



UpToDate
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Contract No.: 00029595

April 12, 2022

Texas Health And Human Services Commission
PO Box 149347
Austin, Texas 78714-9347
United States

Dear Ladies and Gentlemen,

This letter (the "Letter") and the attached Subscription and License Terms set forth in Exhibit A set out the terms and conditions on which UpToDate, Inc. ("UpToDate") will supply Texas Health And Human Services Commission ("You" or "Your" or "HHS") with a subscription to *UpToDate Anywhere*, which consists of the *UpToDate*® online database, software and user documentation (the "Licensed Materials"). This Agreement (as defined below) will be effective as of the date of last signature below ("Effective Date") and Your subscription will be valid for an initial period of five (5) months (the "Initial Term") commencing April 1, 2022. Capitalized terms may be defined in this Letter or in the attached Exhibit A. This Letter, along with the Exhibit A, are collectively referred to herein as the "Agreement."

You acknowledge and agree that UpToDate has provided You with Access to the Licensed Materials since the expiration of Contract No.001-00-53605013 as modified by Contract No. 00016244 on or about August 31, 2021 through the Effective Date of this Agreement. All Access to the Licensed Materials provided to You by UpToDate under this Agreement prior to the Effective Date are hereby ratified. You further acknowledge and agree that the Subscription Fees for the time period between September 1, 2021 and March 31, 2022 are \$39,656.00 USD (plus tax where applicable).

All payments made, or to be made, by HHS to UpToDate for Access to the Licensed Materials provided to You by UpToDate prior to the Effective Date are hereby reaffirmed.

The Parties hereby agree that all rights, obligations, and responsibilities of the Parties under this Agreement for Access to the Licensed Materials provided to You by UpToDate prior to the Effective Date, and subject to payment as stated herein above, are hereby reaffirmed.

Subscription Fees: The total five (5) month Subscription Fees for Your subscription to *UpToDate* is \$28,325.00 USD (plus tax where applicable). The Fees quote reflects a 20% educational discount for those facilities denoted below by an asterisk as they are accredited teaching facilities.

The total Subscription Fees must be paid within 30 days of the date of invoice. This quote is valid for 60 days from the date of this Letter and is confidential.

License to Use the Licensed Materials: For the above Subscription Fees, UpToDate will grant Your Authorized Users access to use the Licensed Materials on the terms set forth in this Agreement. This subscription allows Your Authorized Users to Access the Licensed Materials as follows:

- While physically located at the Designated Site(s) via the IP Address(es) or Security agent(s) listed below;
- Via Your password authenticated system(s) as identified to UpToDate, which will in turn pass UpToDate a unique identifier; and

- Authorized Users have the option to establish a username and password with UpToDate. Once established, a username and password allows the Authorized User to Access Licensed Materials from any Internet-enabled device including desktop computers, laptops, and mobile devices such as the iPhone and Android devices, regardless of Authorized Users location, subject to Registration and Re-verification.

Confirmation of Your Information

The operating statistics on which UpToDate based the Subscription Fees are:

Institution	Inpatient Admissions	Clinicians
Brenham Sslc		8
San Antonio Sslc		5
Terrell State Hospital	906	4
Big Spring State Hospital *	144	11
Lubbock Sslc		5
Rio Grande State Center	415	6
Corpus Christi Sslc		7
Waco Center For Youth	79	2
Rusk State Hospital	154	9
Denton Sslc		9
Kerrville State Hospital *	24	7
El Paso Psychiatric Center *	317	3
Lufkin Sslc		9
Austin State Hospital *	287	11
Abilene Sslc		9
Mexia Sslc		6
San Antonio State Hospital *	221	8
North Texas State Hospital	803	20
El Paso Sslc		4
San Angelo Sslc		4
Richmond Sslc		9
Austin Sslc		7
Total	3,350	163

Designated Sites

Brenham Sslc
4001 Highway 36 S
Brenham, Texas 77833
United States

Terrell State Hospital
1200 E Brin St
Terrell, Texas 75160
United States

San Antonio Sslc
6711 S New Braunfels Ave Ste 500
San Antonio, Texas 78223
United States

Big Spring State Hospital
1901 N US Highway 87
Big Spring, Texas 79720
United States

Lubbock Sslc
3401 N University Ave
Lubbock, Texas 79415
United States

Rio Grande State Center
1401 S Rangerville Rd
Harlingen, Texas 78552
United States

Corpus Christi Sslc
902 Airport Rd
Corpus Christi, Texas 78405
United States

Waco Center For Youth
3501 N 19th St
Waco, Texas 76708
United States

Rusk State Hospital
805 N Dickinson Dr
Rusk, Texas 75785
United States

Denton Sslc
3980 State School Rd
Denton, Texas 76210
United States

Kerrville State Hospital
721 Thompson Dr
Kerrville, Texas 78028
United States

El Paso Psychiatric Center
4615 Alameda Ave
El Paso, Texas 79905
United States

Lufkin Sslc
6844 N US Highway 69
Pollok, Texas 75969
United States

Austin State Hospital
4110 Guadalupe St
Austin, Texas 78751
United States

Abilene Sslc
2501 Maple St
Abilene, Texas 79602
United States

Mexia Sslc
540 Chapel Dr
Mexia, Texas 76667
United States

San Antonio State Hospital
6711 S New Braunfels Ave
San Antonio, Texas 78223
United States

North Texas State Hospital
6515 Kemp Blvd
Wichita Falls, Texas 76308
United States

El Paso Sslc
6700 Delta Dr
El Paso, Texas 79905
United States

San Angelo Sslc
11640 US Highway 87 N
Carlsbad, Texas 76934
United States

Richmond Sslc
2100 Preston St
Richmond, Texas 77469
United States

Austin Sslc
2203 W 35th St
Austin, Texas 78703
United States

//P Addresses

168.45.104.113 - 168.45.104.113
160.42.85.11 - 160.42.85.12

167.137.1.7 - 167.137.1.18

160.42.85.8 - 160.42.85.9

You represent and warrant that: (i) the operating statistics set forth above are accurate and complete figures; (ii) You have the technical capability to ensure that only Authorized Users may Access the Licensed Materials via the IP address(es) and/or UpToDate provided Security Agent(s) listed above; (iii) the IP Addresses above or UpToDate provided Security Agent(s) only provide Access to Authorized Users while Authorized Users are physically located at the Designated Site(s) and no other users will gain Access to the Licensed Materials through this subscription; and (iv) for the purposes of Registration and Re-verification the IP Addresses above or UpToDate provided Security Agent(s) are only accessible by Authorized Users.

Subscription Confirmation

To confirm Your acceptance of the terms in the Agreement, please sign this Letter in the space below and return it to us. Your subscription will be processed promptly and an executed copy will be returned to You.

We look forward to providing You with a subscription to the Licensed Materials. We are confident that Your clinicians will find the *UpToDate* Services to be practical and efficient tools with which to effectively manage clinical issues in practice.

Your account manager, Gloria Spiritas, will call you shortly to answer any questions that you might have and to discuss the next steps.

Again, thank you for your interest in *UpToDate*.

Sincerely,



4/12/2022 10:48 AM

Finance – Contract Administration

UpToDate, Inc.

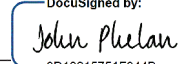
Accepted and Agreed to this 18 day of April, 2022 on behalf of **Texas Health And Human Services Commission.**

By:  0CB2E17A5C9C45D...

Printed Name: Scott Schalchlin

Title: Deputy Executive Commissioner
Texas Health And Human Services Commission.

Accepted and Agreed to this 20 day of April, 2022 on behalf of **UpToDate, Inc.**

By:  9D18215751F944B...

Printed Name: John Phelan

Title: Contract Manager
UpToDate, Inc.

EXHIBIT A**UpToDate Anywhere Subscription - UpToDate, Inc. Subscription and License Terms****1. Definitions**

"Access": Viewing, searching or displaying any page of the Licensed Materials, whether such pages are viewed by means of connection to a network or from storage in any storage medium.

"Agreement": These Subscription and License Terms including the attached Solicitation Affirmations, as well as the attached quotation letter.

"Authorized Users": Physician staff, faculty, residents, nurses, librarians and other staff and medical professionals who are employed by Your organization or who provide medical services to patients at Your organization's facilities, any student affiliated with Your organization, and, to the extent that Your organization includes a publicly accessible physical library, individuals otherwise entitled to use Your library facilities, subject to "Authorized Access" below.

"Registration": The process by which an Authorized User creates a username and password via the IP address(es) or UpToDate provided Security Agent(s).

"Re-verification": The process by which Authorized Users verify their registration credentials. Authorized Users are required to log-in, using their username and password, at least once every 90 days via the IP address(es) or UpToDate provided Security Agent(s). If in any 90-day period such log-in does not occur, the Authorized User's ability to Access Licensed Materials from outside the Designated Site(s) will be suspended. In the event of suspension, Authorized Users may automatically Re-verify by logging-in, using their username and password, via the IP address(es) or UpToDate provided Security Agent(s) any time thereafter during the Term to resume Access via username and password.

2. Grant of License

UpToDate, in consideration of payment of the applicable Subscription Fees (as set forth in the Letter) and subject to the terms and conditions below, grants You a limited, revocable, non-exclusive, non-transferable license for Your Authorized Users to Access the Licensed Materials solely for the purpose of: (i) research and other scholarly activities; or (ii) providing diagnostic treatment or other medical services to patients, subject to the terms and conditions of this Agreement. You shall only permit the Licensed Materials to be Accessed only by Authorized Users affiliated with You for a purpose related to Your business.

In order to Access the Licensed Materials, Authorized Users must agree to the End User License Agreement (EULA). In the event of a conflict or discrepancy between the EULA and this Agreement, this Agreement shall take precedence.

3. Term and Termination

Access to the Licensed Materials will be provided to You for the Initial Term, as defined by the Letter, unless earlier terminated in accordance with this Agreement.

HHS, at its sole discretion, may extend this Agreement for a period of one (1) year. In order to exercise this option, HHS shall provide UpToDate with a written notice of its intent to extend with updated operating statistics at least 60 days prior to the expiration of the Initial Term. Upon receipt of such written notice, UpToDate will review the updated operating statistics and, so long as the updated operating statistics comport with this Agreement, provide HHS with a notice of the updated subscription fees for such extension ("Renewal Term"; collectively with the Initial Term, "Term").

You have the right to terminate this Agreement if UpToDate materially breaches this Agreement and such breach is not cured within 30 days of UpToDate receiving written notice of such breach from You (the "Cure Period"). The end date of the Cure Period will become the effective date of termination and a pro-rated refund of the Subscription Fees actually paid by You for any remaining months of the subscription, from the effective day of termination to the normal end-date of the subscription period, will be provided to You.

UpToDate may terminate this Agreement if You or Your Authorized Users materially breach this Agreement and such breach is not cured within the Cure Period (15 days in the case of non-payment).

It is understood by UpToDate that all obligations of You hereunder are subject to the availability of state funds. If such funds are not appropriate or become unavailable, this Agreement may be terminated.

Upon termination or expiration of Your subscription, Your subscription and associated rights shall expire, unless You have renewed Your annual subscription on UpToDate's then-current terms. At the request of UpToDate following termination or expiration of the subscription, You shall promptly return or destroy any Licensed Materials and copies thereof in Your possession.

4. Authorized Access

You acknowledge that the Licensed Materials are for the use of the Authorized Users. Access by Authorized Users is permitted so long as Access occurs: (i) in the confines of a Designated Site (as designated in the Letter); or (ii) via Your password authenticated system(s) as identified to UpToDate, which will in turn pass UpToDate a unique identifier; or (iii) from any location, provided such access occurs by means of the Authorized User entering his/her username and password. Use of the Licensed Materials by non-Authorized Users is expressly forbidden. Users of public libraries at the Designated Sites are only Authorized Users while physically present at the library.

5. Verified IP Addresses

You warrant that the IP address(es) provided by You to UpToDate and any UpToDate provided Security Agent(s) herein allow Access to the Licensed Materials by the aforementioned Authorized Users only and that no other users are provided Access through the IP address(es) and/or UpToDate provided Security Agent(s).

6. Audit

You agree that UpToDate may audit Your use of the Licensed Materials for compliance with these terms at any time, upon reasonable notice. In the event that such audit reveals any use of the Licensed Materials by You that is in violation of the terms of the Agreement, You shall reimburse UpToDate for all additional users.

7. Fees and Payments

You will pay the agreed upon Subscription Fees within 30 days of the date of invoice. In accordance with Chapter 2251, Subtitle F of Title 10 of the Texas Government Code, "The Prompt Pay Act," UpToDate will hereby waive pre-payment requirements of any and all kind.

UpToDate reserves the right to suspend Access due to late payment, without limiting UpToDate's other rights and remedies including the right to terminate this Agreement. Access will remain suspended until such invoice is paid in full. No refund or credit will be issued for loss of Access during the period of suspension due to late payment.

Notwithstanding any provision of this Agreement to the contrary, Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late and non-payment.

8. Marketing Support

UpToDate will assist You in increasing usage of the Licensed Materials during the subscription period by providing informational materials for Your distribution to Authorized Users, subject to the terms and conditions of this Agreement.

9. Systems Performance

During the Term, the Licensed Materials will be updated by UpToDate. During this time, the online service may be unavailable for up to 2 hours per month, and users Accessing the Licensed Materials at this time will see a notice that UpToDate online is being updated. UpToDate may, in its sole discretion, provide more frequent updates and enhancements, if applicable, as and when they are released. Nothing in this Agreement obligates UpToDate to furnish more frequent updates or to create enhancements.

For online Access from a desktop (or laptop) computer, the Licensed Materials are validated for use with the current versions of the browsers and the technical specifications UpToDate supports. For a current list of those technical specifications please see: <http://www.uptodate.com/help/manual/sysreq>.

The Licensed Materials are hosted by a Tier 1 service provider which guarantees that the site will be operational at least 99.5% of the time. However, technical failures, routine maintenance and transient Internet conditions may render the site temporarily unavailable.

Neither party shall be liable, or considered in default, under this Agreement for delays or failures of performance caused by circumstances beyond the party's reasonable control, provided each party immediately provides notice to the other and does everything reasonably possible to resume its performance.

10. User Access Restrictions

You may not allow or facilitate any Access to the Licensed Materials by any persons who are not Authorized Users. Access by persons who are not Authorized Users is prohibited no matter how such Access is obtained, including without limitation by use of modem, VPN, proxy server, LAN or web-based technology. You shall notify UpToDate promptly if you become aware of any Access to the Licensed Materials by users within Your organization who are not Authorized Users. You and Your registered Authorized Users may not transfer or share Access, usernames, or passwords with anyone. You shall not attempt to defeat or circumvent any system designed to protect Access to UpToDate.

11. Ownership

The Licensed Materials are the sole and exclusive property of UpToDate (or its parents, subsidiaries, affiliates, or designees) or its suppliers. You do not become the owner of the Licensed Materials, but are entitled to use them according to the terms and conditions of this Agreement.

You have purchased the right to Access the Licensed Materials for a specific limited period of time, i.e., the subscription period. At the end of this period, Your license and associated rights, such as technical support, if any, expire automatically, unless You have renewed Your subscription on UpToDate then-current terms. The Agreement and Your license to use the Licensed Materials will also terminate if You fail to comply with any term or condition in this Agreement.

You acknowledge that the Licensed Materials include software which is proprietary and confidential to UpToDate, or its licensors; and all rights, title and interest therein or thereto, including without limitation, all patents, copyrights, trademarks and trade secrets remain in UpToDate or its licensors. You shall not, during the subscription period or thereafter, disclose, directly or indirectly, or take any other action, which would result in the unauthorized disclosure of any confidential or proprietary data whatsoever, including but not limited to, reproduction of data furnished by UpToDate.

12. Permitted Uses and Prohibitions

Copying, printing, distributing to third parties, or preparing derivative works of the Licensed Materials or any part thereof is strictly prohibited unless specifically authorized herein or in writing from UpToDate. Similarly, the Licensed Materials may not be included in other software or databases, reverse engineered, or modified. No part of the Licensed Materials may be hyperlinked, indexed, or otherwise utilized by automated software means, including: search engines, robots, spiders, crawlers, data mining tools, or any other software that aggregates access to, or the content of, the Licensed Materials. No part of the Licensed Materials may be copied for resale, nor may the Licensed Materials be posted or otherwise made available on Intranets, so-called federated sites, knowledge bases, searchable databases, public bulletin boards, web sites, Internet domains, or online chat rooms. The Licensed Materials may not be combined with other content in knowledge banks or through similar technologies. However, Your Authorized Users may occasionally print out individual articles for personal clinical, educational or research use and/or email individual articles to a colleague, provided that the articles printed and emailed by an individual Authorized User contain in aggregate only insubstantial portions of the Licensed Materials and include a

source reference to UpToDate and its copyright notice. Under no circumstances may Authorized Users print or email large numbers of articles from the Licensed Materials. All rights to use the Licensed Materials are expressly stated herein, and UpToDate reserves all other rights. There is no implied right to use the Licensed Materials.

Your Authorized Users, who choose to register, may not share or transfer usernames and passwords. Any sharing or transferring of usernames and passwords is a violation of this Agreement. Access to the Licensed Materials by non-Authorized Users is expressly forbidden.

In addition to its rights set forth in Section 3 (Term and Termination) but excluding "Re-verification" above, UpToDate reserves the right in its sole discretion to limit or suspend Your Authorized Users' Access to the Licensed Materials, by electronic self-help or other means with 48 hour notice, if UpToDate believes in good faith that any Authorized User has committed a breach of security or violated the terms of this Agreement.

13. Restriction against Transfer / Assignment

You may not sublicense, assign, share, sell, rent, lease, or otherwise transfer this Agreement or the right to use the Licensed Materials.

UpToDate understands that it may not assign its rights under the Agreement or delegate the performance of its duties under the Agreement without prior written approval of You. Any attempted assignment in violation of this provision is void and without effect. Notwithstanding the foregoing, UpToDate may assign or transfer its rights and obligations under this Agreement to an affiliate of UpToDate or to a successor to its business to which this Agreement relates and will provide notice thereof to You.

14. Privacy / HIPAA

UpToDate does not collect any individually identifiable health information from You. UpToDate, Inc. is not a covered entity or business associate under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91), as amended.

UpToDate reserves the right to track and collect for its internal purposes personal information about Authorized Users of UpToDate, including without limitation: the URL that the user has come from (whether this URL is on its Website or not), the URL the user goes to next (whether this URL is on its Website or not), the Internet browser that is being used, the type of operating system used, the Authorized User's location, and the Authorized User's IP address. An Authorized User's IP address may be used for system administration purposes and to track a user's session, in order to give UpToDate an understanding as to which parts of its database

Authorized Users are visiting. UpToDate may use such information for purposes including but not limited to improving the content of its database, marketing, advertising, reports to You, or research. UpToDate may send information and notices of new services to registered Authorized Users.

UpToDate reserves the right to release current or past user information, whether or not the information identifies a particular person, internally within UpToDate or to third parties for limited purposes in the event UpToDate believes that the Licensed Materials are being used in violation of this Agreement or to commit unlawful acts, and/or if UpToDate is required to disclose information to comply with applicable laws or regulations, or with a court or administrative order.

Except as stated in the above paragraph, UpToDate will not share with unaffiliated third parties information specific to Authorized Users or share information regarding specific IP addresses. UpToDate is, however, free to disclose aggregate non-personal user information to third parties.

15. Access to Books and Records

To address the requirements of Section 952 of Public Law 96-499 (42 US Code 1395 (x)(V)(I)), UpToDate agrees that it will, until the expiration of four years after the furnishing of the services provided pursuant to this agreement, upon the written request of an appropriate federal official as defined by the statute, make available to the Secretary of Health and Human Services or the Comptroller General or to any of their duly authorized representatives, this Agreement, and those books, documents and records of UpToDate pertaining only to this Agreement as are necessary to verify the nature and extent of the services provided under this agreement and the charges levied, and payments made, for the services set forth in this Agreement. UpToDate will not carry out any services through a subcontract with another organization and the duties under this Agreement may not be assigned or delegated.

16. Use of Professional Judgment

The editors and authors of the Licensed Materials have conscientiously and carefully tried to create the identified diagnosis measures, treatment alternatives and drug dosages in the Licensed Materials that conform to the standards of professional practice that prevailed at the time of publication. However, standards and practices in medicine change as new data become available and the individual medical professional should consult a variety of sources. For this reason, only the most current release of the Licensed Materials should be consulted when information is sought. New updates are issued periodically; do not rely on older versions. In addition, when prescribing medications, the user is advised to check

the product information sheet accompanying each drug to verify conditions of use and identify any changes in dosage schedule or contraindications, particularly if the agent to be administered is new, infrequently used or has a narrow therapeutic range.

The Licensed Materials describe basic principles of diagnosis and therapy. The information provided in the Licensed Materials is no substitute for individual patient assessment based upon the healthcare provider's examination of each patient and consideration of laboratory data and other factors unique to the patient. The Licensed Materials should be used as a tool to help the user reach diagnostic and treatment decisions, bearing in mind that individual and unique circumstances may lead the user to reach decisions not presented in the Licensed Materials. The opinions expressed in the Licensed Materials are those of its authors and editors and may or may not represent the official position of any medical societies cooperating with, endorsing or recommending the Licensed Materials.

17. U.S. Government Limited Rights Notice

Any access to the Licensed Materials provided under contract to the U.S. Government is provided with limited rights. The Licensed Materials consist of data, as defined in 48 CFR 27.401 or 48 CFR 27.404-2(a), as applicable, and restricted computer software as defined in 48 CFR 27.401. The Licensed Materials may be reproduced and used by the U.S. Government, provided that they will not be used for or in connection with manufacturing and will not be disclosed outside of the U.S. Government or to any U.S. Government contractor, without the prior express written permission of UpToDate.

18. Limited Warranty

UpToDate warrants that the Licensed Materials made available to You through the IP addresses listed in the Letter shall be substantially identical to the version of the Licensed Materials provided to other similarly situated customers. If the Licensed Materials are defective, such deficiency shall be rectified without charge promptly after notice to UpToDate from You. This is Your sole and exclusive remedy, and UpToDate's sole liability, for breach of this warranty.

UpToDate agrees to indemnify You against any third party claim that the Licensed Materials infringe a U.S. copyright, patent, or trademark ("IP Claims"), and any damages awarded on such a claim, provided that You provide UpToDate with prompt notice of the claim. While You may elect to coordinate Your defense with the Office of the Texas Attorney General at your own cost and expense. In the event such a claim is made against You or anticipated by UpToDate, then UpToDate may, in its sole discretion and at its

expense: (i) procure the right for You to continue using the Licensed Materials, (ii) modify the Licensed Materials to render it non-infringing, or (iii) replace the Licensed Materials with a reasonably equivalent non-infringing service. If none of the foregoing is commercially practicable, either party shall have the option of terminating this Agreement and refunding a prorated portion of the fees paid by You for the unused portion of the then-current Term and terminating Your right to use the Licensed Materials. The foregoing indemnity and remedies shall be Your sole remedy and UpToDate's sole obligation and liability in the event of any IP Claim.

To the extent that this Agreement requires You to indemnify or hold UpToDate harmless from damage of any kind or character, such obligations are binding only to the extent permitted by the Constitution and laws of the State of Texas.

NEITHER UPTODATE NOR ANY OTHER PARTY OR MEDICAL SOCIETY MAKES ANY OTHER WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, WITH RESPECT TO THE LICENSED MATERIALS, WHICH ARE LICENSED "AS IS", OR WITH RESPECT TO THIS AGREEMENT. THE WARRANTY AND REMEDY PROVIDED ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED, ANY STATEMENTS OR REPRESENTATIONS MADE BY ANY OTHER PERSON OR ENTITY ARE VOID. YOU ASSUME ALL RISK AS TO THE QUALITY, FUNCTION, AND PERFORMANCE OF THE LICENSED MATERIALS.

19. Limitation of Liability

IN NO EVENT WILL UPTODATE OR ANY OTHER PARTY WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, PROMOTION OR MARKETING OF THE LICENSED MATERIALS OR PERFORMANCE OF THIS AGREEMENT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF DATA OR PROFITS OR FOR INABILITY TO USE THE LICENSED MATERIALS, TO ANY PARTY EVEN IF UPTODATE OR SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT IN RELATION TO THE INDEMNITY PROVIDED AGAINST THIRD PARTY CLAIMS AS EXPRESSLY PROVIDED ABOVE, IN NO EVENT SHALL UPTODATE OR SUCH OTHER PARTY'S LIABILITY FOR ANY DAMAGES OR LOSS TO YOU OR ANY OTHER PARTY IN CONNECTION WITH THIS AGREEMENT EXCEED THE LICENSE FEE YOU PAID FOR THE LICENSED MATERIALS.

Some states do not allow limitations on how long an implied warranty lasts and some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation and exclusion may not apply to You. This warranty gives

You specific legal rights, and You may also have other rights that vary from state to state.

20. Confidentiality

"Confidential Information" shall mean any information regarding either party's (the "Disclosing Party") intellectual property rights, product designs and plans, product development plans, release dates, strategies, pricing, and other marketing and technical information and other unpublished information provided to the other party ("Receiving Party"); and all other information which the Disclosing Party characterizes as confidential at the time of its disclosure either in writing or orally, except for information which the Receiving Party can demonstrate: (a) is previously rightfully known to the Receiving Party without restriction on disclosure; (b) is or becomes, from no act or failure to act on the Receiving Party's part, generally known in the relevant industry or public domain; (c) is disclosed to the Receiving Party by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by the Receiving Party without access to the Confidential Information. The Receiving Party shall at all times, both during the Term hereof and for a period of at least three years after termination of the Agreement, keep in confidence all such Confidential Information. The Receiving Party shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of the Disclosing Party. The Receiving Party shall not use any Confidential Information other than in the course of the activities permitted hereunder. The Receiving Party shall only disclose Confidential Information to another employee or contractor who has a need to know such information and is subject to obligations of confidentiality substantially similar to those set forth herein. The Receiving Party shall notify the Disclosing Party in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement, and will cooperate with the Disclosing Party in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If the Receiving Party is legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, the Receiving Party will: (i) provided notification is not otherwise prohibited by law, legal process, or judicial order, or governmental mandate, promptly notify the Disclosing Party prior to such disclosure to allow the Disclosing Party an opportunity to contest the disclosure; (ii) assert the privileged and confidential nature of the Confidential Information; and (iii) cooperate fully with the Disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, the Receiving Party shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements. For the avoidance

of doubt, Your disclosure of contract terms to the following entities for the sole and exclusive purpose of performing their statutory duties under Texas Government Code Chapter 402 and Chapter 321, respectively is permitted under the Agreement: Texas Attorney General's Office, Texas State Auditor's Office.

21. General

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, exclusive of conflict of law provisions. Venue of any suit brought shall be in a court of competent jurisdiction in Travis County, Texas. Nothing herein constitutes a waiver of HHSC's sovereign immunity.

To the extent that this Agreement requires You to pay attorney's fees for any action contemplated or taken, or penalties or liquidated damages in any amount, such obligations are binding only to the extent not prohibited by the Constitution and laws of the State of Texas

If any provision of this Agreement is determined to be invalid or unenforceable under any applicable law, it shall be deemed omitted and the remaining provisions shall continue in full force and effect. This Agreement may be modified only in writing executed by authorized representatives of You and UpToDate. Either party's waiver of any right shall not constitute waiver of that right in the future.

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, and all prior agreements, representations, statements, and undertakings, oral or written, are hereby expressly superseded and canceled. Nothing

herein shall be construed as a waiver of the sovereign immunity of Texas Health and Human Services Commission.

If You use purchase orders in conjunction with this Agreement, then You agree that the following statement is hereby automatically made part of such purchase orders: "The terms and conditions set forth in the UpToDate Contract No.: 00029595 are made part of this purchase order and are in lieu of, and shall replace, all terms and conditions, express or implied, in this purchase order, including any renewals hereof. "

In addition to any other provision of this Agreement that by their terms survive termination of this Agreement, the following provisions of this Agreement will survive expiration or termination of this Agreement: Sections 7, 11, 12, 14-16 and 18-21.

To the extent that Texas Government Code Chapter 2260, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 may be used to attempt to resolve any dispute arising under this Agreement. If UpToDate's claim for a breach of contract cannot be resolved informally with HHS pursuant to other provisions of this Agreement or in the ordinary course of business, the claim may be submitted to the negotiation process provided in Chapter 2260. To initiate the process, UpToDate shall submit written notice, as required by Chapter 2260, pursuant to this Agreement 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 claim for breach of contract required under Chapter 2260.

Exhibit B.

HHS SOLICITATION AFFIRMATIONS

In this document, HHS means the Health and Human Services Commission (HHSC). System Agency refers to HHSC. In this document, the terms Respondent, Contractor, Applicant, and Vendor, when referring to the following affirmations (whether framed as certifications, representations, warranties, or in other terms) refer to Respondent, and the affirmations apply to all Respondents regardless of their business form (e.g., individual, partnership, corporation).

1. UpToDate represents and warrants that all certifications, representations, warranties, and other provisions in this Exhibit B apply to UpToDate, Inc. and, where noted, UpToDate's principals, officers, and directors.
2. **Complete and Accurate Information.** To the best of its knowledge, UpToDate represents and warrants that all statements and information provided to HHS in this Exhibit B are current, complete, and accurate.
3. **Public Information Act.** UpToDate understands that HHS will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. This Agreement may be subject to public disclosure pursuant to the Texas Public Information Act; provided, that HHS notifies UpToDate in writing of such request to the extent not prohibited by law and is reasonably practicable. UpToDate may, at its own option and expense, prepare comments and submit information directly to the Attorney General of the State of Texas stating why the requested information is exempt from disclosure pursuant to the requirements of the Texas Public Information Act. UpToDate must send its comments and information to the Attorney General of the State of Texas within the time period prescribed by the Texas Public Information Act. Except as otherwise required by the Texas Government Code § 552.305, HHS shall not provide any such requested information until UpToDate has either (a) elected to assert that such information is exempted from disclosure under the Texas Public Information Act, or (b) notified HHS that it has no objection to such disclosure.
4. **Contracting Information Requirements.** UpToDate represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the contract and the UpToDate agrees that the contract can be terminated if the UpToDate knowingly or intentionally fails to comply with a requirement of that subchapter.
5. **Financial Participation Prohibited.** Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), UpToDate certifies that the individual or business entity named in this Response or contract is not ineligible to

receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

6. **Prior Disaster Relief Contract Violation.** Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the UpToDate certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
7. **Child Support Obligation.** Under Section 231.006(d) of the Texas Family Code regarding child support, Respondent certifies that the individual or business entity named in this Response is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Respondent subject to Section 231.006 of the Texas Family Code must include in the Response the names and social security numbers (SSNs) of each person with at least 25% ownership of the business entity submitting the Response:

Name:	_____	SSN:	_____
Name:	_____	SSN:	_____
Name:	_____	SSN:	_____
Name:	_____	SSN:	_____

8. **FEDERAL PRIVACY ACT NOTICE:** This notice is given pursuant to the Federal Privacy Act. Disclosure of requested SSNs is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSNs will be used to identify persons that may owe child support. The SSNs will be kept confidential to the fullest extent permitted by law. If submitted by email, Responses containing SSNs must be encrypted. Failure by a Respondent to provide or encrypt the SSNs as required may result in disqualification of the Respondent's Response.
9. **Suspension and Debarment.** UpToDate certifies that it and its principals (as defined under 48 CFR § 52.209-5) are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in UpToDate's subcontracts, if any, if payment in whole or in part is from federal funds. In the event UpToDate discovers that the preceding certification is no longer true, UpToDate will promptly notify You and You may immediately terminate the Agreement. The preceding termination right will be Your sole and exclusive remedy and UpToDate's sole and exclusive liability for a breach of the preceding certification.

10. **Excluded Parties.** UpToDate certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*," published by the United States Department of the Treasury, Office of Foreign Assets Control.
11. **Foreign Terrorist Organizations.** UpToDate represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
12. **Executive Head of a State Agency.** To the best of its knowledge, in accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, UpToDate certifies that it is not (1) the executive head of an HHS agency, or (2) a person who at any time during the four years before the date of the contract was the executive head of an HHS agency.
13. **Human Trafficking Prohibition.** Under Section 2155.0061 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate.
14. **Franchise Tax Status.** UpToDate represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
15. **Debts and Delinquencies.** UpToDate agrees that any payments due under any contract resulting from this Solicitation shall be applied towards any debt or delinquency that is owed to the State of Texas.
16. **Lobbying Prohibition.** UpToDate represents and warrants that payments to UpToDate and UpToDate's receipt of appropriated or other funds under any contract resulting from this Agreement are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).
17. **Restricted Employment for Certain State Personnel.** Pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving UpToDate may not accept employment from UpToDate before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.
18. **No Conflicts of Interest.** UpToDate represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to System Agency under this Agreement and that UpToDate's provision of the requested goods and/or services under this Agreement will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
19. **Fraud, Waste, and Abuse.** UpToDate understands that HHS does not tolerate any type of fraud, waste, or abuse. Violations of law, agency policies, or standards of ethical

conduct will be investigated, and appropriate actions will be taken. Pursuant to Texas Government Code, Section 321.022, if the administrative head of a department or entity that is subject to audit by the state auditor has reasonable cause to believe that money received from the state by the department or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the administrative head shall report the reason and basis for the belief to the Texas State Auditor's Office (SAO). All employees or contractors who have reasonable cause to believe that fraud, waste, or abuse has occurred (including misconduct by any HHS employee, Grantee officer, agent, employee, or subcontractor that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to the Health and Human Services Commission's Office of Inspector General. UpToDate agrees to comply with all applicable laws, rules, regulations, and System Agency policies. regarding fraud, waste, and abuse including, but not limited to, HHS Circular C-027.

20. A report to the SAO must be made through one of the following avenues:

- SAO Toll Free Hotline: 1-800-TX-AUDIT
- SAO website: <http://sao.fraud.state.tx.us/>

All reports made to the OIG must be made through one of the following avenues:

- OIG Toll Free Hotline 1-800-436-6184
- OIG Website: ReportTexasFraud.com
- Internal Affairs Email: InternalAffairsReferral@hhsc.state.tx.us
- OIG Hotline Email: OIGFraudHotline@hhsc.state.tx.us.
- OIG Mailing Address: Office of Inspector General

Attn: Fraud Hotline

MC 1300

P.O. Box 85200

Austin, Texas 78708-5200

21. **Antitrust.** The undersigned affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Response, to the best of his knowledge, neither I nor any representative of the Respondent has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; and (b) in connection with this Response, to the best of his knowledge, neither I nor any representative of the Respondent has violated any federal antitrust law.
22. **Legal and Regulatory Actions.** UpToDate represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against UpToDate within the five (5) calendar years immediately preceding this Agreement.
23. **E-Verify.** UpToDate certifies that for contracts for services, UpToDate shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of:

- A. all persons employed by UpToDate to perform duties within Texas; and
- B. all persons, including subcontractors, assigned by UpToDate to perform work pursuant to the contract within the United States of America.

- 24. Entities that Boycott Israel.** Pursuant to Section 2271.002 of the Texas Government Code, UpToDate certifies that either (1) it meets an exemption criteria under Section 2271.002; or (2) it does not currently boycott Israel and will not boycott Israel during the term of the contract resulting from this Solicitation. If UpToDate refuses to make that certification, UpToDate shall state here any facts that make it exempt from the boycott certification:
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- 25. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR 200.216).** UpToDate certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract or funding pursuant to 2 CFR 200.216.

- 26. Entities that Boycott Energy Companies.** In accordance with Senate Bill 13, Acts 2021, 87th Leg., R.S., if UpToDate is required to make a verification pursuant to Section 2274.002 of the Texas Government Code (relating to prohibition on contracts with companies boycotting certain energy companies), UpToDate verifies that UpToDate does not boycott energy companies and will not boycott energy companies during the term of the Contract. If UpToDate does not make that verification, UpToDate must state here why the verification is not required:
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- 27. Public Information Act Copy.** UpToDate understands, acknowledges, and agrees, that solicitation responses and contracts are subject to the Texas Public Information Act (PIA), Texas Government Code Chapter 552, and may be disclosed to the public upon request or through posting on the System Agency's website, the LBB's website, or as otherwise required by law. UpToDate certifies that it:

- ☐ asserts that information provided in its response is exempt from disclosure under the PIA, and UpToDate, therefore, has submitted a "Public Information Act Copy" as required under the solicitation; or
- ☒ asserts that there is no information provided in its response that is exempt from disclosure under the PIA, and UpToDate, therefore, has not submitted a "Public Information Act Copy."

- 28. No Felony Criminal Convictions.** To the best of its knowledge, UpToDate represents that UpToDate has not been convicted of a felony criminal offense or that if such a conviction has occurred UpToDate has fully advised System Agency in writing of the facts and circumstances surrounding the convictions.

29. **Unfair Business Practices.** To the best of its knowledge, UpToDate represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that UpToDate has not been found to be liable for such practices in such proceedings.
30. **False Representation.** UpToDate understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by UpToDate in this Agreement is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of any contract resulting from this Agreement.
31. **Permits and Licenses.** As applicable to the operation of its business, UpToDate will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws.
32. **False Statements.** Respondent represents and warrants that, to the best of its knowledge, all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.
33. **Signature Authority.** By submitting this Response, Respondent represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from this Solicitation.

Signature Page Follows

Authorized representative on behalf of UpToDate must complete the following:

Legal Name of UpToDate

UpToDate, Inc.

Assumed Business Name of UpToDate, if applicable (d/b/a or 'doing business as')

UpToDate

Texas County(s) for Assumed Business Name (d/b/a or 'doing business as')

Attach Assumed Name Certificate(s) filed with the Texas Secretary of State and Assumed Name Certificate(s), if any, for each Texas County Where Assumed Name Certificate(s) has been filed.

Signature of Authorized Representative

Date Signed

230 Third Avenue

Physical Street Address

Waltham, MA 02451

City, State, Zip Code

Mailing Address, if different

800-998-6374

City, State, Zip Code

781-642-8840

Phone Number

CustomerService@UpToDate.com

Fax Number

#82-4945448

Email Address

#04-3310941

DUNS Number

10433109419

Federal Employer Identification Number

Texas Identification Number (TIN)

0800503387

Texas Franchise Tax Number

Texas Secretary of State Filing Number

SAM.gov Unique Entity Identifier (UEI)
