

**INTERAGENCY COOPERATION CONTRACT  
DEPARTMENT OF STATE HEALTH SERVICES  
CONTRACT No. HHS001126000002**

**THE DEPARTMENT OF STATE HEALTH SERVICES** (System Agency) and **THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON**, State Agency Number 744 (Performing Agency”), each a “Party” and collectively the “Parties,” enter into the following contract to update the “Active Texas 2020” plan to align with the updated National Physical Activity Plan, CDC’s Active People, Healthy Nation initiative, DSHS Obesity Prevention Program activities and stakeholder input (the “Contract”) pursuant to the provisions of “The Interagency Cooperation Act,” Chapter 771 of the Texas Government Code.

**I. CONTRACT REPRESENTATIVES**

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

Performing Agency

Name: The University of Texas Health Science Center at Houston  
Address: 7000 Fannin, UCT 1000  
City and Zip: Houston, TX 77030-5400  
Contact Person: Carmen Martinez  
Telephone: 713-500-3999  
Fax number: 713-383-3746  
E-mail Address: [preaward@uth.tmc.edu](mailto:preaward@uth.tmc.edu)

Agency Number: 744

System Agency

Name: Department of State Health Services  
Address: 1100 W. 49<sup>th</sup> Street, MC 1990  
City and Zip: Austin, TX 78756  
Contact Person: Nadine Bautista  
Telephone: 512-776-6524  
Email Address:  
[Nadine.Bautista@dshs.texas.gov](mailto:Nadine.Bautista@dshs.texas.gov)

Agency Number: 537

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

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

**III. CONTRACT PERIOD AND RENEWAL**

The Contract is effective on the signature date of the latter of the Parties to sign this agreement and terminates on September 30, 2022, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. System Agency, at its

sole discretion, may extend this Contract for any period(s) of time, provided the Contract term, including all extensions or renewals, does not exceed five years. Notwithstanding the limitation in the preceding sentence, System Agency, at its sole discretion, also may extend the Contract beyond five years as necessary to ensure continuity of service, for purposes of transition, or as otherwise determined by System Agency to serve the best interest of the State.

#### **IV. AMENDMENT**

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

#### **V. CONTRACT AMOUNT AND PAYMENT FOR SERVICES**

The total amount of this Contract will not exceed \$19,000.00, as provided for in **Attachment B – Budget**.

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

Performing Agency will be paid on a cost reimbursement basis and in accordance with **Attachment B – Budget**.

#### **VII. LEGAL NOTICES**

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

##### **System Agency**

Department of State Health Services  
Attn: Office of Chief Counsel  
4601 W. Guadalupe, MC 1100  
Austin, Texas 78751

##### **Performing Agency**

The University of Texas Health Science Center at Houston  
7000 Fannin, UCT 1000  
Houston, TX 77030-5400  
Attention: Carmen Martinez

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

#### **VIII. CERTIFICATIONS**

The undersigned Parties certify that:

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

The System Agency further certifies that it has statutory authority to contract for the services described in this Contract under Texas Health and Safety Code, Chapters 12 and 1001 and Texas Government Code, Chapter 531.

The Performing Agency further certifies that it has statutory authority to contract for the services described in this Contract under Texas Education Code, Chapter 65 and Texas Government Code, Chapter 771

**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR SYSTEM AGENCY CONTRACT NO. HHS001126000002**

**DEPARTMENT OF STATE HEALTH SERVICES**

**THE UNIVERSITY OF TEXAS HEALTH  
SCIENCE CENTER AT HOUSTON**

DocuSigned by:  
*Manda Hall, M.D*  
202CEA5A9C164E2...  
Signature

DocuSigned by:  
*Carmen Martinez*  
DA9040C9315B434...  
Signature

Manda Hall, M.D  
Printed Name

Carmen Martinez  
Printed Name

Associate Commissioner, Community Health Improvement  
Title

Director, Grants and Contracts  
Title

February 10, 2022  
Date

February 10, 2022  
Date

**THE FOLLOWING ATTACHMENTS TO SYSTEM AGENCY CONTRACT NO.  
HHS001126000002 ARE HEREBY INCORPORATED BY REFERENCE:**

- ATTACHMENT A – STATEMENT OF WORK**
- ATTACHMENT B – BUDGET**
- ATTACHMENT C – HHS UNIFORM TERMS AND CONDITIONS-GOVERNMENTAL ENTITY (v. 3.2)**
- ATTACHMENT D – UT SUPPLEMENTAL CONDITIONS (v. 3.4)**
- ATTACHMENT E – DATA USE AGREEMENT – UNIVERSITY OF TEXAS SYSTEM V. 10.23.2019**
- ATTACHMENT F – FEDERAL ASSURANCES AND CERTIFICATIONS**
- ATTACHMENT G – CERTIFICATION REGARDING LOBBYING**

## ATTACHMENT A – STATEMENT OF WORK

### I. PERFORMING AGENCY RESPONSIBILITIES

- A. Update the “Active Texas 2020” plan to align with the updated National Physical Activity Plan; CDC’s Active People, Healthy Nation initiative; DSHS Obesity Prevention Program activities and stakeholder input.

Performing Agency’s required responsibilities:

1. Organize and facilitate a statewide symposium to collect stakeholder input,
2. Develop a communication plan to support the roll-out of the updated plan,
3. Develop and publish the updated state plan in collaboration with Texas Department of State Health Services (DSHS),
4. Develop an evaluation plan and final evaluation report to include recommendations on how to bring physical activity consultation to communities,
5. Assemble a committee to oversee the above project processes and inform recommendations,
6. The University of Texas School of Public Health (UTSPH) at the University of Texas Health Science Center at Houston will facilitate data collection for the OLE! Texas Leadership Team Progress in collaboration with DSHS. UTSPH is responsible for developing the tool, conducting technical assistance calls with OLE! Texas partners, administering the tool, and analyzing the results. UTSPH will implement the activities in the workplan approved by DSHS, produce a final report and submit a success story document for OLE! Leadership Team work 2016-2022.
7. Provide administrative duties, as necessary, for evaluation of the Active Texas 2020 plan,
8. Develop and implement the updated Active Texas 2020 plan,
9. Provide administrative duties, as necessary, to facilitate data collection for the OLE! Texas Leadership team and coordination of calls with

relevant partners.

10. Submit a written status report on a monthly basis to DSHS Obesity Prevention Program (OPP) Project Officer and to [bringinghealthyback@dshs.texas.gov](mailto:bringinghealthyback@dshs.texas.gov) no later than the first Thursday of each month.
11. Participate in monthly update and coordination calls with DSHS Obesity Prevention Program and relevant partners.

## II. PERFORMANCE MEASURES

- A. System Agency will monitor the Performing Agency's performance of the requirements in this Statement of Work and compliance with the Contract's terms and conditions. All services and deliverables under the Contract will be provided at an acceptable quality level and in a manner consistent with acceptable industry standard, custom, and practice. All services and deliverables under the Contract will be reviewed and accepted by the DSHS Obesity Prevention Program and should be submitted to [bringinghealthyback@dshs.texas.gov](mailto:bringinghealthyback@dshs.texas.gov) and OPP project officer.

Update Active Texas 2020 Plan	Due Date
Submit a draft workplan and schedule for all contract activities for System Agency review & approval.	15 business days after the effective date of this Contract
Revise workplan based on System Agency feedback and submit final version to System Agency.	45 business days after the effective date of this Contract
Develop a success story that follows the format administered by System Agency and submit to System Agency.	September 30, 2022
Submit a final report to System Agency including: <ul style="list-style-type: none"> <li>• Description/evaluation of processes taken to update the state physical activity plan to align with the updated National Physical Activity Plan, CDC's Active People, Healthy</li> </ul>	September 30, 2022

<p>Nation initiative, DSHS Obesity Prevention Program activities and stakeholder input</p> <ul style="list-style-type: none"> <li>• Partners involved</li> <li>• Key recommendations that informed the revision</li> <li>• A link to the updated Active Texas 2020 plan</li> <li>• Recommendations on how to bring physical activity consultation to communities.</li> </ul>	
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<b>OLE! Texas Leadership Team Progress</b>	<b>Due Date</b>
Submit a draft workplan and schedule for System Agency review & approval.	30 days after the effective date of this Contract
Revise workplan/schedule based on System Agency feedback and submit to System Agency.	60 days after the effective date of this Contract
Submit a final report to System Agency (including summary of process, tool, data & results) and completed workplan/schedule.	September 30, 2022
Submit a success story document for OLE! Texas Leadership Team work 2016-2022.	September 30, 2022

### III. INVOICE AND PAYMENT

- A. Performing Agency will request payments using the State of Texas Purchase Voucher (Form B-13) at <http://www.dshs.texas.gov/grants/forms/b13form.doc>. Voucher and any supporting documentation will be mailed or submitted by fax or electronic mail to the address/number below.

Department of State Health Services  
 Claims Processing Unit, MC 1940  
 1100 West 49<sup>th</sup> Street  
 P.O. Box 149347

Austin, TX 78714-9347

FAX: (512)458-7442

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

- B. Performing Agency will be paid in accordance with the Budget attached hereto as Attachment B.
- C. All invoices must reference Contract number and Purchase Order number once issued.



**ATTACHMENT B –BUDGET**

<b>CATEGORY</b>	<b>AMOUNT</b>
PERSONNEL	\$9,516.00
FRINGE BENEFITS	\$2,663.00
TRAVEL	\$0.00
EQUIPMENT	\$0.00
SUPPLIES	\$0.00
CONTRACTUAL	\$0.00
OTHER	\$0.00
<b>TOTAL DIRECT COSTS</b>	<b>\$12,179.00</b>
INDIRECT COSTS	\$6,821.00
<b>BUDGET PERIOD TOTAL</b>	<b>\$19,000.00</b>



# 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’ *Textravel* accessible at the Texas Comptroller of Public Accounts website.

### **2.3 NO QUANTITY GUARANTEES**

The System Agency makes no guarantee of volume or usage of Work under this Contract. All Work requested may be on an irregular and as needed basis throughout the Contract term.

### **2.4 TAXES**

Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Performing Agency represents and warrants that it shall pay all taxes or similar amounts resulting from the Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Performing Agency or its employees. System Agency shall not be liable for any taxes resulting from the contract.



## ARTICLE III. STATE AND FEDERAL FUNDING

### 3.1 EXCESS OBLIGATIONS PROHIBITED

The Contract is subject to termination or cancellation, without penalty to the System Agency, either in whole or in part, subject to the availability of state funds. System Agency is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If System Agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either System Agency's or Performing Agency's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, System Agency will not be liable to Performing Agency for any damages that are caused or associated with such termination, or cancellation, and System Agency will not be required to give prior notice.

### 3.2 NO DEBT AGAINST THE STATE

This Contract will not be construed as creating any debt by or on behalf of the State of Texas.

### 3.3 DEBT AND DELINQUENCIES

Performing Agency agrees that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.

### 3.4 REFUNDS AND OVERPAYMENTS

- A. At its sole discretion, the System Agency may:
- i. withhold all or part of any payments to Performing Agency to offset overpayments, unallowable or ineligible costs made to the Performing Agency, or if any required financial status report(s) is not submitted by the due date(s); or,
  - ii. require Performing Agency to promptly refund or credit - within thirty (30) calendar days of written notice - any funds erroneously paid by System Agency which are not expressly authorized under the Contract.
- B. "Overpayments," as used in this Section, include payments:
- i. made by the System Agency that exceed the maximum allowable rates;
  - ii. that are not allowed under applicable laws, rules, or regulations; or,
  - iii. that are otherwise inconsistent with this Contract, including any unapproved expenditures. Performing Agency understands and agrees that it will be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Performing Agency further understands and agrees that reimbursement of such disallowed costs shall be paid by Performing Agency from funds which were not provided or otherwise made available to Performing Agency under this Contract.

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

### **4.1 WARRANTY**

Performing Agency warrants that all Work under this Contract shall be completed in a manner consistent with standards under the terms of this Contract, in the applicable trade, profession, or industry; shall conform to or exceed the specifications set forth in the Contract; and all Deliverables shall be fit for ordinary use, of good quality, and with no material defects. If System Agency, in its sole discretion, determines Performing Agency has failed to complete Work timely or to perform satisfactorily under conditions required by this Contract, the System Agency may require Performing Agency, at its sole expense, to:

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

### **4.2 CONTRACT AFFIRMATIONS**

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

### **4.3 FEDERAL ASSURANCES**

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

### **4.4 FEDERAL CERTIFICATIONS**

Performing Agency certifies that, to the extent federal certifications are incorporated into the Contract under the Signature Document, the Performing Agency has reviewed the federal certifications and that Performing Agency is in compliance with all requirements. In addition, Performing Agency certifies that it is and shall remain in compliance with all applicable federal laws, rules, and regulations, as they may pertain to this Contract.

## **ARTICLE V. INTELLECTUAL PROPERTY**

### **5.1 OWNERSHIP OF WORK PRODUCT**

- A. All right, title, and interest in the Work Product, including all Intellectual Property Rights therein, is exclusively owned by System Agency. Performing Agency and Performing Agency's employees will have no rights in or ownership of the Work Product or any other property of System Agency.
- B. Any and all Work Product that is copyrightable under United States copyright law is deemed to be "work made for hire" owned by System Agency, as provided by Title 17 of the United States Code. To the extent that Work Product does not qualify as a "work made for hire" under applicable federal law, Performing Agency hereby irrevocably assigns and

transfers to System Agency, its successors and assigns, the entire right, title, and interest in and to the Work Product, including any and all Intellectual Property Rights embodied therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing.

- C. Performing Agency agrees to execute all papers and to perform such other acts as System Agency may deem necessary to secure for System Agency or its designee the rights herein assigned.
- D. In the event that Performing Agency has any rights in and to the Work Product that cannot be assigned to System Agency, Performing Agency hereby grants to System Agency an exclusive, worldwide, royalty-free, transferable, irrevocable, and perpetual license, with the right to sublicense, to reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, make, have made, use, sell and offer for sale the Work Product and any products developed by practicing such rights.
- E. The foregoing does not apply to Incorporated Pre-existing Works or Third Party IP that are incorporated in the Work Product by Performing Agency. Performing Agency shall provide System Agency access during normal business hours to all Vendor materials, premises, and computer files containing the Work Product.

## 5.2 PERFORMING AGENCY'S PRE-EXISTING WORKS

- A. To the extent that Performing Agency incorporates into the Work Product any works of Performing Agency that were created by Performing Agency or that Performing Agency acquired rights in prior to the Effective Date of this Contract ("**Incorporated Pre-existing Works**"), Performing Agency retains ownership of such Incorporated Pre-existing Works.
- B. Performing Agency hereby grants to System Agency an irrevocable, perpetual, non-exclusive, royalty-free, transferable, worldwide right and license, with the right to sublicense, to use, reproduce, modify, copy, create derivative works of, publish, publicly perform and display, sell, offer to sell, make and have made, the Incorporated Pre-existing Works, in any medium, with or without the associated Work Product.
- C. Performing Agency represents, warrants, and covenants to System Agency that Performing Agency has all necessary right and authority to grant the foregoing license in the Incorporated Pre-existing Works to System Agency.

## 5.3 THIRD PARTY IP

- A. To the extent that any Third Party IP is included or incorporated in the Work Product by Performing Agency, Performing Agency hereby grants to System Agency, or shall obtain from the applicable third party for System Agency's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for System Agency's internal business purposes only,
  - i. to use, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Third Party IP and any derivative works thereof embodied in or delivered to System Agency in conjunction with the Work Product, and
  - ii. to authorize others to do any or all of the foregoing.
- B. Performing Agency shall obtain System Agency's advance written approval prior to incorporating any Third Party IP into the Work Product, and Performing Agency shall

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

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

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

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

#### **5.5 DELIVERY UPON TERMINATION OR EXPIRATION**

No later than the first calendar day after the termination or expiration of the Contract or upon System Agency's request, Performing Agency shall deliver to System Agency all completed, or partially completed, Work Product, including any Incorporated Pre-existing Works, and any and all versions thereof. Performing Agency's failure to timely deliver such Work Product is a material breach of the Contract. Performing Agency will not retain any copies of the Work Product or any documentation or other products or results of Performing Agency's activities under the Contract without the prior written consent of System Agency.

#### **5.6 SURVIVAL**

The provisions and obligations of this **Article V** survive any termination or expiration of the Contract.

#### **5.7 SYSTEM AGENCY DATA**

- A. As between the Parties, all data and information acquired, accessed, or made available to Performing Agency by, through, or on behalf of System Agency or System Agency contractors, including all electronic data generated, processed, transmitted, or stored by Performing Agency in the course of providing data processing services in connection with Performing Agency's performance hereunder (the "**System Agency Data**"), is owned solely by System Agency.
- B. Performing Agency has no right or license to use, analyze, aggregate, transmit, create derivatives of, copy, disclose, or process the System Agency Data except as required for Performing Agency to fulfill its obligations under the Contract or as authorized in advance in writing by System Agency.
- C. For the avoidance of doubt, Performing Agency is expressly prohibited from using, and from permitting any third party to use, System Agency Data for marketing, research, or other non-governmental or commercial purposes, without the prior written consent of System Agency.
- D. Performing Agency shall make System Agency Data available to System Agency, including to System Agency's designated vendors, as directed in writing by System Agency. The foregoing shall be at no cost to System Agency.
- E. Furthermore, the proprietary nature of Performing Agency's systems that process, store, collect, and/or transmit the System Agency Data shall not excuse Performing Agency's performance of its obligations hereunder.

## ARTICLE VI. PROPERTY

### 6.1 USE OF STATE PROPERTY

- A. Performing Agency is prohibited from using State Property for any purpose other than performing services authorized under the Contract.
- B. State Property includes, but is not limited to, System Agency's office space, identification badges, System Agency information technology equipment and networks (*e.g.*, laptops, portable printers, cell phones, iPads or tablets, external hard drives, data storage devices, any System Agency-issued software, and the System Agency Virtual Private Network (VPN client)), and any other resources of System Agency.
- C. Performing Agency shall not remove State Property from the continental United States. In addition, Performing Agency may not use any computing device to access System Agency's network or e-mail while outside of the continental United States.
- D. Performing Agency shall not perform any maintenance services on State Property unless the Contract expressly authorizes such services.
- E. During the time that State Property is in the possession of Performing Agency, Performing Agency shall be responsible for:
  - i. all repair and replacement charges incurred by State Agency that are associated with loss of State Property or damage beyond normal wear and tear, and
  - ii. all charges attributable to Performing Agency's use of State Property that exceeds the Contract scope. Performing Agency shall fully reimburse such charges to System Agency within ten (10) calendar days of Performing Agency's receipt of System Agency's notice of amount due. Use of State Property for a purpose not authorized by the Contract shall constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to System Agency under contract, at law, or in equity.

### 6.2 DAMAGE TO GOVERNMENT PROPERTY

- A. In the event of loss, destruction, or damage to any System Agency or State of Texas owned, leased, or occupied property or equipment by Performing Agency or Performing Agency's employees, agents, Subcontractors, and suppliers, Performing Agency shall be liable to System Agency and the State of Texas for the full cost of repair, reconstruction, or replacement of the lost, destroyed, or damaged property.
- B. Performing Agency shall notify System Agency of the loss, destruction, or damage of equipment or property within one (1) business day. Performing Agency shall reimburse System Agency and the State of Texas for such property damage within 10 calendar days after Performing Agency's receipt of System Agency's notice of amount due.

### 6.3 PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT

In the event the Contract is terminated for any reason, or upon its expiration State Property remains the property of the System Agency and must be returned to the System Agency by the end date of the Contract or upon System Agency's request.

## **ARTICLE VII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY**

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

- A. Performing Agency shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes.
- B. Performing Agency shall maintain and retain legible copies of this Contract and all records relating to the performance of the Contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records shall be maintained and retained by Performing Agency for a minimum of seven (7) years after the Contract expiration date or seven (7) years after the completion of all audit, claim, litigation, or dispute matters involving the Contract are resolved, whichever is later.

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

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

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

- A. Performing Agency must act to ensure its and its subcontractors' compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Contract and the services and Deliverables provided. Any such correction will be at Performing Agency's or its Subcontractor's sole expense. Whether Performing Agency's action corrects the noncompliance shall be solely the decision of the System Agency.
- B. As part of the services, Performing Agency must provide to System Agency upon request a copy of those portions of Performing Agency's and its subcontractors' internal audit reports relating to the services and Deliverables provided to the State under the Contract.

### **7.4 STATE AUDITOR'S RIGHT TO AUDIT**

- A. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- B. The Performing Agency shall comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

### **7.5 CONFIDENTIALITY**

Performing Agency shall maintain as confidential and shall not disclose to third parties without System Agency's prior written consent, any System Agency information including but not limited to System Agency Data, System Agency's business activities, practices, systems, conditions and services. This section will survive termination or expiration of this Contract. The obligations of Performing Agency under this section will survive termination or expiration of this Contract. This requirement must be included in all subcontracts awarded by Performing Agency.

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

### **8.1 CONTRACT REMEDIES**

To ensure Performing Agency's full performance of the Contract and compliance with applicable law, the System Agency reserves the right to hold Performing Agency accountable for breach of contract or substandard performance and may take remedial or corrective actions, including, but not limited to:

- i. suspending all or part of the Contract;
- ii. requiring the Performing Agency to take specific actions in order to remain in compliance with the Contract;
- iii. recouping payments made by the System Agency to the Performing Agency found to be in error;

- iv. suspending, limiting, or placing conditions on the Performing Agency's continued performance of Work; or
- v. imposing any other remedies, sanctions, or penalties authorized under this Contract or permitted by federal or state law.

## **8.2 TERMINATION FOR CONVENIENCE**

The System Agency may terminate the Contract, in whole or in part, at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in the System Agency's notice of termination.

## **8.3 TERMINATION FOR CAUSE**

Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, the System Agency may terminate the Contract, in whole or in part, upon either of the following conditions:

### **i. Material Breach**

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, in its sole discretion, that Performing Agency has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Performing Agency's duties under the Contract. Performing Agency's misrepresentation in any aspect of Performing Agency's Solicitation Response, if any, or Performing Agency's addition to the System for Award Management (SAM) 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 -**

**UT SYSTEM SUPPLEMENTAL CONDITIONS TO HHS UNIFORM TERMS AND  
CONDITIONS – GOVERNMENTAL ENTITY VERSION 3.2  
(Version 3.4; November 1, 2021)**

**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. The Performing Agency, at its sole expense, agrees to promptly repair or replace all Work that was defective or damaged Work upon delivery. Notwithstanding anything to the contrary in the Contract, Work modifications only may be made through formal written amendment signed by both Parties.

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

**5.1 Ownership of Intellectual Property Rights Resulting from Work Product**

- A. To the extent any Work results in the creation of intellectual property and Intellectual Property Rights, all right, title, and interest in and to such intellectual property shall vest in the Party that creates such intellectual property.
- B. Performing Agency hereby grants to the System Agency and the State of Texas a royalty-free, paid up, worldwide, perpetual, non-exclusive, non-transferable, non-commercial license to use all Deliverables and any intellectual property invented or created by Performing Agency, Performing Agency's contractor, or a subcontractor in the performance of the Work under this Contract.
- C. The System Agency shall have the right to review and provide comment to any written report, publication or other literature including copyrightable intellectual property invented or created in the performance of this Contract, prior to the publication of such literature. The Performing Agency agrees to provide the System Agency with an advance copy of any such report, publication, or literature at least 30 Calendar days prior to publication. The Performing Agency agrees to insert the following statement into any such report, publication or literature: "The views expressed in this publication are those of the authors and do not necessarily reflect the official policies, positions, or views of the State of Texas or the Health and Human Services Commission.

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

**5.2 Performing Agency's Pre-Existing Works**

- A. To the extent the Performing Agency incorporates into the Work Product any works of Performing Agency that were created by Performing Agency or to which Performing Agency acquired rights prior to the Effective Date of this Contract ("**Incorporated Pre-Existing Works**"), Performing Agency retains ownership to such Incorporated Pre-Existing Works. For avoidance of doubt, Performing Agency also retains ownership of any works developed by Performing Agency that are unrelated to the Work

under this Contract.

- B. To the extent legally permitted, Performing Agency hereby grants System Agency an irrevocable, perpetual, non-exclusive, royalty-free, worldwide right and license to use, reproduce, modify, copy, create derivative works of, publish, publicly perform and display the Incorporated Pre-Existing Works for the exclusive purpose of utilizing the Work Product for System Agency's non-commercial, governmental purposes.

- 8. **Section 5.4, Agreements with Employees and Subcontractors**, is deleted in its entirety and replaced with the following:

**5.4 Applicability to Employees and Subcontractors**

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

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

**5.5 Delivery Upon Termination or Expiration**

Unless otherwise agreed in writing, no later than 5 business days, or such other time period as set forth within the Contract), after the termination or expiration of the Contract or upon System Agency's request, Performing Agency shall deliver to System Agency all completed, or partially completed, Work Product, including any Incorporated Pre-Existing Works, and any versions thereof. Performing Agency's failure to timely deliver such Work Product is a material breach of the Contract. Performing Agency is permitted to retain copies of the Work Product and any documentation or other products or results of Performing Agency's activities under the Contract for its internal academic, educational, non-commercial patient-care, and/or research use.

- 10. **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.

- 11. **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 equipment or property within 5 business day of discovery.

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

13. **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.

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

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

### **7.5 Confidentiality**

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.

16. **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.

17. **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 10 business days' advance written notice at any time when, in its sole discretion, it determines that termination is in its best interest. The termination will be effective on the date specified in the terminating Party's notice of termination.

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

19. **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.

20. **Section 9.3(B), Limitation on Authority**, is deleted in its entirety and replaced with the following:

B. Performing Agency shall not have any authority to act for or on behalf of the System Agency 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.

21. **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.

22. **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.

23. **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.

24. **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.

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

**9.16 Media Releases**

Except as provided in this Contract or required under applicable law, neither party shall use the other party's name, logo, or other likeness in any press release, marketing material, or other announcement without prior written approval. System Agency does not endorse any vendor, commodity, or service. Performing Agency is not authorized to make or participate in any media releases or public announcements pertaining to this Contract or the Services to

which they relate without System Agency's prior written consent, and then only in accordance with explicit written instruction from System Agency. However, Performing Agency will, if appropriate, acknowledge support received from the System Agency and/or other agency in any publication under 5.1(C) as revised by the UT System Supplemental Conditions to HHS Uniform Terms and Conditions – Governmental Entity.

26. **Section 9.17, No Marketing Activities**, is deleted in its entirety.
27. **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.

28. **Section 9.23, Enterprise Information Management Standards**, is deleted in its entirety.
29. **Section 9.24, Disclosure of Litigation**, is deleted in its entirety.
30. **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.

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