

HHSC Contract No. HHS001068000001  
UTHealth Contract No. LA-05122

**INTERAGENCY COOPERATION CONTRACT**  
**between**  
**Texas Health and Human Services Commission**  
**and**  
**The University of Texas Health Science Center at Houston**

The Health and Human Services Commission (“**HHSC**,” “**Owner**,” “**System Agency**,” or “**Receiving Agency**”), State Agency No. 529, and The University of Texas Health Science Center at Houston (“**UTHealth**,” “**Operator**,” or “**Performing Agency**”), State Agency No. 744, each a “**Party**” and collectively the “**Parties**,” pursuant to the provisions of “The Interagency Cooperation Act,” Chapter 771 of the Texas Government Code, enter into the following contract (the “**Contract**”) for the operation of the new inpatient mental health facility, also known as the John S. Dunn Behavioral Sciences Center, located in Houston, Texas (the “**Hospital**”). The **Contract** shall include all attached documents, exhibits, or other attachments made part of the transaction herein contemplated. The Parties agree and acknowledge that the scope of UTHealth’s role under the Contract is acting on behalf of, and for the benefit of, HHSC for purposes of facilitating the “**Hospital Operations**,” as defined in the **Section 1** of Attachment A to this Contract.

**1. Contract Representatives**

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

**HHSC**

Jodi Day, CTCM  
Health and Human Services Commission  
701 W. 51<sup>st</sup> Street, Mail Code E-619  
Austin, Texas 78751  
(737) 270-2207  
[jodi.day@hhs.texas.gov](mailto:jodi.day@hhs.texas.gov)

**UTHealth**

Stephen Glazier, Hospital Chief Ops. Officer  
UT Health Science Center at Houston  
2800 S. MacGregor Way  
Houston, Texas 77054  
(713) 741-7803  
[stephen.m.glazier@uth.tmc.edu](mailto:stephen.m.glazier@uth.tmc.edu)

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

**2. 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 **attachments A through E**, respectively.

**3. Contract Period and Renewal**

This Contract is effective as of the date last signed by the Parties and terminates on August 31, 2023 (the “**Initial Term**”). Thereafter, subject to the availability of funds, this Contract shall **automatically renew for four successive two-year terms**, unless either Party provides notice to

the other Party 180 days in advance of the renewal date stating that the Party wishes not to renew, or unless the Contract is terminated earlier pursuant to its terms and conditions.

Notwithstanding the limitation in the preceding paragraph, the Parties may also extend this Contract beyond the Initial Term and any automatic renewals as necessary to ensure continuity of service or as otherwise agreed upon by the Parties to serve the best interest of the State in accordance with applicable law.

#### **4. Contract Amount and Payment for Services Provided**

Reimbursements by HHSC to UTHealth for authorized and approved services provided during the Initial Term shall not exceed **\$39,709,760.00**, in accordance with **Attachment B, Payment for Services Provided**. This amount includes a portion of funds available for one-time operational start-up costs, as provided in **Subsection 2.1 of Attachment B**, which are to be expended in Texas state fiscal year 2022. The amount for operational start-up costs will not be included in the Hospital operational funding for renewal contract periods. All reimbursement amounts for renewal contract periods are subject to **Subsection 3.1** of Attachment C to this Contract and any related funding amendments.

UTHealth, in its sole discretion, and at its sole cost and expense, may contribute additional funding to support the operations of UTHealth designated beds (the revenue generating beds as defined in Subsection 3.1.3 of Attachment A) under this Contract, subject to the General Appropriations Act, UTHealth financial policies and procedures, and any other applicable laws.

#### **5. Basis for Calculating Reimbursable Costs**

HHSC will reimburse or advance funds to UTHealth for authorized services or resources provided by UTHealth and invoiced pursuant to the terms and conditions of this Contract, and in accordance with Section 771.007 of the *Texas Government Code*.

Reimbursements made under this Contract (1) are based on cost recovery which is the nearest practical estimate of cost; (2) are intended to fairly compensate the UTHealth for the services performed under this Contract; and (3) will be made from current revenues available to the HHSC.

#### **6. Ground Lease**

HHSC has previously entered into a certain Ground Lease dated 2018-August-01 (the “**Ground Lease**”) with the Texas Medical Center (“**TMC**”), a copy of which is attached hereto as **Attachment F**. This Contract is subject to all of the terms of the Ground Lease with the same force and effect as if each provision of the Ground Lease were included in this Contract. All of the obligations of HHSC under the Ground Lease shall be binding upon UTHealth. In the event of a conflict between or among the provisions of the Ground Lease and this Contract, the Ground Lease shall control, to the extent consistent with applicable law.

The Ground Lease requires the prior written consent of TMC to any subletting of the ground or any building constructed thereon except to another agency of the state of Texas or their successors. In accordance with Section 10.1 of the Ground Lease, written notification has been provided to TMC, a copy of which is attached hereto as **Attachment G**. This written notification also included a copy of the final version of this Contract prior to execution.

## 7. Legal Notices

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

### HHSC

Health and Human Services Commission  
Attn: Office of Chief Counsel  
4601 W. Guadalupe Street, MC 1100  
Austin, Texas 78751

### UTHealth

UT Health Science Center at Houston  
Attn: Office of Legal Affairs  
7000 Fannin Street, Suite 1460  
Houston, Texas 77030

Legal notice given in any other manner not set forth within this Section shall be deemed effective only if and when received by the Party to be notified. Additionally, a copy of any legal notice must be provided at the same time to the receiving Party's designated Representative identified in **Section 1** of this Contract when said notice is given. Either Party may change its address for legal notices by written notice to the other Party.

## 8. HHS Covered Entity Privacy, Security, and Breach Notification Terms

### 8.1. Definitions

- 8.1.1. **"Breach"** means the acquisition, access, use, or disclosure of Confidential Information in an unauthorized manner which compromises the security or privacy of the Confidential Information.
- 8.1.2. **"Confidential Information"** means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to the other Party electronically or through any other means that consists of or includes any or all of the following:
- (a) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information (as these terms are defined in 45 Code of Federal Regulations ("C.F.R.") §160.103);
  - (b) Sensitive Personal Information defined by *Texas Business and Commerce Code* Chapter 521;
  - (c) Federal Tax Information (as defined in Internal Revenue Service Publication 1075);
  - (d) Personal Identifying Information (as defined in *Texas Business and Commerce Code* Chapter 521);
  - (e) Social Security Administration Data (defined as information received from a Social Security Administration federal agency system of records), including, without limitation, Medicare or Medicaid information (defined as information relating to an applicant or recipient of Medicare or Medicaid benefits);
  - (f) Substance Use Disorder Treatment Records (as defined in 42 C.F.R. Part 2);
  - (g) Education Records (as defined in the Family Educational Rights and Privacy Act ("**FERPA**") (20 U.S.C. § 1232g; 34 C.F.R. Part 99); and
  - (h) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the *Texas Health & Safety*

Code and the “Texas Public Information Act,” *Texas Government Code* Chapter 552.

## 8.2. Confidential Information

Any Confidential Information of a Party received by the other Party under this Contract may be disclosed only in accordance with applicable law and as authorized in this Contract. By signing this Contract, each Party certifies that it is, and intends to remain for the term of this Contract, in compliance with all applicable state and federal laws and regulations with respect to privacy, security, and breach notification, including without limitation the following:

- (a) 5 United States Code (“U.S.C.”) Part I, Chapter 5, Subchapter II, Section 552a, Records Maintained on Individuals, The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988;
- (b) 26 U.S.C., Internal Revenue Code;
- (c) 42 U.S.C. Chapter 7, Subchapter XI, Part C, Administrative Simplification, the relevant portions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”);
- (d) 42 U.S.C. Chapter 7, the relevant portions of the Social Security Act;
- (e) 42 U.S.C. Chapter I, Subchapter A, Part 2, Confidentiality of Substance Use Disorder Patient Records;
- (f) 45 C.F.R. Chapter A, Subchapter C, Part 160, General Administrative Requirements;
- (g) 45 C.F.R. Chapter A, Subchapter C, Parts 160, 162 and 164, Security and Privacy;
- (h) 20 U.S.C. § 1232g; 34 CFR Part 99 (Family Educational Rights and Privacy Act (“FERPA”));
- (i) Internal Revenue Service Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies, Safeguards for Protecting Federal Tax Returns and Return Information;
- (j) Office of Management and Budget Memorandum 17-12, Preparing for and Responding to a Breach of Personally Identifiable Information;
- (k) *Texas Business and Commerce Code*, Title 11, Subtitle B, Chapter 521, Unauthorized Use of Identifying Information;
- (l) *Texas Government Code*, Title, 5, Subtitle A, Chapter 552, Public Information, as applicable;
- (m) *Texas Health and Safety Code*, Title 2, Subtitle D, Chapter 81, Section 81.006, Funds;
- (n) *Texas Health and Safety Code*, Title 2, Subtitle I, Chapter 181, Medical Records Privacy;
- (o) *Texas Health and Safety Code*, Title 7, Subtitle E, Chapter 611, Mental Health Records;
- (p) *Texas Human Resources Code*, Title 2, Subtitle A, Chapter 12, Section 12.003, Disclosure of Information Prohibited;
- (q) *Texas Occupations Code*, Title 3, Health Professions, as applicable;
- (r) Constitutional and common law privacy; and
- (s) Any other applicable law controlling the release of information created or obtained in the course of providing the services described in this Contract.

Each Party further certifies that it will comply with all amendments, regulations, and guidance relating to those laws, to the extent applicable.

### 8.3. **Cybersecurity Training**

Each Party's authorized users, workforce, and subcontractors with access to a state computer system or database owned/operated by the other Party will complete a cybersecurity training program certified under *Texas Government Code*, Title 10, Subtitle B, Chapter 2054, Section 2054.5192, Cybersecurity Training Required: Certain State Contractors, by the Texas Department of Information Resources.

### 8.4. **HIPAA Compliance**

To the extent applicable to this Agreement, the Parties agree to comply with the HIPAA and any current and future regulations promulgated hereunder, including, without limitation, the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 ("**Federal Privacy Regulations**"), the federal security standards contained in 45 C.F.R. Part 160,162 and 164 ("**Federal Security Regulations**"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 142, 160 and 162 (the "**Federal Electronic Transaction Regulations**"), and the Health Information Technology for Economic and Clinical Health Act ("**HITECH**") contained in Section 13402 of Title XIII of the American Recovery and Reinvestment Act of 2009 ("**Stimulus Bill**"), as applicable, all as may be amended from time to time, and all collectively referred to herein as "HIPAA Requirements". The Parties agree not to use or further disclose any Protected Health Information (as defined in the Federal Privacy Regulations) or Individually Identifiable Health Information (as defined in the Federal Security Regulations), other than as permitted by the HIPAA Requirements and the terms of this Contract. Each Party agrees to make its internal practices, books and records relating to the use and disclosure of Protected Health Information ("**PHI**") available to the Secretary of the U.S. Department of Health and Human Services to the extent required for determining compliance with the HIPAA Requirements. In addition, the Parties agree to comply with any state laws and regulations that govern or pertain to the confidentiality, privacy, security of, and electronic and transaction code sets pertaining to, information related to health care information.

### 8.5. **Business Associate Agreement**

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

### 8.6. **UTHealth's Incident Notice, Reporting and Mitigation**

UTHealth's obligation begins at discovery of any unauthorized disclosure of Confidential Information or any privacy or security incident that may compromise Confidential Information. "**Incident**" is defined as an attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. UTHealth's obligation continues until all effects of the Incident are resolved to HHSC's satisfaction, hereafter referred to as the "**Incident Response Period**."

### 8.7. **Notification to HHSC**

- 8.7.1. UTHealth must notify HHSC within the timeframes set forth in **Subsection 8.7.3** below.

8.7.2. UTHealth must require that its subcontractors and contractors take the necessary steps to assure that UTHealth can comply with all of the following Incident notice requirements.

8.7.3. Incident Notice:

8.7.3.1. Initial Notice:

Within 24 hours of discovery, or in a timeframe otherwise approved by HHSC in writing, UTHealth must preliminarily report on the occurrence of an Incident to the Texas Health and Human Services Privacy and Security Offices via email at: [infosecurity@hhsc.state.tx.us](mailto:infosecurity@hhsc.state.tx.us) with a copy to [privacy@hhsc.state.texas.us](mailto:privacy@hhsc.state.texas.us). This initial notice must, at a minimum, contain (1) all information reasonably available to UTHealth about the Incident, (2) confirmation that UTHealth has met any applicable federal Breach notification requirements and (3) a single point of contact for UTHealth for HHSC communications both during and outside of business hours during the Incident Response Period.

8.7.3.2. Formal Notice:

No later than 3 business days after discovery of an Incident, or when UTHealth should have reasonably discovered the Incident, UTHealth must provide written formal notification to HHSC using the Potential Privacy/Security Incident Form which is available on the Texas Health and Human Services website. The formal notification must include all available information about the Incident, and UTHealth's investigation of the Incident.

## 8.8. **UTHealth Investigation, Response and Mitigation**

UTHealth must fully investigate and mitigate any Incident, to the extent practicable and as soon as possible or as indicated below. At a minimum, UTHealth will:

- (a) Immediately commence a full and complete investigation;
- (b) Cooperate fully with HHSC in its response to the Incident;
- (c) Complete or participate in an initial risk assessment;
- (d) Provide a final risk assessment;
- (e) Submit proposed corrective actions to HHSC Privacy and Security Offices [infosecurity@hhsc.state.tx.us](mailto:infosecurity@hhsc.state.tx.us) and [privacy@hhsc.state.texas.us](mailto:privacy@hhsc.state.texas.us) for review and approval, and include a submission of the Incident to the State Hospital System incident notification mailbox at [incidentnotificationssh@hhsc.state.tx.us](mailto:incidentnotificationssh@hhsc.state.tx.us);
- (f) Commit necessary and appropriate staff and resources to expeditiously respond;
- (g) Report to HHSC as required by HHSC and all applicable federal and state laws for Incident response purposes and for purposes of HHSC's compliance with report and notification requirements, to the satisfaction of HHSC;
- (h) Fully cooperate with HHSC to respond to inquiries and/or proceedings by federal and state authorities about the Incident;
- (i) Fully cooperate with HHSC's efforts to seek appropriate injunctive relief or to otherwise prevent or curtail such Incidents;

- (j) Recover, or assure destruction of, any Confidential Information impermissibly disclosed during or as a result of the Incident; and
- (k) Provide HHSC with a final report on the Incident explaining the Incident's resolution.

## 8.9. Breach Notification to Individuals and Reporting to Authorities

- 8.9.1. In addition to the notices required in this Section, UTHealth must comply with all applicable legal and regulatory requirements in the time, manner, and content of any notification to individuals, regulators, or third-parties, or any notice required by other state or federal authorities, including without limitation, notifications required in 45 C.F.R. Chapter A, Subchapter C, Part 164, Subpart D, Notification in the Case of Breach of Unsecured Protected Health Information, and *Texas Business and Commerce Code*, Title 11, Subtitle B, Chapter 521, Section 521.053(b), Notification Required Following Breach of Security of Computerized Data, or as specified by HHSC following an Incident.
- 8.9.2. UTHealth must assure that the time, manner, and content of any Breach notification required by this Section meets all federal and state regulatory requirements.
- 8.9.3. Breach notice letters must be in UTHealth's name and on UTHealth's letterhead and must contain contact information to obtain additional information, including the name and title of the UTHealth's representative, an email address, and a toll-free telephone number.
- 8.9.4. UTHealth must provide HHSC with copies of all distributed communications related to the Breach notification at the same time UTHealth distributes the communications.
- 8.9.5. UTHealth must demonstrate to the satisfaction of HHSC that any Breach notification required by applicable law was timely made. If there are delays outside of UTHealth's control, UTHealth must provide written documentation to HHSC of the reasons for the delay.

## 9. Contract Documents

The following documents are incorporated by reference and made a part of this Contract for all purposes. Unless expressly stated otherwise in this Contract, in the event of conflict, ambiguity or inconsistency between or among any documents, all System Agency documents take precedence over UTHealth's documents, and the Ground Lease takes precedence over all contract documents.

- Attachment A, Statement of Services to be Provided**
- Attachment B, Payment for Services Provided**
- Attachment C, HHS Uniform Terms and Conditions – Governmental Entity (v3.2)**
- Attachment D, UTHealth Houston Supplemental Conditions to HHS Uniform Terms and Conditions**
- Attachment E, Contract Exhibits:**
  - Exhibit 1 - Forensic Admission Referral and Coordination Process
  - Exhibit 2 - Notification and Transfer of Forensic Patients Requiring Extended Mental Health Treatment
  - Exhibit 3 - Unusual Incident Outcome Notification Summary Form

- Exhibit 4 - Appropriate Use Criteria
- Exhibit 5 - Daily Census Report
- Exhibit 6 - Quarterly Financial Report

**Attachment F, Texas Medical Center Ground Lease (Dated 2018-August-01)**  
**Attachment G, Texas Medical Center Notice of Operating Agreement**

**10. 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.

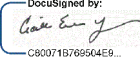
HHSC further certifies that it has statutory authority to contract for the services described in this Contract under Chapter 531 of the *Texas Government Code*.

UTHealth further certifies that it has statutory authority to contract for the services described in this Contract under Chapter 65 of the *Texas Education Code*.

**11. Signatures**


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

**Receiving Agency:**  
**Health and Human Services**  
**Commission**

By:  \_\_\_\_\_  
DocuSigned by:  
C800718786604E9...  
 Cecile Erwin Young  
 Executive Commissioner

Date: February 24, 2022

**Performing Agency:**  
**The University of Texas Health Science**  
**Center at Houston**

By:  \_\_\_\_\_  
DocuSigned by:  
34337E711C8E4E0...  
 T. Kevin Dillon  
 Senior Executive Vice President,  
 Chief Operating Officer

Date: February 24, 2022



## Attachment A

**Statement of Services to be Provided****1. Purpose**

The purpose of this Contract is for a type of hybrid operation of the Hospital with 264 beds for patients who are admitted under forensic and civil commitments and voluntarily. The Parties agree that UTHHealth will be responsible for the day-to-day operations and given substantial discretion in the overall governance of the Hospital (the “**Hospital Operations**”), including but not limited to the following: direct patient care, administration, general Hospital management, health and facilities planning, financial management (including, but not limited to, accounting, budgeting, Medicare cost reporting, and accounts receivable), maintaining financial reserves for future needs and capital projects, purchasing and dispensing of medications, laundry, food, information systems, human resources, physician, professional and direct care staff recruitment, general staffing, security, marketing, maintenance, and Ground Lease obligations for the “**Tenant**,” (as defined in the Ground Lease), all in accordance with the terms and conditions of this Contract. The Hospital Operations shall be overseen and supported by the Hospital’s governing body in accordance with **Subsection 3.1.14** of this Attachment to the Contract.

**2. Background**

HHSC is responsible for oversight of all Texas Health and Human Services agencies, which includes overseeing and coordinating the planning and delivery of health and human services programs throughout the state of Texas. As part of its responsibilities, HHSC currently owns and operates state hospitals (“**State Hospital System**”) across the state of Texas that provide inpatient psychiatric care.

In 2017, the Texas Legislature acknowledged the need for renovations, new construction, and the expansion of the State Hospital System, and gave HHSC the initial funding authority for the construction of or significant repair to state-funded inpatient psychiatric facilities in Austin, Houston, Kerrville, Rusk, and San Antonio. After identifying a proposed location for a new state inpatient mental health facility, as defined by *Texas Health and Safety Code* §571.003(9), adjacent to the Harris County Psychiatric Center, HHSC received approval from the Office of the Texas Governor and the Legislative Budget Board to move forward with the construction of the Hospital.

These State Hospital System renovations and construction projects are part of HHSC’s goal of transforming inpatient psychiatric care throughout Texas and is founded on three bedrock principles: developing a systems-based continuum of care, providing unparalleled care, and ensuring access to care. As such, and when feasible, HHSC is collaborating with medical schools to assist with the design, construction, and possible operation of new HHSC hospitals that will join cutting-edge research with operational expertise to create a more effective healing environment.

**3. UTHHealth’s Responsibilities**

To provide Hospital Operations and satisfy the objectives of this Contract, UTHHealth must meet the obligations, goals, and requirements as set forth within this Contract, and as more fully described within this Section.

### 3.1. General

- 3.1.1.** UTHealth must ensure compliance with all UTHealth duties, obligations, and requirements under this Contract, as well as all Ground Lease obligations, requirements, or restrictions for the Tenant.
- 3.1.2.** UTHealth upon this Contract being fully executed, will assume all Hospital Operations and must begin the process of planning, preparing, and finalizing the Hospital to begin operations on a date agreed to by the Parties in writing, but no earlier than **2022-March 01** (“Operations Start Date”).
- 3.1.3.** UTHealth, on the Hospital’s Operations Start Date, will begin accepting eligible forensic, civil, and voluntary patients, as set forth in **Section 3.5** of this Attachment to the Contract from within a designated service delivery area(s), as set forth in **Subsections 3.1.4 and 3.6** of this Attachment to the Contract, with a maximum of **168** adult beds being designated as State Hospital System beds, and for which a minimum of **96** beds should be designated for forensic (non-maximum security competency restoration) admissions. Notwithstanding anything to the contrary within this Contract, upon UTHealth’s written request, which request must include a detailed explanation that supports the need for adjustments to the capacity and/or allocated number of beds, HHSC, in its sole discretion, may approve adjustments to the capacity and/or the designated number of civil and forensic beds. Upon 30 days written notice to UTHealth, and when determined to be in the best interest of the HHSC State Hospital System, HHSC has the sole discretion to make adjustments to the allocation of the 168 civil and forensic beds. UTHealth must seek and obtain this written approval from HHSC prior to making any adjustments to the number of beds. A request for an adjustment for capacity under this Subsection may only be for non-emergent reasons. Also, the Parties agree that an additional **96** beds are allocated to UTHealth and must be utilized by UTHealth for inpatient psychiatric services within UTHealth’s academic and research mission, and may generate revenue from multiple payor sources, including third-party payors (such beds may be called “**revenue generating beds**”). UTHealth will use all funding from these revenue generating beds to support overall Hospital Operations. Eligibility and treatment of patients using the revenue generating beds will be the sole responsibility of UTHealth and at its sole discretion. Upon the Operations Start Date and at the end of each month during the Contract term and all renewals, the number of State Hospital System and UTHealth designated beds that are operational scheduled to be opened in any given month must become must meet or exceed the thresholds operational by the last day of the month the beds are scheduled to be opened as set forth in the Hospital Beds Operational and Disbursement Schedule in **Subsection 2.2** of Attachment B of this Contract.
- 3.1.4.** UTHealth must ensure (i) that the Hospital maintains accreditation with The Joint Commission (“**TJC**”), or other accrediting body granted deeming authority by the Centers for Medicare and Medicaid Services (“**CMS**”), as a hospital throughout the term of this Contract, and (ii) must ensure compliance with all standards established by the TJC or other accrediting body.

- 3.1.5.** UTHealth must ensure compliance with all applicable federal and state laws, rules, regulations, standards, guidelines, and policies in effect on the beginning date of this Contract unless amended, including, but not limited to, the Emergency Medical Treatment and Labor Act of 1986, *Texas Health and Safety Code* Chapters 241, 571 through 577, and *Texas Code of Criminal Procedure* Chapter 46B. Notwithstanding the proceeding sentence, the Parties acknowledge that the Hospital is exempt from the licensing requirements under *Texas Health and Safety Code* Chapter 577, in accordance with Section 577.002, as long as the Hospital and the funding allocations under the General Appropriations Act relating thereto remain under the control of a Texas Health and Human Services System agency, as defined within *Texas Government Code* Chapter 531. If either the Hospital ownership or funding allocations change, then UTHealth, the state agency, or institution of higher education that will control the Hospital, must apply for licensing pursuant to *Texas Health and Safety Code* Chapter 577.
- 3.1.6.** UTHealth must ensure compliance with its policies and procedures as well as all applicable state and federal statutes and regulations, and Texas administrative rules governing the provision of inpatient mental health services, including but not limited to *Texas Administrative Code* Title 25, Part 1, Chapters 404, 405, 414 and 415; *Texas Administrative Code* Title 26, Part 1, Chapter 306, and *Texas Administrative Code* Title 40, Part 19, Chapter 705.
- 3.1.7.** UTHealth must ensure detailed financial records are kept throughout the life of this Contract that accounts for all expenditures of funding allocated by HHSC to the Hospital, including but not limited to, all detailed expenditures related to voluntary, civil, and forensic beds.
- 3.1.8.** UTHealth shall ensure that funding allocated by HHSC for the Hospital, after any available third-party insurance, indigent care programs, or other local medical care programs, must cover the costs for all medical care and treatment including the cost of psychiatric and physician services and all non-prescription and prescription medications (including discharge medications) incurred by or on behalf of patients admitted to the Hospital. This includes all on-site medical care and treatment, as well as all outside medical care and treatment, emergency room and hospitalization costs, any and all charges by specialists, consultants, and laboratories, incurred by or on behalf of patients admitted. The Parties acknowledge and stipulate that no additional HHSC funds will be made available for Hospital Operations under this Contract except as stated in **Section 4** of this Contract.
- 3.1.9.** UTHealth must begin the process of establishing a fund upon the execution of this Contract to maintain financial reserves that are to be used to meet unplanned and short-term financial needs relating to the Hospital or Hospital Operations.
- 3.1.10.** UTHealth must ensure entry of Client Assignment and Registration (“**CARE**”) assignments, including discharges, for adult civil, voluntary and forensic patients served within the Hospital.
- 3.1.11.** UTHealth must develop and use local reporting unit(s) for the Inpatient Competency Restoration Program (“**ICRP**”) and non-forensic bed units that will provide an

assigned location for all clients served at the Hospital. This information shall also be entered into CARE when reporting on State Hospital System designated beds.

- 3.1.12.** UTHealth must (i) develop written policies and procedures, by which UTHealth will manage the admission, service delivery, continuity of care, and discharge requirements outlined in **Subsection 3.3** of this Contract, (ii) coordinate with other local mental health authorities (“**LMHA**”)/local behavioral health authorities (“**LBHA**”) or local intellectual and developmental disability authority (“**LIDDA**”), courts, county jails or other parties affected by this Contract, and (iii) report to HHSC in accordance with the terms and conditions of this Contract.
- 3.1.13.** UTHealth must designate Hospital primary and secondary points-of-contact, as well as an emergency contact roster, all of whom will be responsible for communication, correspondence, responding, and reporting to HHSC during and after business hours regarding Hospital Operations. These Hospital points-of-contact shall respond to emergency capacity management inquiries initiated by HHSC within a reasonable amount of time not to exceed 4 hours. HHSC will endeavor to contact non-primary points of contact only in an emergency. Communication with points-of-contact is not intended to limit conversations between medical leadership, clinical teams, and central office admission management staff with like Hospital personnel.
- 3.1.14.** UTHealth, within 30 days of this Contract being fully executed, must establish and maintain a Hospital governing body to support Hospital Operations and the provision of patient care in accordance with TJC standards. The governing body must include at least 1 designated State Hospital System representative as a non-voting member.
- 3.1.15.** UTHealth must designate 1 Hospital staff member to participate as a non-voting member in the State Hospital System governing body meetings and subcommittees, as appropriate and requested by HHSC.
- 3.1.16.** UTHealth shall promote and protect Hospital patient rights and value patient feedback and satisfaction as measures of Hospital service quality. To support this function, UTHealth shall have a process by which it receives, investigates, collects and reviews data and reports quarterly to HHSC on patient, family or other complaints related to the rights of Hospital patients.
- 3.1.17.** UTHealth must develop and submit an operational transition plan for the Hospital within 6 months of this Contract being fully executed, which must be reviewed and approved by HHSC. The operational transition plan must describe UTHealth’s policies and procedures that will ensure the following: (1) the least disruption in Hospital Operations during a transition of the Hospital back to HHSC, another state agency, institution of higher education, or third-party; and (2) the full cooperation with HHSC, another state agency, institution of higher education, or third-party, in transferring Hospital Operations.
- 3.1.18.** UTHealth will, in accordance with its current policies and procedures, collaborate with other educational institutions, to offer students, interns, or residents of those educational institutions the opportunity for placement with, and training at, the

Hospital when feasible, and to the extent such placement will not interfere with Hospital Operations.

- 3.1.19.** UTHealth will maintain documentation on whether UTHealth alone operates the Hospital, or whether UTHealth contracts for third-party services or resources in providing Hospital Operations.

### 3.2. Inpatient Mental Health Services

- 3.2.1.** UTHealth in developing and implementing the ICRP must:

- a. Implement an ICRP for individuals committed to the State Hospital System under *Texas Code of Criminal Procedure* Chapter 46B;
- b. Maintain operations of the minimum number of forensic beds for the ICRP, as set forth in **Subsection 3.1.3** of this Attachment to the Contract;
- c. In collaboration with the State Hospital System Admissions Management Team as guided by the Forensic Admission Referral and Coordination Process, attached as **Exhibit 1** to Attachment E of this Contract, accept all referrals of individuals from the State Hospital System Forensic Clearinghouse List for whom Hospital medical staff have reviewed for the presence of an emergent, acute or chronic medical condition and determined that their psychiatric and/or medical condition needs do not exceed the Hospital's capacity to treat, as guided by the Appropriate Use Criteria, attached hereto as **Exhibit 4** to Attachment E of this Contract,. Acceptance of referrals includes patients who do not require admission to a maximum-security hospital and can be served in a hospital designated by HHSC pursuant to *Texas Code of Criminal Procedure* Articles 46B.073(c) or 46B.104. Furthermore, the Hospital is specifically designated by HHSC to accept admission of patients pursuant to the *Texas Code of Criminal Procedure* Article 46B.0021;
- d. Provide, when appropriate, clinically appropriate and effective competency restoration services and treatment in accordance with professional practices and conditional release/discharge planning for those patients adjudicated incompetent to stand trial pursuant to *Texas Code of Criminal Procedure* Chapter 46B;
- e. Regularly assess and reassess patients for restoration of competency as guided by the *Texas Code of Criminal Procedure* Chapter 46B and competency restoration best practices;
- f. Provide timely reports to the courts and to each patient's assigned local mental health authority regarding the patient's progress toward achieving competency to stand trial, including recommendations for extended mental health treatment, pursuant to *Texas Code of Criminal Procedure* Article 46B.102;
- g. Make reasonable efforts with the designated LMHA/LBHA or LIDDA to provide discharge planning for persons who are discharged unexpectedly, which shall include discharge due to:
  - i. a patient's unauthorized departure;
  - ii. criminal charges being dropped, or court otherwise releasing the patient;
  - iii. the death of the patient; or
  - iv. the execution of an arrest warrant for the patient.
- h. If the Hospital suspects a patient has an intellectual/developmental disability, then

UTHealth shall notify the State Hospital System Chief of Forensic Medicine and the forensic admissions mailbox ([forensicadmissions@hhsc.state.tx.us](mailto:forensicadmissions@hhsc.state.tx.us)), unless instructed otherwise in this Contract or in writing by an authorized HHSC representative.

- i. If the patient's initial commitment is approaching expiration and the Hospital determines that it is clinically appropriate for the patient to receive continued services for competency restoration at the Hospital, the Hospital will obtain an Article 46B.102 commitment order for the patient and continue serving that patient with no disruption in care until the patient can be transferred to a state hospital for longer-term treatment in accordance with the process outlined in the Notification and Transfer of Forensic Patients Requiring Extended Mental Health Treatment, attached hereto as **Exhibit 2** to Attachment E to this Contract;
- j. If the individual's initial commitment is approaching expiration and the Hospital determines, through clinical assessment and observation that the individual is not likely to be restored to competency, the Hospital will contact the forensic admissions mailbox ([forensicadmissions@hhsc.state.tx.us](mailto:forensicadmissions@hhsc.state.tx.us)) unless instructed otherwise in this Contract or in writing by an authorized HHSC representative, to arrange the next course of treatment for the individual, prior to discharging the individual back to court.
- k. Provide continuity of care to individuals entering and completing the program as outlined in *Texas Administrative Code* Title 26, Part 1, Chapter 306, Subchapter D;
- l. Collaborate with committing courts and other appropriate entities within the judicial or mental health systems as permitted by law or requested by the court; and
- m. Use best practices and reasonable efforts to operate the Hospital with the goal of maintaining an average daily census that is 95% of the HHSC designated forensic bed capacity for the Hospital. Average daily census is computed by dividing the total number of bed days used during the month by the number of calendar days in the month. .

**3.2.2.** UTHealth for State Hospital System designated non-forensic beds, must:

- a. Provide inpatient civil or voluntary admission beds in the number as set forth in **Subsection 3.1.3** of this Attachment to the Contract for patients admitted under *Texas Health and Safety Code* Chapters 572 through 574 with funds allocated by HHSC for indigent, uninsured, or underinsured patients;
- b. Provide clinically appropriate and effective treatment, ensuring coordination with LMHA/LBHA, LIDDA, and other service providers;
- c. Provide continuity of care to individuals entering and discharging from treatment as outlined in *Texas Administrative Code* Title 26, Part 1, Chapter 306, Subchapter D; and
- d. Use best practices and reasonable efforts to operate the Hospital with the goal of maintaining an average daily census that is 95% of the HHSC designated non-forensic bed capacity for the Hospital. Average daily census is computed by dividing the total number of bed days used during the month by the number of calendar days in the month. .

**3.2.3.** UTHealth in operating the Hospital will work with HHSC on capacity management in coordination with the State Hospital System with the goal of increasing access to

services and decreasing wait times. This may include, but is not limited to, serving individuals from outside of the Hospital's service delivery area(s), from other state hospitals, and expedited admissions as agreed upon by the Parties.

- 3.2.4.** UTHealth will provide all medications and medication-related services to patients served under this Contract in accordance with UTHealth's policies and procedures, as well as all applicable state and federal statutes and regulations, and Texas administrative rules.
- 3.2.5.** UTHealth must notify HHSC of all reports of death, abuse, neglect, exploitation, illegal, unethical or unprofessional conduct, or other unusual incidents impacting patients in State Hospital System designated beds and report the investigation disposition of each incident using the Unusual Incident Outcome Notification Summary Form, attached hereto as **Exhibit 3** to Attachment E to this Contract.

### 3.3. Admission, Continuity of Care, and Discharge Requirements

- 3.3.1.** UTHealth must ensure that patients are provided a full array of services that comply with the following principles for treatment, including treatment that:
- a. Applies the Appropriate-Use and Medical Clearance criteria as outlined in the Appropriate Use Criteria, attached hereto as **Exhibit 4** to Attachment E to this Contract;
  - b. Is effective, responsive, individualized, goal-directed, culturally competent, and least restrictive, and evidence-based treatment;
  - c. Is provided through the development and implementation of a Comprehensive Treatment Plan by an interdisciplinary team and corresponding intervention(s) including but not limited to:
    - i. A reasonable and appropriate discharge plan that is developed by UTHealth and a local LMHA/LBHA, LIDDA, courts, and/or the patient's legal authorized representatives; and
    - ii. Communication that will facilitate the exchange of information between UTHealth and the LMHA/LBHA, LIDDA, court, or other parties needed to accomplish common admission, transfer, and discharge activities;
  - d. Promotes recovery, independence, and self-sufficiency;
  - e. Upholds HIPAA privacy rules;
  - f. Protects comprehensive patient rights consistent with state and federal regulations, and TJC requirements;
  - g. Incorporates a behavior management program as appropriate; and
  - h. Provides telehealth and telemedicine in accordance **Subsection 3.4** of this Attachment to the Contract, if necessary.
- 3.3.2.** UTHealth must demonstrate efforts to reduce restraint and seclusion by adopting and implementing the following restraint/seclusion reduction tools:
- a. Using assessment tools to identify risk factors for violence and seclusion and restraint history;

- b. Using a trauma assessment;
- c. Using tools to identify persons with risk factors for death and injury;
- d. Using de-escalating or safety surveys; and
- e. Provide comfort and sensory rooms and other meaningful clinical interventions that assist people in emotional self-management.

**3.3.3.** UHealth must comply with the following standards regarding admission, continuity of care, and discharge:

- a. For admissions ordered under *Texas Code of Criminal Procedure* Article 46B.073, UHealth must coordinate with the State Hospital System Admissions Management Team for receiving information about persons on the state hospital waiting list and coordination for admission as outlined in the Forensic Admission Referral and Coordination Process, attached as **Exhibit 1** to Attachment E to this Contract.
- b. When the Hospital admits a patient, a physician must issue and sign a written order admitting the patient;
- c. The Hospital must conduct an intake process as soon as possible, but not later than 24 hours after the patient is admitted. The intake process shall include:
  - i. Obtaining relevant information about the patient, including information about finances, third-party coverage or insurance benefits, and advance directives; and
  - ii. Explaining, orally and in writing, the patient's rights described in *Texas Administrative Code* Title 25, Part 1, Chapter 404, Subchapter E (concerning Rights of Persons Receiving Mental Health Services), including:
    - (1) The Hospital's services and treatment as they relate to the patient; and
    - (2) The existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Disability Rights, Texas, as required by *Texas Health and Safety Code* §576.008;
- d. When the Hospital admits a patient, the Hospital must promptly, but no later than 24 hours after admission, notify the LMHA of residence of the admission and the patient's admission status;
- e. Upon admission of a patient to the Hospital, the Hospital must begin discharge planning for the patient;
- f. Discharge planning must involve the patient, Hospital treatment team, LMHA/LBHA, and LIDDA as appropriate; patients committed for competency restoration must also involve court personnel and the patient's attorney (if represented) as necessary, and any other service providers, parties or agencies as appropriate. Involvement in discharge planning may be held via teleconference or videoconference. The Hospital is responsible for notifying individuals involved in discharge planning of scheduled treatment team meetings and case reviews;
- g. Discharge planning must include, at a minimum, the following activities:



- i. Identifying and recommending clinical services and supports needed by the patient after discharge or transfer;
- ii. Counseling the patient and the patient's LAR, if applicable, to prepare them for care after discharge or transfer;
- iii. Preparing a continuing care plan by the patient's treating physician, unless the physician believes the patient does not require continuing care, that includes:
  - (1) A description of recommended services and supports the patient may receive after discharge or transfer;
  - (2) A description of problems identified at discharge or transfer, which may include any issues that disrupt the patient's stability;
  - (3) The patient's goals, interventions, and objectives as stated in the patient's treatment plan in the Hospital;
  - (4) Comments or additional information;
  - (5) A final diagnosis based on the current edition of the Diagnostic Statistical Manual of Mental Disorders ("DSM") published by the American Psychiatric Association;
  - (6) The provider(s) to whom the patient will be referred to for any services or supports after discharge or transfer;
- iv. Development of a transportation plan in conjunction with the LMHA/LBHA or LIDDA; and
- v. Provision of 7 days of medications provided upon discharge or transfer and a prescription for 14 days for each medication the patient will need after discharge or transfer.

**3.3.4.** UTHealth will be responsible for providing and paying for:

- i. the 7 days of medication needed after discharge or transfer until the patient is evaluated by a physician, and
- ii. Transportation services if the discharge transportation plan designates UTHealth as the entity that will provide transportation services at discharge.

**3.3.5.** UTHealth must develop a disaster services plan for when the Hospital is unable to fully operate or cannot operate at all due to a hurricane damage or other disaster, and must report the quarterly expenditures to HHSC for each applicable service provided under the disaster services plan. During periods of hurricanes or other disaster beyond UTHealth's control, UTHealth may utilize funding allocated by HHSC to the Hospital to purchase the following:

- a. Crisis respite beds;
- b. Adult psychiatric inpatient beds;
- c. Psychiatric assessment and coordination; and
- d. Mental health transport;

If the ICRP is not fully operational due to hurricane damage or other disaster, UTHealth may utilize funding allocated by HHSC to the Hospital during the time the Hospital is not fully operational to purchase alternate inpatient beds meeting

standards for this committed population. However, State Hospital System designated beds must have priority in the utilization of the funding for these alternate facility inpatient beds.

### 3.4. Telehealth and Telemedicine Medical Services

**3.4.1.** UTHealth may use telehealth services (“a health service, other than a telemedicine medical service, delivered by a health professional licensed, certified, or otherwise entitled to practice in the state of Texas and acting within the scope of the health professional’s license, certification, or entitlement to a patient at a different physical location than the health professional using telecommunications or information technology,”) and telemedicine medical services (“a health care service delivered by a physician licensed in the state of Texas, or a health professional acting under the delegation and supervision of a physician licensed in the state of Texas, and acting within the scope of the physician’s or health professional’s license to a patient at a different physical location than the physician or health professional using telecommunications or information technology”) pursuant to *Texas Occupations Code* Chapter 111, and other applicable state and federal laws regarding payment sources, including *Texas Government Code* Chapter 531 regarding Medicaid reimbursement.

**3.4.2.** UTHealth in providing telehealth and telemedicine services must comply with all of the following:

- a. Patients, or a legally authorized representative of the patients, must give written consent that they agree to receive services via telehealth and telemedicine;
- b. Telehealth and telemedicine services must comply with all Texas Medicaid requirements for telehealth, as well as the licensure/practice act requirements for each physician or health professional; and
- c. Technology used to provide telehealth services must be compliant with HIPAA and FERPA, as may be applicable to the patient.

### 3.5. Eligible Population

**3.5.1.** Individuals that are the age of 18 years or older.

**3.5.2.** Individuals that meet the criteria for inpatient mental health services under *Health & Safety Code* Chapters 572 through 574, including those released from the Texas Department of Criminal Justice.

**3.5.3.** Individuals committed to the State Hospital System by a Texas state court under *Code of Criminal Procedure* Chapter 46B.

### 3.6. Service Delivery Area(s)

**3.6.1.** The patients served must reside in the service delivery area(s) approved by HHSC or as may be dictated pursuant to **Subsection 3.2.3** of this Contract. The service delivery area(s) for this Contract includes: **Angelina, Austin, Brazoria, Brazos, Chambers, Colorado, Fort Bend, Galveston, Grimes, Hardin, Harris, Jasper, Jefferson,**

**Liberty, Madison, Matagorda, Montgomery, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, Washington, and Wharton.** UTHealth may provide services to individuals outside of its designated service delivery area(s), if UTHealth requests and receives written approval from HHSC, and the individuals either reside in counties not covered by an HHSC funded inpatient mental health facility, or are on a waiting list at a HHSC funded inpatient mental health facility.

- 3.6.2.** All requests for changes in service delivery area assignments must be approved in writing by HHSC before implementation. HHSC reserves the right to negotiate the geographic boundaries of designated service delivery area(s).

### **3.7. Reporting Requirements**

- 3.7.1.** UTHealth must ensure all reports, documentation, and other information required to be submitted by UTHealth to HHSC under this Contract are submitted via email to [sh\\_contracted\\_hospital\\_reports@hhs.texas.gov](mailto:sh_contracted_hospital_reports@hhs.texas.gov) with a copy of any correspondence to HHSC designated Representative, unless instructed otherwise in this Contract or in writing by an authorized HHSC representative.
- 3.7.2.** UTHealth must report the daily census of State Hospital System designated beds using a UTHealth-developed and HHSC-approved format report, or by submitting the Daily Census Report, attached hereto as **Exhibit 5** to Attachment E to this Contract, **each business day no later than 8:00 AM** via email to [sh\\_contracted\\_hospital\\_reports@hhs.texas.gov](mailto:sh_contracted_hospital_reports@hhs.texas.gov) with a copy of any correspondence to HHSC designated Representative, unless instructed otherwise in this Contract or in writing by an authorized HHSC representative.
- 3.7.3.** UTHealth shall report to the State Hospital System Incident Management Coordinator ([incidentnotificationsh@hhsc.state.tx.us](mailto:incidentnotificationsh@hhsc.state.tx.us)), the following other incidents:
- a. Severe weather resulting in damage to person or property;
  - b. Fire resulting in destruction of property;
  - c. Computer, power, and telephone outages that affect Hospital Operations or communications from or to the Hospital;
  - d. Cyber ransomware attacks;
  - e. Accidents on hospital grounds resulting in serious injury or loss of property;
  - f. Unannounced visits by TJC, HHS Centers for Medicare & Medicaid Services, HHSC Regulatory, the Texas State Auditor's Office, or other federal or state regulatory or oversight entities;
  - g. Infectious Diseases, other than COVID-19, that affect Hospital Operations or census. Patients testing positive or are symptomatic for COVID-19 must be reported to HHSC on the daily census sheet; and
  - h. Any other incident that is likely to be a legal liability to the Hospital, Contractor, or HHSC or create media attention.
- 3.7.4.** UTHealth shall report all allegations of abuse, neglect, or exploitation of a patient in a bed to the Texas Abuse Hotline by calling (800) 252-5400 or reporting online at <https://www.txabusehotline.org>, and shall follow all requirements related to the

reporting and investigation of abuse, neglect or exploitation in accordance with *Texas Human Resources Code* Chapter 48.

- 3.7.5. UTHealth must track and address patient complaints and grievances in State Hospital System designated beds, and provide HHSC with a quarterly summary report of patient grievances, findings and resolution status.
- 3.7.6. UTHealth, within the established deadlines, must submit a quarterly performance indicator report in a format proposed by UTHealth and approved by HHSC, with measures that are agreed to by both Parties, and which measures use definitions that have been agreed to by both Parties.
- 3.7.7. UTHealth must submit to HHSC the total number of individuals admitted to State Hospital System designated non-forensic beds (acute and sub-acute) and the ICRP during the previous fiscal quarter. HHSC will monitor attainment toward annual occupancy performance each quarter. HHSC may, in its sole discretion, grant exceptions from expected attainment on a case-by case basis for good cause shown. Any deviation of Hospital capacity funded under this Contract must be submitted in writing to HHSC prior to implementation of such changes.
- 3.7.8. UTHealth must submit Quarterly Financial Report, attached hereto as **Exhibit 6** of Attachment E to this Contract within 30 days of the end of the quarter. The quarters shall be based upon the Texas state fiscal year.

### 3.8. **Personnel Standards and Requirements**

- 3.8.1. UTHealth must maintain qualified Hospital personnel, including but not limited to, physicians and health professionals, in accordance with all TJC, Texas statutory, and Texas administrative rule requirements, and established industry standards for inpatient mental health facilities.
- 3.8.2. UTHealth is solely responsible for hiring, directing, supervising, terminating, and compensating Hospital personnel, representatives, agents, subcontractors, and third-party service providers performing services under this Contract. UTHealth shall have no claim against HHSC 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.
- 3.8.3. UTHealth must use funding allocated by HHSC to the Hospital to only pay Hospital personnel hourly rates, salaries, or benefits based on the actual percentage of time their job duties are related to Hospital Operations, if Hospital personnel duties are split between the Hospital, UTHealth Harris County Psychiatric Center (“**HCPC**”), or any other UTHealth facility, department, or position, which must be evidenced by weekly time and attendance records that detail the percentage of time Hospital personnel split between the Hospital and non-Hospital related duties.
- 3.8.4. UTHealth must conduct criminal background checks on all Hospital personnel, including but not limited to, full-time staff, part-time staff, professors, medical fellowships, medical residents, medical students, interns, or volunteers, or any other

staff whose primary duty station is at the Hospital. All background checks/clearances must be conducted in accordance with applicable state and federal laws. If the results of any criminal background check show an individual has been convicted of or received deferred adjudication for any of the criminal offenses listed in *Texas Health and Safety Code §250.006* or other applicable laws, that individual will be barred from the Hospital premises, and from participating in any activities or services related to this Contract.

- 3.8.5. UTHealth must provide written notification to HHSC of changes in President, Senior Executive Vice-President and Chief Operating Officer, Hospital's Chief Operating Officer, Hospital's Chief Medical officer, and Hospital's executive leadership team within 30 days after the change.

### 3.9. Maintenance, Repairs, Additions, Alterations, and Improvements

- 3.9.1. UTHealth must, out of funding allocated by HHSC to the Hospital, or other UTHealth funds which include third party revenue generated from UTHealth designated beds must maintain and repair the entirety of the exterior of the Hospital and the "**Demised Premises**," as defined in the Ground Lease, including, but not limited to, the roof, downspouts, gutters, foundation, slab, walls, glazing systems, doors, sidewalks, parking areas, all utility and electrical lines, project infrastructure, and all building systems including but not limited to the elevators, security system, HVAC, and plumbing systems in good repair, reasonable wear and tear excepted.
- 3.9.2. UTHealth must, out of funding allocated by HHSC to the Hospital, or other UTHealth funds which include third party revenue generated from UTHealth designated beds must maintain and repair the interior of the Hospital in good condition and repair, reasonable wear and tear excepted, including, but not limited to, interior walls and ceiling, windows, glass and plate glass, doors, finish work, floors and floor covering, millwork and casework, audio visual systems, and IT system.
- 3.9.3. UTHealth, with HHSC's prior written approval, and subject to the terms of the Ground Lease, may, at its own cost and expense, make alterations, additions, or improvements to the exterior and interior of the Hospital and the Demised Premises, structural or otherwise, to construct or add additional facilities.
- 3.9.4. UTHealth, in the event substantial damages, repairs, and maintenance to the Hospital are required during the initial term or any renewal term of this Contract, may submit a written request to HHSC for funding assistance with such repairs or maintenance, as long as the damages, repairs, and maintenance are not the result of UTHealth's failure to maintain or repair the Hospital or the Demised Premises.
- 3.9.5. UTHealth, out of funding allocated by HHSC to the Hospital or at its cost and expense, shall maintain and keep the Hospital personal property in good repair and operating condition. UTHealth will keep all revenue generating beds in good repair and operating condition using funding from the revenue generating beds.
- 3.9.6. UTHealth must notify the HHSC Assets Management Department in writing if UTHealth determines that any items of personal property owned by HHSC, and listed on the HHSC Hospital Inventory List of Assets, has become inadequate, obsolete,

worn-out, or are no longer useful; any removal thereof must not interfere with Hospital Operations or substantially decrease the use of, or the services provided by, the Hospital. UTHealth, out of funding allocated by HHSC to the Hospital or at UTHealth's own cost and expense, may substitute machinery or equipment or replace Hospital personal property. All substituted machinery or equipment purchased from HHSC allocated funds, or replaced personal property, shall be free of any liens and encumbrances, shall be and become part of the personal property owned by HHSC. This Subsection also applies to revenue generating beds, as that term is defined in **Subsection 3.1.3** of this Attachment to the Contract.

### **3.10. Branding, Signage, Marketing, and Third-Party Communications**

- 3.10.1.** UTHealth received conditional approval from HHSC during the construction phase of the Hospital, to name the Hospital the "John S. Dunn Behavioral Sciences Center," and install signs upon the exterior of the Hospital that reflect said name and include the UTHealth logo. That conditional naming and signage approval stipulated it was contingent upon this Contract being executed by both Parties. Notwithstanding anything to the contrary within this Section, upon this Contract being fully executed, UTHealth may install additional signs upon the exterior of the Hospital or the Demised Premises regarding the conduct of UTHealth's business or Hospital services, subject to prior written approval by HHSC.
- 3.10.2.** Neither Party shall use the other Party's name, logo, or other likeness in any press release, marketing material, website or other announcement without the other Party's prior written approval. Excluding informational, educational, and marketing materials or activities related to research, provision of services, or staff recruitment activities, UTHealth is not authorized to make or participate in any media releases or public announcements pertaining to the Hospital, Hospital Operations, or this Contract without HHSC's prior written consent (which consent shall not be unreasonably withheld or conditioned, or unduly delayed), and then only in accordance with explicit written instruction from HHSC. Notwithstanding anything to the contrary contained herein, UTHealth is not prohibited and may design, develop, and launch a website that reflects the name, UTHealth logo, services, and other relevant information relating to the Hospital, but any website related to the Hospital must contain information making clear that the Hospital is operated by UTHealth in partnership with HHSC, whom owns the Hospital as an expansion of the HHSC State Hospital System. Additionally, any services identified on any website that are provided at the Hospital and are funded through HHSC allocated funds must contain an explanation that such services are funded by HHSC and are provided in partnership with the HHSC State Hospital System. UTHealth is the contractual operator of this HHSC owned and majority funded inpatient mental health facility. This website must also include a link to the State Hospital System webpage.
- 3.10.3.** UTHealth shall not communicate with TMC regarding the Ground Lease, Hospital, the Demised Premises, or this Contract, excluding Ground Lease required fees, without providing advance notice to and receiving HHSC written approval (which approval shall not be unreasonably withheld or conditioned, or unduly delayed), except during emergency circumstances which UTHealth must provide written notice to HHSC regarding the communication within 48 hours.

### 3.11. Hospital Utilities, TMC Fees, Insurance, and Other Related Fees

UTHealth shall be responsible for ensuring that all Hospital utilities, insurance policies (including commercial property insurance if required by HHSC in accordance with **Subsection 4.6** of this Attachment to the Contract), TMC fees, and any other related fees are billed to and paid by UTHealth. UTHealth shall be responsible for confirming all payments are made in accordance with the “Prompt Payment Act,” *Texas Government Code* Chapter 2251, and is solely liable for any interest incurred on overdue payments.

### 3.12. Mechanic’s liens, Encumbrances, Sublets, and Third-Party Debts

Consistent with **Section 7** of this Contract, entitled Ground Lease, all of the obligations of HHSC under Section 5.3 of the Ground Lease entitled “Liens” are binding upon UTHealth. Accordingly, if any lien as described in Section 5.3 is placed on the Demised Premises, then, pursuant to Section 5.3(c) of the Ground Lease, UTHealth shall fully discharge such lien as set forth therein within 60 days of written notice from either TMC or HHSC. Also, in the event UTHealth fails to discharge any lien, HHSC is entitled to all of the rights and remedies under Section 5.3(d) granted to TMC as Landlord. Furthermore, consistent with **Section 7** of this Contract, any construction of an addition or an alteration to the Hospital shall be subject to the terms of Section 5.7 of the Ground Lease in addition to any other applicable term in this Contract.

Neither Party will have authority to act for or on behalf of the other Party except as expressly provided for in this Contract; no other authority, power, or use is granted or implied. HHSC hereby expressly reserves the right from time to time to designate by written notice to UTHealth to act partially or wholly for HHSC in connection with the performance of HHSC’s obligations hereunder under the Ground Lease. Except as expressly provided for in this Contract, neither Party may incur any debts, obligations, expenses, or liabilities of any kind on behalf of the other Party.

## 4. HHSC’s Responsibilities

- 4.1. HHSC will coordinate a centralized admission referral process for forensic patients to effectively manage the capacity needs of the State Hospital System and “**Contracted Hospitals**,” as defined in **Exhibit 2** of Attachment E to this Contract, through the State Hospital System Admissions Management Team.
- 4.2. HHSC will provide the Hospital with information about individuals who have been court-ordered into the State Hospital System from counties within the Hospital’s designated service delivery area(s), or as requested by HHSC, as described in **Subsection 3.2.3** of this Attachment to the Contract through the State Hospital System Admissions Management Team.
- 4.3. HHSC will review and approve any requests for expedited admissions of individuals on the State Hospital System clearinghouse or civil waitlists through the State Hospital System Associate Commissioner or an authorized designee.
- 4.4. HHSC will provide oversight and coordination for the transfer of patients in the Hospital to another state hospital who are in need of extended mental health treatment under *Texas Code of Criminal Procedure* Article 46B.102 through the State Hospital System management or an authorized designee(s).

- 4.5. HHSC will evaluate demand and utilization of the HHSC designated beds by counties within the designated service delivery area(s) throughout the term of this Contract.
- 4.6. HHSC, in its sole discretion, and at its own cost and expense, may purchase commercial property insurance that covers the exterior and/or interior of the Hospital, or require UTHealth, upon 30 days advance written notice, to purchase said insurance under Subsection 3.11 of this Attachment to the Contract.
- 4.7. HHSC, in its sole discretion, and at its own cost and expense, may complete such repairs and maintenance necessary to maintain the exterior and interior of the Hospital or the Demised Premises in good repair and in compliance with all applicable state and federal laws, rules, and regulations provided such is discussed and agreed upon in advance by UTHealth so as not to impact Hospital Operations.
- 4.8. HHSC will coordinate with the HHSC Assets Management Department and the Texas Facilities Commission's Surplus Property Department upon receiving notice from UTHealth that Hospital personal property owned by HHSC has become inadequate, obsolete, worn-out, or is no longer useful, in regards to pick up and disposal of any HHSC owned personal property in accordance with state law.

## **5. Joint Responsibilities**

HHSC and UTHealth agree to collaboratively work together to ensure the success of the contractual obligations set forth within this Contract in order to meet the overall safety and well-being of patients served through the term of this Contract.

## **6. Performance and Outcome Measures**

In accordance with HHSC regulations and policies, all contracts for client or patient services must include clearly defined goals and outcomes that can be measured to determine whether the objectives of the program or services are being achieved. As such, UTHealth's performance will be evaluated during the life of this Contract through the monitoring of all contractual obligations and requirements as established under this Contract, including but not limited to, the Quarterly Financial Report, attached hereto as **Exhibit 6** of Attachment E to this Contract and the Quarterly Performance Indicator Report that will be developed pursuant to **Subsection 3.7.6** of this Attachment to the Contract, which will be incorporated into this Contract upon acceptance by HHSC as if originally set forth within.

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## Attachment B

**Payment for Services Provided****1. Payment and Reimbursement**

HHSC will reimburse UTHealth in accordance with the terms and conditions of this Contract based on the budget amounts and reimbursement schedule as referenced in **Section 2** of this Attachment to the Contract, but shall not exceed the total amount set forth in **Section 4** of this Contract. UTHealth agrees the amount set forth in **Section 4** of this Contract is the nearest practicable estimate of those costs that may result from the Hospital Operations and that HHSC is discharged of reimbursement obligations for any costs beyond that said amount. Additionally, HHSC is not obligated to pay costs that are not related to the Hospital Operations, are not authorized under the terms of this Contract, or to pay more than UTHealth's allowable and actually incurred costs consistent with federal and state regulations.

The payment methodology utilized is cost reimbursement, which UTHealth agrees is the sole basis for payment under this Contract. Additionally, UTHealth agrees to adhere to HHSC's fiscal and billing policies and procedures throughout the term of this Contract.

All payments by HHSC will be advanced monthly to UTHealth in the amounts set forth in **Subsection 2.2** of this Attachment to the Contract and made in accordance with *Texas Government Code* §§771.007(c) and .008. All advanced reimbursements shall be supported by UTHealth pursuant to the invoicing requirements in **Section 3** of this Attachment to the Contract.

UTHealth may submit invoice(s) for all expenditures related to the Hospital Operations that were incurred within 3 months prior to the execution of this Contract that were not covered by any other funding source, which must be submitted in accordance with the requirements set forth in **Section 3** of this Attachment to the Contract. HHSC, in its reasonable discretion, may determine if a pre-Contract expenditure qualifies as reimbursable under this Contract.

Notwithstanding anything to the contrary in this Contract, UTHealth shall promptly refund HHSC for any advanced funds made to UTHealth, less any documented UTHealth allowable expenses or contract payment obligations incurred or irrevocably committed at the end of each Texas state fiscal year or as of UTHealth's receipt of HHSC's written notice of termination or the Contract's termination date.

**2. Budget and Reimbursement Totals**

- 2.1. Budget Categories and Reimbursement Totals. All operating expenditures to be eligible for reimbursement under this Contract must be in accordance with the budget categories and amounts set forth below:

<b>Table 1 – Budget with Categories for State Fiscal Years 2022-23*</b>		
<b>Budget Categories</b>	<b>Total Budget</b>	<b>HHSC Allocated Funds</b>
Personnel Salaries & Benefits	\$ 32,105,718	\$ 32,105,718
Patient Services & Direct Clinical Costs	\$ 2,787,110	\$ 2,787,110
Physical Plant, Equipment and Overhead	\$ 3,375,888	\$ 3,375,888
One-time Operational Start-up Costs	\$ 1,441,045	\$ 1,441,045

<b>Total</b>	<b>\$39,709,760</b>	<b>\$39,709,760</b>
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*\*UTHealth must submit for HHSC's review and approval a final budget template that includes the total estimated Hospital budget for all 264 beds (e.g. both HHSC allocated funds and non-HHSC funding resources) and narratives that describe what is accounted for in each budget category within 30 days of the execution of this Contract.*

- 2.2. Hospital Beds Operational and Disbursement Schedule. UTHealth must ensure all State Hospital System and UTHealth designated beds must become operational by the end of each month as set forth in the schedule as follows:

<b>Table 2 - Hospital Bed Operational and Disbursement Schedule</b>		
<b>FY 2022</b>	<b># of Beds Operational</b>	<b>Maximum Disbursement Amount</b>
Start-up Operations*	--	\$ 1,441,045.00
March 2022	48	\$ 944,546.69
April 2022	48	\$ 914,077.44
May 2022	48	\$ 944,546.69
June 2022	48	\$ 914,077.44
July 2022	96	\$ 1,889,093.37
August 2022	96	\$ 1,889,093.37
<b>Total FY 2022</b>		<b>\$ 8,936,480.00</b>
<b>FY 2023</b>	<b># of Beds Operational</b>	<b>Maximum Disbursement Amount</b>
September 2022	96	\$ 1,756,800.00
October 2022	96	\$ 1,815,360.00
November 2022	96	\$ 1,756,800.00
December 2022	120	\$ 2,269,200.00
January 2023	120	\$ 2,269,200.00
February 2023	120	\$ 2,049,600.00
March 2023	168	\$ 3,176,880.00
April 2023	168	\$ 3,074,400.00
May 2023	168	\$ 3,176,880.00
June 2023	168	\$ 3,074,400.00
July 2023	168	\$ 3,176,880.00
August 2023	168	\$ 3,176,880.00
<b>Total FY 2023</b>		<b>\$ 30,773,280.00</b>

*\*Funding for start-up operational costs must be expended by 08/31/2022.*

- 2.3. UTHealth Budget Categories Transfers. UTHealth may transfer funds between budget categories where the fund transfers are **less than 20%** of the total current Texas state fiscal year Contract budget. However, prior to any fund transfers under this Subsection, UTHealth must provide HHSC advance written notice that describes the need for the fund transfers and revised budget categories no less than 5 business days prior to the planned fund transfers.
- 2.4. HHSC Approval of Budget Categories Transfers and Hospital Beds Operational and Disbursement Schedule Changes. HHSC, in its sole discretion, may approve fund transfers

between budget categories **that exceed 20%** of the total current Texas state fiscal year Contract budget or changes to the beds operational and disbursement schedule upon UTHealth's written request, which must include a detailed explanation supporting the need for the fund transfer or change in beds operational and disbursement schedule, and proposed revised budget categories or schedule. UTHealth must seek and obtain HHSC's written approval prior to making any fund transfers or changes to the schedule under this Subsection.

### **3. Submittal of Invoices**

To account for the use of advanced funds, UTHealth must submit quarterly invoices that include a detailed breakout of the costs by budget categories and supporting documentation of expenditures from the previous quarter, not to include individual invoices for referenced expenditures in said quarter, from the UTHealth financial reporting system no later than 30 calendar days following the end of the Texas state fiscal year quarter that the expenditures were incurred in a secure, non-alterable electronic format (*.pdf is acceptable*) emailed to: [hscsfacilitycontracts@hhs.texas.gov](mailto:hscsfacilitycontracts@hhs.texas.gov) with a copy to the designated HHSC Representative identified in **Section 1** of this Contract. Alternative submission arrangements must be approved in writing by the designated HHSC Representative identified in **Section 1** of this Contract.

In submitting an invoice via email, UTHealth must use the following naming convention for the subject line of the email: "Performing Agency's Name, HHSC Contract No., Invoice No., PO No., Payment or Advancement Amount, and Months Year." *For example, an invoice submitted to HHSC by UTHealth Houston, for services provided during the third quarter of 2022 would look like this: "UTHealth Houston, HHSC Contract No. HHS001068000001, Invoice No. 00001, \$100.00, March-May 2022."*

The final invoice shall be submitted by UTHealth within 90 days following the termination date of this Contract.

If HHSC requests corrections to the invoice or additional information, documentation, or justification, the invoice shall be resubmitted with all corrections initialed or information necessary and changes to the date of submission to the date of resubmission.

### **4. Dispute of Invoices**

Notwithstanding anything to the contrary in this Contract, HHSC may deduct from funding advancements any expenditures from previously submitted UTHealth invoices that it disputes in good faith, until such time HHSC, in its sole discretion, has determined that UTHealth has provided additional information, documentation, or justification that supports or justifies the expenditure(s).

### **5. Verification of Invoices**

Notwithstanding anything to the contrary in this Contract, HHSC reserves the right to verify the details set forth in UTHealth's invoices, either before or after payment, by requesting additional information or justification, including but not limited to, inspecting books of UTHealth at a mutually convenient time, or documentation which clearly indicates an activity has taken place or an expense has been incurred.

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

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

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

### **9.24 DISCLOSURE OF LITIGATION**

- A. The Performing Agency must disclose in writing to the contract manager assigned to this Contract any material civil or criminal litigation or indictment either threatened or pending involving the Performing Agency. "Threatened litigation" as used herein shall include governmental investigations and civil investigative demands. "Litigation" as used herein shall include administrative enforcement actions brought by governmental agencies. The Performing Agency must also disclose any material litigation threatened or pending



involving subcontractors, consultants, and/or lobbyists. For purposes of this section, “material” refers, but is not limited, to any action or pending action that a reasonable person knowledgeable in the applicable industry would consider relevant to the Work under the Contract or any development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the Work, together with any litigation threatened or pending that may result in a substantial change in the Performing Agency’s financial condition.

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

**9.25 NO THIRD-PARTY BENEFICIARIES**

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

**9.26 BINDING EFFECT**

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

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## Attachment D

**UTHEALTH HOUSTON SUPPLEMENTAL CONDITIONS TO HHS UNIFORM TERMS  
AND CONDITIONS – GOVERNMENTAL ENTITY VERSION 3.2**

**The HHS Uniform Terms and Conditions - Governmental Entity are revised, modified, or supplemented as follows:**

1. **Section 2.4, Taxes**, is deleted in its entirety and replaced with the following:

**2.4 Taxes**

Purchases made for the 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 applicable taxes or similar amounts resulting from the Contract.

2. **Section 3.1, Excess Obligations Prohibited**, is deleted in its entirety and replaced with the following:

**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. To the extent authorized under the constitution and laws of the state of Texas, Performing Agency agrees that 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. Nothing in this Contract may be deemed (i) an admission or assumption of liability by Performing Agency or (ii) a waiver of any claim or defense available to Performing Agency under applicable laws.

3. **Section 3.3, Debt and Delinquencies**, is deleted in its entirety.
4. **Section 3.4(A), Refunds and Overpayments**, is deleted in its entirety and replaced with the following:
  - A. Subject to prior discussion and agreement with Performing Agency and exchange of supporting documentation, 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. withhold payments to Performing Agency of any expenditures that System Agency disputes in good faith, or deduct from funding advancements to Performing Agency, until such time as System Agency has determined that Performing Agency has provided additional information, documentation, or justification that supports or justifies the expenditure(s).

5. **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.

6. **Article V, Ownership of Work Product**, is deleted in its entirety.

7. **Section 6.1(A), Use of State Property**, is deleted in its entirety and replaced with the following:

- A. Performing Agency is prohibited from using state property belonging to System Agency (“**State Property**”) for any purpose other than performing services authorized under the Contract.

8. **Section 6.1(E), Use of State Property**, is deleted in its entirety and replaced with the following:

- E. Each Party shall take responsibility for the actions of its employees, including but not limited to, the possibility of any damages (repairs and replacements) caused by its employees during the course and scope of their employment to the other Party’s property. Nothing in this Contract may be deemed (i) an admission or assumption of liability by either Party or (ii) a waiver of any claim or defense available to either Party under applicable laws. Performing Agency shall notify System Agency of the loss, destruction, or damage of HHSC personal property in accordance in **Section 3.9.6** of Attachment A to this Contract.

9. **Section 6.2, Damage to Government Property**, is deleted in its entirety.

10. **Section 7.1(B), Record Maintenance and Retention**, is deleted in its entirety and replaced with the following:

- 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: (i) 7 years after the Contract expiration date; (ii) 3 years after the completion of all audit, claim, litigation, or dispute matters involving the Contract are resolved; or (iii) as otherwise required under Texas law, whichever term is longer.

11. **Section 7.3(A), Response/Compliance with Audit of Inspection Findings**, is amended by deleting the last sentence in its entirety.

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

**7.5 Confidentiality**

The Parties shall maintain as confidential and shall not disclose to third parties without the disclosing Party’s prior written consent, except to the extent required by the Texas Public Information Act, Chapter 552 of the Texas Government Code, or as otherwise required by law, any information identified

in writing as confidential or that is included in the following definition of **“confidential information”**: “Confidential Information” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to a Party or that a Party may create, receive, maintain, use, disclose or have access to on behalf of the other Party (the **“disclosing party”**) that consists of any or all of the following:

- (1) Education records as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. Part 99;
- (2) Federal Tax Information as defined in Internal Revenue Code §6103 and Internal Revenue Service Publication 1075;
- (3) Personal Identifying Information (**PII**) as defined in Texas Business and Commerce Code, Chapter 521;
- (4) Protected Health Information (**PHI**) in any form including, without limitation, Electronic Protected Health Information or Unsecured Protected Health Information as defined in 45 C.F.R. §160.103;
- (5) Sensitive Personal Information (**SPI**) as defined in Texas Business and Commerce Code, Chapter 521;
- (6) Social Security Administration Data, including, without limitation, Medicaid information means disclosures of information made by the Social Security Administration or the Centers for Medicare and Medicaid Services from a federal system of records for administration of federally funded benefit programs under the Social Security Act, 42 U.S.C., Chapter 7;
- (7) Patient identifying information as defined in 42 C.F.R. Part 2;
- (8) All privileged work product;
- (9) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

This Section will survive termination or expiration of this Contract. The obligations of the Parties to safeguard confidential information in compliance with all applicable federal and state laws and regulations under this Section will survive termination or expiration of this Contract until the Confidential Information is returned to the disclosing Party, destroyed, or is deemed no longer confidential. For the avoidance of any doubt, Confidential Information is deemed no longer confidential if it: (i) is or later becomes generally available to the public through no act or omission of the non-disclosing Party, unless made available by an unauthorized disclosure; (ii) was possessed by the non-disclosing Party prior to the latest execution date of the Contract without being subject to an obligation to keep such information confidential; (iii) is lawfully obtained without restriction from a third Party who had the legal right to disclose the same; (iv) is independently developed by the non-disclosing Party without the use or benefit of Confidential Information as evidenced by the non-disclosing Party’s written records; or (v) disclosing Party has agreed in writing it is no longer subject to the restrictions applicable to Confidential Information under the term of this Contract. In the event the non-disclosing Party becomes legally compelled or required by regulation to disclose any Confidential Information, it shall promptly provide to disclosing Party notice thereof, shall use its reasonable efforts to minimize the disclosure of any Confidential Information, and shall cooperate with disclosing Party should the disclosing

Party seek to obtain a protective order or other appropriate remedy. This requirement must be included in all subcontracts awarded by non-disclosing Party.

13. **Section 8.1, Contract Remedies**, is amended by adding a new paragraph at the end of the section as follows:

The Parties will attempt to resolve all Contract issues through good faith negotiations. If negotiations are unsuccessful then the Parties agrees to use the dispute resolution process in Section 9.14.

14. **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 180 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 notice.

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

16. **Section 9.2, Insurance**, is amended by adding a new Subsection C:

C. Nothing in this Contract should be construed to limit Performing Agency's right to self-insure in accordance with Texas Government Code Chapter 2259.

17. **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. The Parties will 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.

18. **Section 9.6(ii), E-Verify Program**, is deleted in its entirety and replaced with the following:

ii. seek the same assurances from all subcontractors regarding their employees to perform Work pursuant to the Contract within the United States of America.

19. **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 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.

20. **Section 9.14, Dispute Resolution**, is deleted in its entirety and replaced with the following:

**9.14 Dispute Resolution**

The Parties agree to use good-faith efforts to resolve all questions, difficulties, or disputes of any nature that may arise under or by this Contract; provided, however, nothing in this Section shall preclude either Party from pursuing any remedies as may be available under Texas law.

21. **Section 9.16, Media Releases**, is deleted in its entirety.:

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

23. **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 State of Texas' sovereign immunity with respect to either the System Agency or the Performing Agency. 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.

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

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

26. **Article IX, General Provisions**, is amended by adding after **Section 9.26**, the following new sections 9.27, 9.28, and 9.29:

**9.27 Texas Public Information Act**

It shall be the independent responsibility of the System Agency and Performing Agency to comply with the provisions of Chapter 552, Texas Government Code (the "**Public Information Act**"), as those provisions apply to the Parties' respective information. Neither Party is authorized to receive public information requests or take any action under the Public Information Act on behalf of any other Party.

**9.28 Limitations**

THE PARTIES ARE AWARE THERE ARE CONSTITUTIONAL AND STATUTORY 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 SUCH LIMITATIONS WILL NOT BE BINDING ON A PARTY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

**9.29 UT Institution Approval Process**

Notwithstanding any other provision in this Contract to the contrary, this Contract may be subject to review and approval by the Board of Regents of The University of Texas System ("**Board of Regents**") under the Rules and Regulations of the Board. If such Board of Regents review and approval is required, then the validity and effectiveness of this Contract is contingent upon such approval through the agenda requirements and approval process under the Rules and Regulations of the Board of Regents. If the Board of Regents does not approve this Contract, then the Contract will terminate effective as of the date of non-approval by the Board of Regents and the Performing Agency may submit a final invoice to System Agency within 30 days of such non-approval requesting System Agency's payment to Performing Agency for the goods or services provided by Performing Agency in compliance with the terms and conditions of this Contract prior to the Board's non-approval. In the event that the Board of Regents does not approve this Contract, the total amount that System Agency pays to Performing Agency under this Contract will not in any event exceed **\$4,999,999.99**.

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