

**DEPARTMENT OF STATE HEALTH SERVICES
CONTRACT NO. HHS001197400006**

The Department of State Health Services (“DSHS” or “System Agency”) and Physician’s Preferred Laboratory, Ltd. (“Contractor”), having its principal office in 1301 S. Coulter, Ste 400, Amarillo, TX, 79106 (each a “Party” and collectively “the Parties”), enter into the following agreement (the “Contract”) for Tuberculosis Prevention and Elimination (“TB”) services for Public Health Region 1 under Open Enrollment No. HHS0011974.

I. LEGAL AUTHORITY

This Contract is entered into pursuant to Chapters 81, 12, and 1001 of the Texas Health and Safety Code and Chapters 531 and 2254 of the Texas Government Code.

II. DURATION

This Contract is effective on the signature date of the latter of the Parties to sign this agreement and expires on **August 31, 2027**, unless terminated earlier pursuant to the terms and conditions of the Contract. System Agency, at its sole option and subject to availability of funding, may extend the Contract beyond the initial term for up to one year as necessary to ensure continuity of service, to process a new Open Enrollment to award new contracts, for purposes of transition, or as otherwise determined to serve the best interest of the State of Texas.

III. STATEMENT OF WORK

The Statement of Work to which Contractor is bound is incorporated into and made a part of this Contract for all purposes and included as **ATTACHMENT A, STATEMENT OF WORK**.

IV. BUDGET

The total amount of this Contract will not exceed **\$22,500.00**. By executing this Contract, Contractor agrees to the contracted rates and budget for the Contract term, including the initial term, and all renewals and extensions exercised. However, at DSHS’ sole discretion or by mutual agreement of the Parties as authorized under the Contract, the budget or contract amounts may be amended. All expenditures under the Contract will be in accordance with the service rate schedule in **ATTACHMENT A, STATEMENT OF WORK**.

V. CONTRACT REPRESENTATIVES

The following persons will act as the Representative authorized to administer activities under this Contract on behalf of their respective Party.

DSHS

David Acosta
Department of State Health Services
Contract Management Section
1100 W 49th Street, Mail Code 1990
Austin, Texas 78756
E-Mail: david.acosta@dshs.texas.gov

Contractor

Charlyn Snow
Physician’s Preferred Laboratory, Ltd.
P.O. Box 50117
Amarillo, Texas 79159
Email: SnowC@amapath.com

VI. LEGAL NOTICES

- A. All notices given by Contractor shall be in writing, include the Contract number, comply with all terms and conditions of the Contract, and be delivered to the DSHS' Contract Representative identified above.
- B. Contractor shall send legal notices to DSHS at the address below and provide a copy to DSHS' Contract Representative:

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

with a copy to:

Department of State Health Services
1100 W. 49th Street, Mail Code 1919
Austin, Texas 78756
Attention: General Counsel

- C. Notices given by DSHS to Contractor may be e-mailed, mailed or sent by common carrier. E-mail notices shall be deemed delivered when sent by DSHS. Notices sent by mail shall be deemed delivered when deposited by DSHS in the United States mail, postage paid, certified, return receipt requested. Notices sent by common carrier shall be deemed delivered when deposited by DSHS with a common carrier, overnight, signature required.
- D. Notices given by Contractor to DSHS shall be deemed delivered when received by DSHS.
- E. Either Party may change its Contract Representative or Legal Notice contact by providing written notice to the other Party.

VII. CONTRACT DOCUMENTS

The following documents are incorporated by reference and made a part of this Contract for all purposes. The Data Use Agreement takes precedence over all other contractual documents:

- ATTACHMENT AStatement of Work**
- ATTACHMENT BHealth and Human Services (HHS) Contract Affirmations (Version 2.3)**
- ATTACHMENT CHHS Uniform Terms and Conditions (Vendor Version 3.4)**
- ATTACHMENT DAdditional Provisions Version 1.0**
- ATTACHMENT ETexas Department of State Health Services Open Enrollment for Tuberculosis Prevention and Elimination/Treatment Services (OE No. HHS0011974) and Addenda**
- ATTACHMENT F.....Contractor Response to OE No. HHS0011974**

VIII. SIGNATURE AUTHORITY

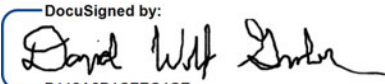
Each Party represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract. Any Services or Work performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

SIGNATURE PAGE FOLLOWS

**SIGNATURE PAGE FOR
DEPARTMENT OF STATE HEALTH SERVICES
CONTRACT NO. HHS001197400006**

DEPARTMENT OF STATE HEALTH SERVICES

**PHYSICIAN'S PREFERRED LABORATORY,
LTD**

By:  DocuSigned by:
B113A8B1CFE646E...

By:  DocuSigned by:
C6CBA450785E4D6...

Name: David Gruber

Name: Charlyn Snow

Title: Associate Commissioner for RLHO

Title: Administrator

Date of Signature: March 28, 2024

Date of Signature: March 26, 2024

HEALTH AND HUMAN SERVICES
Contract Number HHS001197400006
Attachment B **CONTRACT AFFIRMATIONS**

For purposes of these Contract Affirmations, HHS includes both the Health and Human Services Commission (HHSC) and the Department of State Health Services (DSHS). System Agency refers to HHSC, DSHS, or both, that will be a party to this Contract. These Contract Affirmations apply to all Contractors and Grantees (referred to as “Contractor”) regardless of their business form (e.g., individual, partnership, corporation).

By entering into this Contract, Contractor affirms, without exception, understands, and agrees to comply with the following items through the life of the Contract:

1. Contractor represents and warrants that these Contract Affirmations apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract and any related Solicitation.

2. Complete and Accurate Information

Contractor represents and warrants that all statements and information provided to HHS are current, complete, and accurate. This includes all statements and information in this Contract and any related Solicitation Response.

3. Public Information Act

Contractor 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. Information, documentation, and other material prepared and submitted in connection with this Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

4. Contracting Information Requirements

Contractor 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 Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

5. Assignment

- A. Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from System Agency. Any attempted assignment in violation of this provision is void and without effect.
- B. Contractor understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. Upon receipt of System Agency's notice of assignment, pledge, or transfer, Contractor shall cooperate with System Agency in giving effect to such assignment, pledge, or transfer, at no cost to System Agency or to the recipient entity.

6. Terms and Conditions

Contractor accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation, if any, under which this Contract was awarded. Contractor agrees that all exceptions to the Solicitation, as well as terms and conditions advanced by Contractor that differ in any manner from HHS' terms and conditions, if any, are rejected unless expressly accepted by System Agency in writing.

7. HHS Right to Use

Contractor agrees that HHS has the right to use, produce, and distribute copies of and to disclose to HHS employees, agents, and contractors and other governmental entities all or part of this Contract or any related Solicitation Response as HHS deems necessary to complete the procurement process or comply with state or federal laws.

8. Release from Liability

Contractor generally releases from liability and waives all claims against any party providing information about the Contractor at the request of System Agency.

9. Dealings with Public Servants

Contractor has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or any related Solicitation, or related Solicitation Response.

10. Financial Participation Prohibited

Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

11. 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 Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract

and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

12. Child Support Obligation

Under Section 231.006(d) of the Texas Family Code regarding child support, Contractor certifies that the individual or business entity named in this Contract and any related Solicitation 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. If the certification is shown to be false, Contractor may be liable for additional costs and damages set out in 231.006(f).

13. Suspension and Debarment

Contractor certifies that it and its principals 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 Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

14. Excluded Parties

Contractor 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.'

15. Foreign Terrorist Organizations

Contractor 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.

16. Executive Head of a State Agency

In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of this Contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.

17. Human Trafficking Prohibition

Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

18. Franchise Tax Status

Contractor 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.

19. Debts and Delinquencies

Contractor agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

20. Lobbying Prohibition

Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract or any related Solicitation 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).

21. Buy Texas

Contractor agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.

22. Disaster Recovery Plan

Contractor agrees that upon request of System Agency, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.

23. Computer Equipment Recycling Program

If this Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

24. Television Equipment Recycling Program

If this Contract is for the purchase or lease of covered television equipment, then Contractor certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

25. Cybersecurity Training

A. Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.

B. Contractor represents and warrants that if Contractor or Subcontractors, officers, or employees of Contractor have access to any state computer system or database, the Contractor, Subcontractors, officers, and employees of Contractor shall complete cybersecurity training pursuant to and in accordance with Government Code, Section 2054.5192.

26. Restricted Employment for Certain State Personnel

Contractor acknowledges that, 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 Contractor may not accept employment from Contractor before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.

27. No Conflicts of Interest

- A. Contractor 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 Contract or any related Solicitation and that Contractor's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- B. Contractor agrees that, if after execution of the Contract, Contractor discovers or is made aware of a Conflict of Interest, Contractor will immediately and fully disclose such interest in writing to System Agency. In addition, Contractor will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Contractor or by System Agency as a potential conflict. System Agency reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Contractor agrees to abide by System Agency's decision.

28. Fraud, Waste, and Abuse

Contractor 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 questioned activity to the Health and Human Services Commission's Office of Inspector General. Contractor 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.

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

29. Antitrust

The undersigned affirms under penalty of perjury of the laws of the State of Texas that:

- A. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
- B. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any federal antitrust law; and
- C. neither I nor any representative of the Contractor has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Response to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.

30. Legal and Regulatory Actions

Contractor 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 Contractor or any of the individuals or entities included in numbered paragraph 1 of these Contract Affirmations within the five (5) calendar years immediately preceding execution of this Contract or the submission of any related Solicitation Response that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to System Agency a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. In addition, Contractor acknowledges this is a continuing disclosure requirement. Contractor represents and warrants that Contractor shall notify System Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update System Agency shall constitute breach of contract and may result in immediate contract termination.

31. No Felony Criminal Convictions

Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised System Agency in writing of the facts and circumstances surrounding the convictions.

32. Unfair Business Practices

Contractor 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 Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

33. Entities that Boycott Israel

Contractor represents and warrants that (1) it does not, and shall not for the duration of the Contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify System Agency.

34. E-Verify

Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of this Contract to determine the eligibility of:

1. all persons employed by Contractor to perform duties within Texas; and
2. all persons, including subcontractors, assigned by Contractor to perform work pursuant to this Contract within the United States of America.

35. Former Agency Employees – Certain Contracts

If this Contract is an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code, in accordance with Section 2252.901 of the Texas Government Code, Contractor represents and warrants that neither Contractor nor any of Contractor's employees including, but not limited to, those authorized to provide services under the Contract, were former employees of an HHS Agency during the twelve (12) month period immediately prior to the date of the execution of the Contract.

36. Disclosure of Prior State Employment – Consulting Services

If this Contract is for consulting services,

A. In accordance with Section 2254.033 of the Texas Government Code, a Contractor providing consulting services who has been employed by, or employs an individual who has been employed by, System Agency or another State of Texas agency at any time during the two years preceding the submission of Contractor’s offer to provide services must disclose the following information in its offer to provide services. Contractor hereby certifies that this information was provided and remains true, correct, and complete:

1. Name of individual(s) (Contractor or employee(s));
2. Status;
3. The nature of the previous employment with HHSC or the other State of Texas agency;
4. The date the employment was terminated and the reason for the termination; and
5. The annual rate of compensation for the employment at the time of its termination.

B. If no information was provided in response to Section A above, Contractor certifies that neither Contractor nor any individual employed by Contractor was employed by System Agency or any other State of Texas agency at any time during the two years preceding the submission of Contractor’s offer to provide services.

37. Abortion Funding Limitation

Contractor understands, acknowledges, and agrees that, pursuant to Article IX of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act:

1. performs an abortion procedure that is not reimbursable under the state’s Medicaid program;
2. is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state’s Medicaid program; or
3. is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state’s Medicaid program.

The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article IX.

38. Funding Eligibility

Contractor understands, acknowledges, and agrees that, pursuant to Chapter 2272 (eff. Sept. 1, 2021, Ch. 2273) of the Texas Government Code, except as exempted under that Chapter, HHSC cannot contract with an abortion provider or an affiliate of an abortion provider. Contractor certifies that it is not ineligible to contract with HHSC under the terms of Chapter 2272 (eff. Sept. 1, 2021, Ch. 2273) of the Texas Government Code.

39. Gender Transitioning and Gender Reassignment Procedures and Treatments for Certain Children – Prohibited Use of Public Money; Prohibited State Health Plan Reimbursement.

Contractor understands, acknowledges, and agrees that, pursuant to Section 161.704 of the Texas Health and Safety Code (eff. Sept. 1, 2023), public money may not directly or indirectly be used, granted, paid, or distributed to any health care provider, medical school, hospital, physician, or any other entity, organization, or individual that provides or facilitates the provision of a procedure or treatment to a child that is prohibited under Section 161.702 of the Texas Health and Safety Code. Contractor also understands, acknowledges, and agrees that, pursuant to Section 161.705 of the Texas Health and Safety Code (eff. Sept. 1, 2023), HHSC may not provide Medicaid reimbursement and the child health plan program established under Chapter 62 may not provide reimbursement to a physician or health care provider for provision of a procedure or treatment to a child that is prohibited under Section 161.702 of the Texas Health and Safety Code. Contractor certifies that it is not ineligible to contract with System Agency under the terms of Chapter 161, Subchapter X, of the Texas Health and Safety Code.

40. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR 200.216)

Contractor 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.

41. COVID-19 Vaccine Passports

Pursuant to Texas Health and Safety Code, Section 161.0085(c), Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.

42. COVID-19 Vaccinations

Contractor understands, acknowledges, and agrees that, pursuant to Article II of the General Appropriations Act, none of the General Revenue Funds appropriated to the Department of State Health Services (DSHS) may be used for the purpose of promoting or advertising COVID-19 vaccinations in the 2024-25 biennium. It is also the intent of the legislature that to the extent allowed by federal law, any federal funds allocated to DSHS shall be expended for activities other than promoting or advertising COVID-19 vaccinations. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article II.

43. Entities that Boycott Energy Companies

In accordance with Senate Bill 13, Acts 2021, 87th Leg., R.S., pursuant to Section 2274.002 (eff. Sept. 1, 2023, Section 2276.002, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.) of the Texas Government Code (relating to prohibition on contracts with companies boycotting certain energy companies), Contractor represents and warrants that: (1) it does not, and will not for the duration of the Contract, boycott energy companies or (2) the verification required by Section 2274.002 (eff. Sept. 1, 2023, Section 2276.002, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.) of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify System Agency.

44. Entities that Discriminate Against Firearm and Ammunition Industries

In accordance with Senate Bill 19, Acts 2021, 87th Leg., R.S., pursuant to Section 2274.002 of the Texas Government Code (relating to prohibition on contracts with companies that discriminate against firearm and ammunition industries), Contractor verifies that: (1) it does not, and will not for the duration of the Contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify System Agency.

45. Security Controls for State Agency Data

In accordance with Senate Bill 475, Acts 2021, 87th Leg., R.S., pursuant to Texas Government Code, Section 2054.138, Contractor understands, acknowledges, and agrees that if, pursuant to this Contract, Contractor is or will be authorized to access, transmit, use, or store data for System Agency, Contractor is required to meet the security controls the System Agency determines are proportionate with System Agency's risk under the Contract based on the sensitivity of System Agency's data and that Contractor must periodically provide to System Agency evidence that Contractor meets the security controls required under the Contract.

46. Cloud Computing State Risk and Authorization Management Program (TX-RAMP)

In accordance with Senate Bill 475, Acts 2021, 87th Leg., R.S., pursuant to Texas Government Code, Section 2054.0593, Contractor acknowledges and agrees that, if providing cloud computing services for System Agency, Contractor must comply with the requirements of the state risk and authorization management program and that System Agency may not enter or renew a contract with Contractor to purchase cloud computing services for the agency that are subject to the state risk and authorization management program unless Contractor demonstrates compliance with program requirements. If providing cloud computing services for System Agency that are subject to the state risk and authorization management program, Contractor certifies it will maintain program compliance and certification throughout the term of the Contract.

47. Office of Inspector General Investigative Findings Expert Review

In accordance with Senate Bill 799, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 531.102(m-1)(2) (eff. Apr. 1, 2025, Section 544.0106, pursuant to House Bill 4611, Acts 2023, 88th Leg., R.S.) is applicable to this Contract, Contractor affirms that it possesses the necessary occupational licenses and experience.

48. Contract for Professional Services of Physicians, Optometrists, and Registered Nurses

In accordance with Senate Bill 799, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 2254.008(a)(2) is applicable to this Contract, Contractor affirms that it possesses the necessary occupational licenses and experience.

49. Foreign-Owned Companies in Connection with Critical Infrastructure

If Texas Government Code, Section 2274.0102(a)(1) (eff. Sept. 1, 2023, Section 2275.0102(a)(1), pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.) (relating to prohibition on contracts with certain foreign-owned companies in connection with critical infrastructure) is applicable to this Contract, pursuant to Government Code Section 2274.0102 (eff. Sept. 1, 2023, Section 2275.0102, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.), Contractor certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103 (eff. Sept. 1, 2023, Section 2275.0103, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.), or (2) headquartered in any of those countries.

50. Critical Infrastructure Subcontracts

For purposes of this Paragraph, the designated countries are China, Iran, North Korea, Russia, and any countries lawfully designated by the Governor as a threat to critical infrastructure. Pursuant to Section 113.002 of the Business and Commerce Code, Contractor shall not enter into a subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business and Commerce Code, in this state, other than access specifically allowed for product warranty and support purposes to any subcontractor unless (i) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is majority owned or controlled by citizens or governmental entities of a designated country; and (ii) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is headquartered in a designated country. Contractor will notify the System Agency before entering into any subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business & Commerce Code, in this state.

51. Enforcement of Certain Federal Firearms Laws Prohibited

In accordance with House Bill 957, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 2.101 is applicable to Contractor, Contractor certifies that it is not ineligible to receive state grant funds pursuant to Texas Government Code, Section 2.103.

52. Prohibition on Abortions

Contractor understands, acknowledges, and agrees that, pursuant to Article II of the General Appropriations Act, (1) no funds shall be used to pay the direct or indirect costs (including marketing, overhead, rent, phones, and utilities) of abortion procedures provided by contractors of HHSC; and (2) no funds appropriated for Medicaid Family Planning, Healthy Texas Women Program, or the Family Planning Program shall be distributed to individuals or entities that perform elective abortion procedures or that contract with or provide funds to individuals or entities for the performance of elective abortion procedures. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article II.

53. False Representation

Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

54. False Statements

Contractor represents and warrants that all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Response are current, complete, true, and accurate. Contractor acknowledges any false statement or material misrepresentation made by Contractor during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

55. Permits and License

Contractor represents and warrants that it 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 that pertain to this Contract.

56. Equal Employment Opportunity

Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

57. Federal Occupational Safety and Health Law

Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

58. Signature Authority

Contractor represents and warrants that the individual signing this Contract Affirmations document is authorized to sign on behalf of Contractor and to bind the Contractor.

Signature Page Follows

Authorized representative on behalf of Contractor must complete and sign the following:

Legal Name of Contractor

Assumed Business Name of Contractor, if applicable (d/b/a or ‘doing business as’)

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

**Printed Name of Authorized Representative
First, Middle Name or Initial, and Last Name**

Title of Authorized Representative

Physical Street Address

City, State, Zip Code

Mailing Address, if different

City, State, Zip Code

Phone Number

Fax Number

Email Address

DUNS Number

Federal Employer Identification Number

Texas Identification Number (TIN)

Texas Franchise Tax Number

Texas Secretary of State Filing Number

SAM.gov Unique Entity Identifier (UEI)



TEXAS

Health and Human Services

Health and Human Services (HHS)
Uniform Terms and Conditions - Vendor
Version 3.4

Effective: November 2023

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 other than those permitted by Work Orders.

“[Attachment](#)” means documents, terms, conditions, or information added to this Contract following the Signature Document or included by reference and made a part of this Contract.

“[Contract](#)” means the Signature Document, these Uniform Terms and Conditions, along with any Attachments, and any Amendments, purchase orders, or Work Orders that may be issued by the System Agency, to be incorporated by reference for all purposes.

“[Contractor](#)” means the Party selected to provide the goods or Services to the State under this Contract.

“[Deliverable](#)” means a Work Product(s), including all reports and project documentation, prepared, developed, or procured by Contractor as part of the Services under the Contract for the use or benefit of the System Agency or the State of Texas.

“[DSHS](#)” means the Department of State Health Services.

“[Effective Date](#)” means the date agreed to by the Parties as 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. “[Goods](#)” means supplies, materials, or equipment.

“[HHSC](#)” means the Texas 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.

“[Parties](#)” means the System Agency and Contractor, collectively.

“[Party](#)” means either the System Agency or Contractor, individually.

“[Project](#)” means the goods or Services described in the Signature Document or a Work Order of this Contract.

“[Scope of Work](#)” means the description of Services and Deliverables specified in the Contract and as may be amended.

“[Services](#)” means the tasks, functions, and responsibilities assigned and delegated to Contractor under the Contract.

“[Signature Document](#)” means the document executed by both Parties that specifically sets forth all of the documents that constitute the Contract.

“[Solicitation](#)” means the document 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 Contractor’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 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 information maintained on the Texas Comptroller of Public Accounts’ website relative to travel reimbursements under this Contract, if any.

“[Subcontract](#)” means any written agreement between Contractor and a third party to fulfill the requirements of the Contract. All Subcontracts are required to be in writing.

“[Subcontractor](#)” means any individual or entity (including a subcontractor of a subcontractor) that enters a contract with the Contractor to perform part or all of the obligations of Contractor under this Contract.

“[System Agency](#)” means HHSC or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under state law and the officers, employees, authorized representatives, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services.

“[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 Contractor in connection with Contractor’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 or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.
- D. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
- E. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to these documents as amended, modified, or supplemented from time to time during the term of the Contract.
- F. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
- G. All Attachments, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- H. 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, and each will be performed in accordance with its terms.
- I. 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.”
- J. Time is of the essence in this Contract.

ARTICLE II. PAYMENT PROVISIONS

2.1 PROMPT PAYMENT

Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

2.2 ANCILLARY AND TRAVEL EXPENSES

- A. Except as otherwise provided in the Contract, no ancillary expenses incurred by the Contractor 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* guidelines which can currently be accessed at: <https://fmxcpa.texas.gov/fmx/travel/textravel/>

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. Contractor 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 Contractor 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 Contractor'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 Contractor 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

Contractor 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 Contractor to offset overpayments, unallowable or ineligible costs made to the Contractor, or if any required financial status report(s) is not submitted by the due date(s); or,
 - ii. require Contractor 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.
- Contractor 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. Contractor further understands and agrees that reimbursement of such disallowed costs shall be paid by Contractor from funds which were not provided or otherwise made available to Contractor under this Contract.

ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES, AND CERTIFICATIONS

4.1 WARRANTY

Contractor 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 Contractor has failed to complete Work timely or to perform satisfactorily under conditions required by this Contract, the System Agency may require Contractor, at its sole expense, to:

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

4.2 GENERAL AFFIRMATIONS

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

4.3 FEDERAL ASSURANCES

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

4.4 FEDERAL CERTIFICATIONS

Contractor certifies that, to the extent federal certifications are incorporated into the Contract under the Signature Document, the Contractor has reviewed the federal certifications and that Contractor is in compliance with all requirements. In addition, Contractor 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. Contractor and Contractor'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, Contractor 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. Contractor 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 Contractor has any rights in and to the Work Product that cannot be assigned to System Agency, Contractor 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 Contractor. Contractor shall provide System Agency access during normal business hours to all Vendor materials, premises, and computer files containing the Work Product.

5.2 CONTRACTOR'S PRE-EXISTING WORKS

- A. To the extent that Contractor incorporates into the Work Product any works of Contractor that were created by Contractor or that Contractor acquired rights in prior to the Effective Date of this Contract ("**Incorporated Pre-existing Works**"), Contractor retains ownership of such Incorporated Pre-existing Works.
- B. Contractor 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. Contractor represents, warrants, and covenants to System Agency that Contractor 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 Contractor, Contractor 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. Contractor shall obtain System Agency's advance written approval prior to incorporating any Third-Party IP into the Work Product, and Contractor shall notify System Agency on delivery of the Work Product if such materials include any Third Party IP.
- C. Contractor shall provide System Agency all supporting documentation demonstrating Contractor's compliance with this **Section 5.3**, including without limitation documentation indicating a third party's written approval for Contractor to use any Third Party IP that may be incorporated in the Work Product.

5.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS

Contractor shall have written, binding agreements with its employees and subcontractors that include provisions sufficient to give effect to and enable Contractor's compliance with Contractor'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, Contractor shall deliver to System Agency all completed, or partially completed, Work Product, including any Incorporated Pre-existing Works, and any and all versions thereof. Contractor's failure to timely deliver such Work Product is a material breach of the Contract. Contractor will not retain any copies of the Work Product or any documentation or other products or results of Contractor'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 Contractor by, through, or on behalf of System Agency or System Agency contractors, including all electronic data generated, processed, transmitted, or stored by Contractor in the course of providing data processing services in connection with Contractor's performance hereunder (the "**System Agency Data**"), is owned solely by System Agency.
- B. Contractor 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 Contractor to fulfill its obligations under the Contract or as authorized in advance in writing by System Agency.
- C. For the avoidance of doubt, Contractor 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. Contractor 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 Contractor's systems that process, store, collect, and/or transmit the System Agency Data shall not excuse Contractor's performance of its obligations hereunder.

ARTICLE VI. PROPERTY

6.1 USE OF STATE PROPERTY

- A. Contractor 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. Contractor shall not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access System Agency's network or e-mail while outside of the continental United States.
- D. Contractor 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 Contractor, Contractor 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 Contractor's use of State Property that exceeds the Contract scope. Contractor shall fully reimburse such charges to System Agency within ten (10) calendar days of Contractor'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 Contractor or Contractor's employees, agents, Subcontractors, and suppliers, Contractor 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. Contractor shall notify System Agency of the loss, destruction, or damage of equipment or property within one (1) business day. Contractor shall reimburse System Agency and the State of Texas for such property damage within 10 calendar days after Contractor'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. WORK ORDERS

7.1 WORK ORDERS

If the Contract is for indefinite quantities of Services, as specified in the Signature Document, all Work will be performed in accordance with properly executed Work Orders.

7.2 PROPOSALS

For Work Order contracts, the Contractor shall submit to System Agency separate proposals, including pricing and a project plan, for each Project.

7.3 RESPONSIBILITY

For each approved Project, the Contractor shall be responsible for all Work assigned under the Work Order. Multiple Work Orders may be issued during the term of this Contract, all of which will be in writing and signed by the Parties. Each Work Order will include a scope of Services; a list of tasks required; a time schedule; a list of Deliverables, if any; a detailed Project budget; and any other information or special conditions as may be necessary for the Work assigned.

7.4 TERMINATION

If this Work Order is in effect on the day the Contract would otherwise expire, the Contract will remain in effect until this Work Order is terminated or expires; and the Contract and this Work Order may be amended after such termination or expiration to extend the performance period or add ancillary deliverables or services, only to the extent necessary.

ARTICLE VIII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY

8.1 RECORD MAINTENANCE AND RETENTION

- A. Contractor 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 all information required to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes. Contractor shall ensure these same requirements are included in all subcontracts.
- B. Contractor 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 Contractor for a minimum of seven (7) years after the Contract expiration date or seven (7) years after the completion of all audits, claim, litigation, or dispute matters involving the Contract are resolved, whichever is later. Contractor shall ensure these same requirements are included in all subcontracts.

8.2 AGENCY'S RIGHT TO AUDIT

- A. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents kept current by Contractor pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by System Agency and the State of Texas. Contractor shall ensure these same requirements are included in all subcontracts.
- B. In addition to any right of access arising by operation of law, Contractor and any of Contractor'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. Contractor shall permit the System Agency or any of its duly authorized federal, state, or local authorities unrestricted access to and the right to examine all external contracts and or pricing models or methodologies related to the Contract. Contractor shall ensure these same requirements are included in all subcontracts. 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 oversight, including, but not limited to, reviews, inspections, audits and investigations, Contractor 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 and payments related to the Contract, including those related to a Subcontractor.
- E. Contractor shall include the System Agency's and any of its duly authorized representatives', as well as duly authorized federal, state, or local authorities, unrestricted

right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

8.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS

- A. Contractor 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, inspection or investigation of the Contract and the Services and Deliverables provided. Any such correction will be at Contractor's or its Subcontractor's sole expense. Whether Contractor's action corrects the noncompliance shall be solely the decision of the System Agency.
- B. As part of the Services, Contractor must provide to System Agency upon request a copy of those portions of Contractor's and its Subcontractors' internal audit reports relating to the Services and Deliverables provided to the State under the Contract.
- C. Contractor shall include the requirement to provide to System Agency (and any of its duly authorized federal, state, or local authorities) internal audit reports related to this Contract in any Subcontract it awards. Upon request by System Agency, Contractor shall enforce this requirement against its Subcontractor. Further, Contractor shall include in any Subcontract it awards a requirement that all Subcontractor Subcontracts must also include these provisions.

8.4 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 Contractor 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.
- C. Contractor shall ensure the authority to audit funds received indirectly by subcontractors through the contract and the requirement to cooperate is included in any subcontract it awards.

8.5 CONFIDENTIALITY

Contractor 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 Article VIII will survive termination or expiration of this Contract. Further, the obligations of Contractor under this Article VIII will survive termination or expiration of this Contract. This requirement must be included in all subcontracts awarded by Contractor.

ARTICLE IX. CONTRACT REMEDIES AND EARLY TERMINATION

9.1 CONTRACT REMEDIES

To ensure Contractor's full performance of the Contract and compliance with applicable law, the System Agency reserves the right to hold Contractor 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 Contractor to take specific actions in order to remain in compliance with the Contract;
- iii. recouping payments made by the System Agency to the Contractor found to be in error;
- iv. suspending, limiting, or placing conditions on the Contractor'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.

9.2 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.

9.3 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 Contractor 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 Contractor's duties under the Contract.

Contractor's misrepresentation in any aspect of Contractor's Solicitation Response, if any, or Contractor'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 Contractor no longer maintains the financial viability required to complete the Work, or otherwise fully perform its responsibilities under the Contract.

9.4 CONTRACTOR RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS

If the System Agency terminates the Contract for cause, the Contractor shall be responsible to the System Agency for all costs incurred by the System Agency and the State of Texas to replace the Contractor. 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 Contractor's failure to perform any Work in accordance with the terms of the Contract.

ARTICLE X. INDEMNITY

10.1 GENERAL INDEMNITY

A. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND SYSTEM AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS,

- DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT.**
- B. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE SYSTEM AGENCY OR ITS EMPLOYEES.**
- C. FOR THE AVOIDANCE OF DOUBT, SYSTEM AGENCY SHALL NOT INDEMNIFY CONTRACTOR OR ANY OTHER ENTITY UNDER THE CONTRACT.**

10.2 INTELLECTUAL PROPERTY

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE SYSTEM AGENCY AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS, OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM:

- i. THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT;**
- ii. ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR**
- iii. SYSTEM AGENCY'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO SYSTEM AGENCY BY CONTRACTOR OR OTHERWISE TO WHICH SYSTEM AGENCY HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT.**

10.3 ADDITIONAL INDEMNITY PROVISIONS

- A. CONTRACTOR AND SYSTEM AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY INDEMNITY CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES.**
- B. THE DEFENSE SHALL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL.**
- C. CONTRACTOR SHALL REIMBURSE SYSTEM AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE SYSTEM AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF SYSTEM AGENCY IS**

**REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL,
SYSTEM AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL
AND CONTRACTOR SHALL PAY ALL REASONABLE COSTS OF SYSTEM
AGENCY'S COUNSEL.**

ARTICLE XI. GENERAL PROVISIONS

11.1 AMENDMENT

The Contract may only be amended by an Amendment executed by both Parties.

11.2 INSURANCE

- A. Unless otherwise specified in this Contract, Contractor 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. Contractor 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, Contractor 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, Contractor must produce renewal certificates for each type of coverage.
- B. These and all other insurance requirements under the Contract apply to both Contractor and its Subcontractors, if any. Contractor is responsible for ensuring its Subcontractors' compliance with all requirements.

11.3 LIMITATION ON AUTHORITY

- A. The authority granted to Contractor by the System Agency is limited to the terms of the Contract.
- B. Contractor 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. Contractor may not incur any debt, obligation, expense, or liability of any kind on behalf of System Agency or the State of Texas.
- C. Contractor 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 Contractor, the Contractor shall assist the System Agency in communications and negotiations regarding the Work under the Contract with state and federal governments.

11.4 LEGAL OBLIGATIONS

Contractor 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. Contractor shall be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.

11.5 CHANGE IN LAWS AND COMPLIANCE WITH LAWS

Contractor 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.

11.6 E-VERIFY PROGRAM

Contractor certifies that for Contracts for Services, Contractor 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 Contractor to perform duties within Texas; and
- ii. all persons, including subcontractors, assigned by the Contractor to perform Work pursuant to the Contract within the United States of America.

11.7 PERMITTING AND LICENSURE

At Contractor's sole expense, Contractor 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 Contractor to provide the goods or Services required by this Contract.

Contractor shall be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Contractor shall be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Contract.

11.8 SUBCONTRACTORS

Contractor 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 Contractor shall be in writing and be subject to the requirements of the Contract. Should Contractor subcontract any of the services required in the Contract, Contractor expressly understands and acknowledges that in entering into such Subcontract(s), System Agency is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all Subcontracts are rendered in compliance with the Contract.

11.9 INDEPENDENT CONTRACTOR

Contractor and Contractor's employees, representatives, agents, Subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the Contract. Neither Contractor nor System Agency is an agent of the other and neither may make any commitments on the other party's behalf. Contractor 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 Contractor and System Agency.

11.10 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.

11.11 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.

11.12 SURVIVABILITY

Expiration or termination of the Contract for any reason does not release Contractor 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.

11.13 FORCE MAJEURE

Neither Contractor nor System Agency 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.

11.14 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 Contractor'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 Contractor 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 Contractor 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 Contractor'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 Contractor 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 Contractor may suspend performance during the pendency of such claim or dispute if the Contractor 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.

11.15 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 Contractor 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.

11.16 MEDIA RELEASES

- A. Contractor 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. Contractor 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. Contractor may publish, at its sole expense, results of Contractor 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.

11.17 NO MARKETING ACTIVITIES

Contractor is prohibited from using the Work for any Contractor 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 Contractor'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 Contractor as part of the Work.

11.18 PROHIBITION ON NON-COMPETE RESTRICTIONS

Contractor 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.

11.19 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.

11.20 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.

11.21 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.

11.22 CIVIL RIGHTS

- A. Contractor agrees to comply with 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. §§6101-6107);
 - v. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
 - 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 Contract.
- B. Contractor agrees to comply with all amendments to the above-referenced 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 aid, care, service, or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.
- C. Contractor agrees to 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 contractor 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. State and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Contractor agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- D. Contractor agrees to 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: <https://www.hhs.texas.gov/services/your-rights/civil-rights-office/civil-rights-posters>
- E. Contractor agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

- F. Upon request, Contractor shall provide HHSC's Civil Rights Office with copies of the Contractor's civil rights policies and procedures.
- G. Contractor must notify HHSC's Civil Rights Office of any complaints of discrimination 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. Notice provided pursuant to this section must be directed to:
HHSC Civil Rights Office
701 W. 51st Street, Mail CodeW206
Austin, Texas 78751
Phone Toll Free: (888) 388-6332
Phone: (512) 438-4313
Fax: (512) 438-5885
Email: HHSCivilRightsOffice@hpsc.state.tx.us

11.23 ENTERPRISE INFORMATION MANAGEMENT STANDARDS

Contractor shall conform to HHS standards for data management as described by the policies of the HHS Office of Data, Analytics, and Performance. 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.

11.24 DISCLOSURE OF LITIGATION

- A. The Contractor 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 Contractor. "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 Contractor 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 Contractor'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.

11.25 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.

11.26 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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ADDITIONAL PROVISIONS

The terms and conditions of these Additional Provisions are incorporated into and made a part of the Contract. Capitalized items used in these Additional Provisions and not otherwise defined have the meanings assigned to them in HHSC Uniform Terms and Conditions.

1. HHSC APPROVAL OF STAFFING

- A. Contractor shall not employ or contract with or permit the employment of unfit or unqualified persons or persons not skilled in the tasks assigned to them. The Contractor shall at all times employ sufficient labor to carry out functions and services in the manner and time prescribed by the Contract. The Contractor shall be responsible to HHSC for the acts and omissions of the Contractor's employees, agents (including, but not limited to, lobbyists) and Subcontractors and the Contractor shall enforce strict discipline among the Contractor's employees, agents (including, but not limited to, lobbyists) and Subcontractors performing the services under the Contract.
- B. Any person employed by the Contractor shall, at the written request of HHSC, and within HHSC's sole discretion, be removed immediately by the Contractor from work relating to the Contract.

2. NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS

- A. Contractor shall immediately report in writing to its assigned HHSC contract manager when Contractor learns of or has any reason to believe it or any person with ownership or controlling interest in Contractor, or their agent, employee, subcontractor or volunteer who is providing services under this Contract has:
 - i. Engaged in any activity that could constitute a criminal offense equal to or greater than a Class A misdemeanor or grounds for disciplinary action by a state or federal regulatory authority; or
 - ii. Been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime.
- B. Contractor shall not permit any person who engaged, or was alleged to have engaged, in any activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed in writing by the System Agency.

3. NOTICE OF IRS OR TWC INSOLVENCY

Contractor shall notify in writing its assigned HHSC contract manager of any insolvency, incapacity or outstanding unpaid obligations of Contractor owed to the Internal Revenue Service or the State of Texas, or any agency or political subdivision of the State of Texas within five days of the date of Contractor's becoming aware of such.

4. NOTICE OF A LICENSE ACTION

Contractor shall notify its assigned HHSC contract manager of any action impacting Contractor's license to provide services under this Contract within five days of becoming aware of the action and include the following:

- i. Reason for such action;
- ii. Name and contact information of the local, state or federal department or agency or entity;
- iii. Date of the license action; and
- iv. License or case reference number.



TEXAS

Health and Human Services

TEXAS DEPARTMENT OF STATE HEALTH SERVICES

OPEN ENROLLMENT (OE) for

Tuberculosis Prevention and Elimination/Treatment Services

OE No. # HHS0011974

Enrollment Period Opens: September 1, 2022

Enrollment Period Closes: August 31, 2026

NIGP Class/Item No(s):

948-48

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SECTION 1. SCHEDULE OF EVENTS

Enrollment Period Opens (Posted to HHS OE Opportunities webpage)	9/1/2022
Enrollment Period Closes (Final date for RECEIPT of Applications)	8/31/2026
Anticipated Contract Start Date	Contract will start upon execution, no earlier than September 1, 2022.

Applications must be **received** by DSHS prior to the closing date as indicated in this Schedule of Events or as changed via an Addendum posted to the HHS Open Enrollment Opportunities webpage. Every Applicant is solely responsible for ensuring its Application is received before the submission period closes. DSHS is not responsible for lost, misdirected or late applications.

The dates in the Schedule of Events are tentative. DSHS reserves the right to modify these dates at any time by posting an Addendum to the HHS Open Enrollment Opportunities webpage.

By submitting an Application, the Applicant represents and warrants that any individual submitting the Application and any related documents on behalf of the Applicant is authorized to do so and to bind the Applicant under any resulting contract.

Withdrawal of Application:

Applications may be withdrawn from consideration or amended at any time prior to the "Enrollment Period Closes" date by emailing a request to the points of contact listed in Section 4. The email subject line should contain the OE number and title as indicated on the cover page. The Applicant is solely responsible for ensuring requests are received timely by DSHS. DSHS is not responsible for lost, misdirected or late emails.

SECTION 2. OVERVIEW

2.1. INTRODUCTION

The Department of State Health Services (DSHS) is an agency within the Texas Health and Human Services (HHS) system.

DSHS is seeking Applications to establish a Contract or Contracts for the selected tuberculosis (TB) services as described in **Section 8: Statement of Work** to individuals with suspected or confirmed TB disease including persons identified as a contact to a known case or suspected case, refugees, and class B immigrants regardless of their ability to pay for services.

To be considered for award, Applicants must submit a comprehensive Application which meets all the requirements of this Open Enrollment and includes all requested documentation.

2.2. LEGAL AUTHORITY

Any Contract issued pursuant to this Open Enrollment is authorized by and in compliance with the provisions of Texas Health and Safety Code Chapters 81, 12, and 1001, and Texas Government Code Chapters 531 and 2254.

2.3. NO GUARANTEE OF VOLUME, USAGE OR COMPENSATION

DSHS does not guarantee any volume, usage, or compensation to be paid to any Contractor under any Contract resulting from this Open Enrollment. Additionally, all Contracts resulting from this Open Enrollment are subject to appropriations, the availability of funds, and termination.

SECTION 3. DEFINITIONS AND ACRONYMS

Unless the context clearly indicates otherwise, throughout this Open Enrollment, the definition given to a term below applies whenever the term appears in this Open Enrollment, in any Application submitted in response to this Open Enrollment, and in any Contract awarded as a result of this Open Enrollment. All other terms have their ordinary and common meaning.

TERM	DEFINITION
Addendum	A written clarification or revision to this Open Enrollment. All Addenda will be posted to the HHS Open Enrollment Opportunities web page.
Application	All information and materials submitted by an Applicant in response to this Open Enrollment.
Applicant	Any person or entity that submits an Application in response to this Open Enrollment.
Contract	Any Contract awarded under this Open Enrollment.
TERM	DEFINITION
Contractor (Provider)	Each Applicant, if any, awarded a Contract as a result of this Open Enrollment. May also be referred to as Provider. Unless the context clearly indicates otherwise, all terms and conditions of this Open Enrollment and resulting Contract that refer to Applicant apply with equal force to Contractor (Provider).
HHS Agency	The Health and Human Services Commission (HHSC) and the Texas Department of Health and Human Services (DSHS) may be identified separately as an 'HHS Agency' or collectively as the 'HHS Agencies' in this Open Enrollment or any resulting Contract.
HHS Open Enrollment Opportunities	The HHS web page where Open Enrollments are posted: https://apps.hhs.texas.gov/pcs/openenrollment.cfm
HUB	A Historically Underutilized Business, as defined by Chapter 2161, Texas Government Code.
Plan or HSP	The Historically Underutilize Business Subcontracting Plan (HSP) is required by Chapter 2161 of the Texas Government Code for contracts with an expected value of \$100,000 or more and where subcontracting opportunities have been determined to be probable.
Open Enrollment (OE)	This document, including all exhibits, attachments and addenda, as applicable, posted on the HHS Open Enrollment Opportunities webpage.
Statement of Work	The description of services and deliverables in this Open Enrollment that the Contractor is required to provide under the Contract.

SECTION 4. GENERAL INFORMATION

4.1. DSHS POINTS OF CONTACT

All questions, requests for clarification, or other communication about this Open Enrollment shall be made in writing only to the DSHS points of contact listed below, based upon the DSHS public health region in which the Applicant is located.

Attempts to ask questions by phone or in person will not be allowed or recognized as valid.

Physical Address for Regular Mail Delivery, Delivery Service or Hand Delivery
--

Regions 6/5S, 8, 9/10, and 11 – Send to:

David Acosta, CTCM

David.acosta@dshs.texas.gov

Ref: OE #TBD

Contract Management Section MC 1990

Department of State Health Services

1100 W. 49th Street, Room T-502

Austin, Texas 78756

Regions 1, 2/3, 4/5N, 7 – Send to:

Amanda Mendez, CTCM

Amanda.mendez@dshs.texas.gov

Ref: OE #TBD

Contract Management Section MC 1990

Department of State Health Services

1100 W. 49th Street, Room T-502

Austin, Texas 78756

To be considered for contract award, Applications must only be submitted via email to the points of contact above, based upon the region in which the Applicant is located. See Section 14 for submission requirements.

Do not contact other HHS Agency personnel regarding this OE.

This restriction, as to only communicating in writing with the DSHS points of contact identified above, does not preclude discussions between Applicant and agency personnel for the purposes of conducting business unrelated to this OE.

Failure of an Applicant or its representatives to comply with these requirements may result in disqualification of the submitted Application.

4.2. CHANGES, MODIFICATIONS AND CANCELLATION

DSHS reserves the right to change, amend, modify, or cancel this OE at any time.

All Applications, including those submitted after cancellation of the OE, become the property of DSHS upon receipt.

4.2.1. ADVERTISEMENT OF CHANGES, MODIFICATIONS OR CANCELLATION

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If DSHS determines that the OE needs to be changed or modified, either an Addendum will be posted on the OE Opportunities webpage or the OE will be canceled. The action to be taken will be determined at the sole discretion of DSHS. Furthermore, if the OE will be canceled, DSHS will determine, in its sole discretion, if a new OE will be posted.

No HHS Agency will be responsible or liable in any regard for the failure of any individual or entity to receive notification of any posting to the OE Opportunities webpage.

It is the responsibility of each Applicant to monitor the OE Opportunities webpage for any Addenda or additional information regarding this OE. Failure to monitor the OE Opportunities webpage will in no way release or relieve any Applicant or Contractor of its obligations to fulfill the requirements as posted.

4.3. OFFER PERIOD

By submitting an Application in response to this OE, Applicant agrees that its Application will remain a firm and binding offer to enter into a Contract under all terms and conditions of this OE for at least 240 days from the date applications are due, as stated in Exhibit A, Affirmations and Solicitation Acceptance, unless withdrawn by the Applicant before the Enrollment Period closes.

4.4. COSTS INCURRED

DSHS accepts no obligations for costs incurred in preparing, submitting, and screening an Application, including, but not limited to, costs or expenses related to contract execution.

Applicants understand that issuance of this OE or retention of Applications in no way constitutes a commitment by DSHS to award a Contract. All Applications shall be prepared simply and economically, providing a straightforward, concise delineation of the Applicant's capabilities to satisfy the requirements of this OE and submitted at the sole expense of the Applicant.

4.5. OE QUESTIONS OR CLARIFICATIONS

4.5.1. QUESTIONS AND REQUESTS FOR CLARIFICATION

Written questions and requests for clarification regarding this OE are permitted if submitted by email to points of contact listed in Section 4.1.

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Responses to questions and requests for clarification will not be posted. However, if DSHS determines, based on a question, request for clarification, or any other factor (including, but not limited to notices of ambiguity, conflict, or discrepancy as reference in Section 4.5.3, below), that the OE needs to be amended or clarified, either an Addendum will be posted on the OE Opportunities webpage or the OE will be canceled. The action to be taken will be determined at the sole discretion of DSHS. Furthermore, if the OE will be canceled, DSHS will determine, in its sole discretion, if a new OE will be posted.

4.5.2. QUESTION AND CLARIFICATION FORMAT

Questions and requests for clarification must include the following information:

- a. the OE Number
- b. the question or request for clarification, providing the following information:
 - OE language, topic, section heading
 - Section, paragraph and page number(s) or exhibit/attachment

The requestor must provide the following contact information:

- Company name
- Company representative name
- Phone number
- Email address

4.5.3. AMBIGUITY, CONFLICT, DISCREPANCY

Applicants must notify the point of contact assigned to the Applicant's region in Section 4.1 of any ambiguity, conflict, discrepancy, exclusionary specification, omission or other error in the OE. Notices must be submitted in the same manner for submitting questions.

Each Applicant submits its Application at its own risk.

If an Applicant fails to properly and timely notify the point of contact assigned to the Applicant's region in Section 4.1 of any ambiguity, conflict, discrepancy, exclusionary specification, omission or other error in the OE, the Applicant, whether awarded a contract or not:

- a. shall have waived any claim of error or ambiguity in the OE and any resulting contract,

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- b. shall not contest the interpretation by DSHS of such provision, and
- c. shall not be entitled to additional compensation, relief, or time by reason of ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error or its later correction.

SECTION 5. HUB SUBCONTRACTING PLAN (HSP) REQUIREMENTS

It is the policy of HHS to promote and encourage contracting and subcontracting opportunities for State of Texas-certified Historically Underutilized Businesses (HUBs) in all contracts in compliance with [Chapter 2161 of the Texas Government Code](#) and [Title 34, Part 1, Chapter 20, Subchapter D, Division 1 of the Texas Administrative Code](#).

Applicants who may be eligible are encouraged to become HUB certified and may access more information including the State of Texas HUB Application at the CPA website at: <https://comptroller.texas.gov/purchasing/vendor/hub/>.

HHS has determined subcontracting opportunities are not probable under this OE; therefore, a **HSP is not required to be submitted with the Application**.

SECTION 6. CONTRACT TERM

6.1. TERM OF CONTRACT

DSHS may award one or more Contracts under this OE.

Any Contract resulting from this OE will be effective on the effective date stated in the contract, but no earlier than September 1, 2022, and will expire on August 31, 2027, unless terminated earlier pursuant to the terms and conditions of the Contract.

6.2. EXTENSION OPTION

DSHS, at its sole option and subject to availability of funding, may extend the Contract beyond the initial term for up to one year as necessary to ensure continuity of service, to process a new OE to award new contracts, for purposes of transition, or as otherwise determined to serve the best interest of the State of Texas.

SECTION 7. MINIMUM QUALIFICATIONS

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To be eligible to apply for a Contract and receive an award, Applicants must be eligible, qualified and meet all requirements of this OE. Applicant requirements apply with equal force to Contractors awarded Contracts under this OE.

7.1 Licensure and Accreditation

Applicant and all personnel and technicians assigned to provide services under the Contract must have all permits, licenses, and certifications required by applicable law.

Assigned personnel and technicians, who may include department directors or equivalent positions, providing services that, by law, require a professional license or certification, must hold a current, valid, and applicable Texas license and/or certification in good standing.

Contractor is responsible for ensuring all Contractor staff and subcontractors, if any, hold current, valid, and applicable licenses and/or certifications in good standing.

Each Contractor is required to maintain all required permits, licenses, and certifications for the business during the term of the Contract. Copies of all permits, licenses, and certifications are to be made available to DSHS upon request.

SECTION 8. STATEMENT OF WORK

8.1. PROJECT OVERVIEW

The purpose of this Project is to assist the current efforts of state, local and territorial TB programs to prevent, control and eventually eliminate TB in the United States. Financial assistance is provided to TB programs to augment current and local contributions for TB prevention and control activities, including targeted testing, surveillance activities, and program evaluation; developing human resources through improved training, education, communications, and information dissemination; and strengthening laboratory capacity to ensure that timely and reliable TB laboratory services are available to healthcare providers and TB controllers.

8.2. DSHS RESPONSIBILITIES

DSHS will monitor Contractor's performance of the requirements in the Statement of Work and compliance with the Contract's terms and conditions.

8.3. CONTRACTOR (PROVIDER) RESPONSIBILITIES

The Contractor must:

8.3.1. Provide the selected TB services as described under Section 8.4: Statement of Services to Be Provided and in the resulting Contract to individuals with suspected or confirmed TB disease including persons identified as a contact to a known case or suspected case, refugees and class B immigrants, regardless of their ability to pay for services.

8.3.2. Obtain and maintain active status for all licenses, certifications, permits, registrations, and approvals required to perform their duties under an awarded Contract. The Contractor will prohibit any person who does not hold a current, active required license, certification, permit, registration, or approval from performing services under this Contract. The Contractor will notify DSHS within five (5) calendar days of any revocation of licenses, certifications, permits or registrations.

8.3.3. Provide all services under the resulting Contract at an acceptable quality level and in a manner consistent with acceptable industry standard, custom, and practice.

8.4. STATEMENT OF SERVICES TO BE PROVIDED – (A.) thru (E.)

The services listed below are for reference only. Applicant must indicate the services it intends to provide on Form E, which must be submitted along with the completed Application.

(A.) X-RAY IMAGING ONLY

I. PURPOSE

Contractor will provide x-rays of the chest or other anatomical sites as ordered for patients referred by DSHS with suspected/confirmed TB or LTBI.

II. CONTRACTOR RESPONSIBILITIES

Contractor will:

- A. Accept DSHS referrals for x-ray imaging of the chest or other anatomical sites for patients with suspected/confirmed TB or LTBI. Referral forms will be delivered to the Contractor by the patient directly or by the DSHS provider via fax or secure email.

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- B. Perform the procedure(s) requested on the referral form within five (5) calendar days of receipt of the referral form.
- C. Return requested images to DSHS or its designee within three (3) to five (5) days after images have been taken.
- D. Provide radiographic images that are of good professional quality and clearly readable. Output should be on digital media as directed by DSHS.
- E. Performs repeat imaging at no additional cost should image quality be of poor quality or image is obscured.
- F. Perform procedures required under this Contract using radiation machines (including x-ray machines) that are currently registered with the DSHS Radiation Safety Licensing Branch and are compliant with all state and federal requirements.
- G. Ensure that all individuals who operate radiation machines (including x-ray machines) under this Contract meet all applicable credentialing requirements, including but not limited to DSHS rules found at 25 TAC 140 regarding medical radiologic technologists.
- H. Maintain personnel licensed in Texas to provide the professional services required under this Contract for patients with suspected/confirmed TB disease or LTBI for the purpose of diagnosis or medical assessment of progress.
- I. Obtain and maintain in good standing all applicable licenses, or registrations for radiation producing devices or radiation sources (such as x-ray machines or CT scanners) and comply with all applicable provisions of Texas Health and Safety Code Chapter 401 and Texas Radiation Control Rules, 25 TAC § 289.201 *et seq.* that are needed to provide the services under this Contract. Failure to obtain or any revocation, surrender, expiration, non-renewal, inactivation or suspension of any such license, certification, permit, registration or approval constitutes grounds for termination of this Contract or other remedies DSHS deems appropriate.
- J. Ensure that all its employees, volunteers, and subcontractors providing services under this Contract obtain and maintain in active status all licenses, certifications, permits, registrations and approvals required to perform their duties under this Contract. Contractor will prohibit any person who does not hold a current, active required license, certification, permit, registration or approval from performing services under this Contract. Contractor will notify DSHS within five (5) calendar days of any revocation of licenses, certifications, permits or registrations.

(B.) CT SCAN WITHOUT INTERPRETATION

I. PURPOSE

Contractor will provide CT scans for patients referred by DSHS with suspected/confirmed TB or LTBI.

II. CONTRACTOR RESPONSIBILITIES

Contractor will:

- A. Accept and complete DSHS referrals for CT Scans for patients with suspected/confirmed TB or LTBI. Referral forms will be delivered to the Contractor by the patient directly or by the DSHS provider via fax or secure email.
- B. Perform the procedure(s) requested on the referral form within five (5) calendar days of receipt of the referral form. The requested procedures may be one or more of the following:
 - 1. CT Scan with contrast, in accordance with the referral. CT Scan with contrast may require additional testing, as required by the performing facility.
 - 2. CT Scan without contrast.
- C. Perform 100 percent of the referrals received from DSHS.
- D. Provide requested images to DSHS or its designee within three (3) to five (5) calendar days after images have been taken.
- E. Provide CT Scans that are of good professional quality and clearly readable. Output should be on digital media as directed by DSHS.
- F. Perform procedures required under this Contract using radiation machines (including x-ray machines) that are currently registered with the DSHS Radiation Safety Licensing Branch and are compliant with all state and federal requirements.
- G. DSHS will need access to digital image CD upon request.
- H. Ensure that all individuals who operate radiation machines (including x-ray machines) for human use meet all applicable credentialing requirements, including (but not limited to) DSHS rules found at 25 Texas Administrative Code Chapter 140 regarding medical radiologic technologists.

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- I. Employ personnel who are licensed in Texas to provide the professional services required under this Contract for patient(s) with suspected/confirmed TB disease or LTBI for the purpose of diagnosis or medical assessment of progress.
- J. Obtain and maintain in good standing all applicable licenses or registrations for radiation producing devices or radiation sources (such as x-ray machines or CT scanners) and comply with all applicable provisions of Texas Health and Safety Code Chapter 401 and Texas Radiation Control Rules, 25 TAC § 289.201 et seq. that are needed to provide the services under this Contract. Failure to obtain or any revocation, surrender, expiration, non-renewal, inactivation, or suspension of any such license, certification, permit, registration or approval constitutes grounds for termination of this Contract or other remedies DSHS deems appropriate.
- K. Ensure that all its employees, volunteers, and subcontractors providing services under this Contract obtain and maintain in active status all licenses, certifications, permits, registrations and approvals required to perform their duties under this Contract. Contractor will prohibit any person who does not hold a current, active required license, certification, permit, registration or approval from performing services under this Contract. Contractor will notify DSHS within five (5) calendar days of any revocation of licenses, certifications, permits or registrations.

(C.) MEDICAL LABORATORY SERVICES

- I. PURPOSE
Contractor will perform requested laboratory tests upon receipt of a completed DSHS referral form. Referral forms will be delivered to the Contractor by the patient directly or by the DSHS provider via fax or secure email. The patient or DSHS may provide a collected blood specimen.
- II. CONTRACTOR RESPONSIBILITIES
Contractor will:
 - A. Perform requested laboratory tests upon receipt of a completed DSHS referral form. The patient or DSHS may provide a collected blood specimen.
 - B. Provide the following laboratory tests, as requested in the referral form:
 - 1. Complete Blood Count (CBC) with platelets;
 - 2. Comprehensive Metabolic Panel (CMP);
 - 3. Basic Metabolic Panel (BMP);
 - 4. Hemoglobin A1C;
 - 5. TSH/T4;

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6. IGRA (either TSPOT or Quantiferon TB Gold Plus);
 7. Viral hepatitis B infection panel (including hepatitis B surface antigen, hepatitis B surface antibody and hepatitis B core antibody);
 8. Viral hepatitis C panel (including anti-HCV antibody and HCV RIBA);
 9. HIV tests; and
 10. Coagulation tests (including Partial Thromboplastin Time (PTT), Prothrombin Time (PT) and Prothrombin Time/International Normalized Ratio (PT/INR)).
- C. Notify TB Program Manager by phone immediately and in no event more than 24 hours of finding any critical lab values that may require urgent therapeutic action. "Critical lab value" is defined as any test result that may require rapid clinical attention to avert significant patient morbidity or mortality.
- D. Maintain throughout the term of the Contract Clinical Laboratory Improvement Amendments (CLIA) or College of American Pathologists (CAP) certification or accreditation, as applicable.
- E. Ensure that all its employees, volunteers, and subcontractors providing services under this Contract obtain and maintain in active status all licenses, certifications, permits, registrations, and approvals required to perform their duties under this Contract. Contractor will prohibit any person who does not hold a current, active required license, certification, permit, registration, or approval from performing services under this Contract. Contractor will notify DSHS within five (5) calendar days of any revocation of licenses, certifications, permits or registrations.

(D.) ALTERATION OF THE FORM OF TUBERCULOSIS (TB) DRUGS

- I. PURPOSE
Contractor will provide pharmaceutical compounding of anti-tuberculosis drugs for pediatric or adult patients with unique medical needs.
- II. CONTRACTOR RESPONSIBILITIES
Contractor will:
 - A. Maintain for the duration of this Contract an active and unrestricted registration with the Texas State Board of Pharmacy as a licensed pharmacist.
 - B. Upon receipt of a written request and/or referral from a DSHS nurse case manager, the Contractor will alter the form of drugs provided to Contractor by DSHS and appropriately label the container containing the altered-format drug. Contractor will receive rifampin, isoniazid, pyrazinamide, ethambutol, or other

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medications in tablet form that are generally considered second-line medications for the treatment of tuberculosis.

- C. Complete 100 percent of all written requests or referrals received from DSHS within three (3) to five (5) days of receipt of the request or referral.
- D. Obtain and maintain in good standing all applicable licenses, certifications, permits, registrations and approvals with Texas State Board of Pharmacy or such other licensing board to conduct its business and to perform the services under this Contract. Failure to obtain or any revocation, surrender, expiration, non-renewal, inactivation, or suspension of any such license, certification, permit, registration or approval constitutes grounds for termination of this Contract or other remedies DSHS deems appropriate. Contractor will notify DSHS within five (5) days of any revocation of licenses, certifications, permits or registrations.

(E.) ELECTROCARDIOGRAM WITHOUT INTERPRETATION

I. PURPOSE

Contractor will provide 12-lead electrocardiogram for patients referred by DSHS with suspected/confirmed TB or LTBI.

II. CONTRACTOR RESPONSIBILITIES

Contractor will:

- A. Accept DSHS referrals for 12-lead electrocardiograms for patients with suspected/confirmed TB or LTBI.
- B. Perform the 12-lead electrocardiogram(s) requested on the referral form within five (5) calendar days of receipt of the referral form. Tracing to include routine measurement of heart rate, PR, QRS, and QT interval at a minimum.
- C. Return requested 12-lead electrocardiogram results to DSHS or its designee within three (3) to five (5) days after reading was done.
- D. Maintain personnel licensed in Texas to provide the professional services required under this Contract for patients with suspected/confirmed TB disease or LTBI for the purpose of diagnosis or medical assessment of progress.
- E. Ensure that all its employees, volunteers, and subcontractors providing services under this Contract obtain and maintain in active status all licenses, certifications, permits, registrations, and approvals required to perform their duties under this Contract. Contractor will prohibit any person who does not hold a current, active

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required license, certification, permit, registration, or approval from performing services under this Contract. Contractor will notify DSHS within five (5) calendar days of any revocation of licenses, certifications, permits or registrations.

8.5. PERFORMANCE CRITERIA

DSHS will look solely to the Contractor for the performance of all contractual obligations resulting from an award based on this OE.

No Contractor will be relieved of its obligations for any nonperformance by its subcontractors. Contractor must ensure that its subcontractors abide by all requirements, terms, and conditions of this Contract. Unless the context clearly indicates otherwise, every requirement and every prohibition set forth in this OE and any resulting contract that applies to a Contractor applies with equal force to its employees, agents, representatives, and subcontractors.

8.5.1. SPECIFIC PERFORMANCE STANDARDS

Contractor shall comply with all obligations and duties under the Contract.

8.6. CONTRACTOR PERSONNEL PERFORMANCE

- A.** Contractor shall not employ or contract with or permit the employment of unfit or unqualified persons or persons not skilled in the tasks assigned to them.
- B.** The Contractor shall at all times employ sufficient personnel to carry out functions and services in the manner and time prescribed by the Contract.
- C.** The Contractor shall be responsible for the acts and omissions of the Contractor's employees, agents (including, but not limited to, lobbyists) and subcontractors and shall enforce strict discipline among the Contractor's employees, agents (including, but not limited to, lobbyists) and subcontractors performing the services under the Contract.
- D.** DSHS, at its sole discretion, may request in writing the immediate removal of any Contractor personnel or subcontractor personnel from the services being provided under the Contract. Upon such request, Contractor shall immediately remove the subject personnel and submit in writing to DSHS, within 10 calendar days of DSHS's request for removal,

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confirmation of the removal and assurance of continued, compliant Contract performance.

8.7. NOTICE OF CRIMINAL ACTIVITY

At the time of submission, Applicants shall provide confirmation that the Applicant, any person with ownership or controlling interest in Applicant, and Applicant's agents, employees, subcontractors, and volunteers who will be providing the required services:

- a. have not engaged in any activity that does or could constitute a criminal offense equal to or greater than a Class A misdemeanor or grounds for disciplinary action by a state or federal regulatory authority; and
- b. have not been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program, or sex crime.

This is a continuing disclosure requirement; prior to Contract award, if any, Applicants must notify the point of contact assigned to the Applicant's region within five days of the date Applicant learns of actions set forth in subsections (a) and (b) above. Additionally, this is a continuing disclosure requirement for each Contractor, during the term of the Contract, to immediately report, in writing, to the DSHS contract manager when Contractor learns of or has any reason to believe it or any person with ownership or controlling interest in Contractor, or any of Contractor's agents, employees, subcontractors or volunteers has: engaged in any activity that does or could constitute a criminal offense equal to or greater than a Class A misdemeanor or grounds for disciplinary action by a state or federal regulatory authority; or been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to the involvement in any financial matter, federal or state program, or sex crime.

Contractor shall not permit any person who engaged, or was alleged to have engaged, in any activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed in writing by the DSHS contract manager.

DSHS, at its sole discretion, may terminate any Contract if Contractor, its agents, employees, subcontractors, or volunteers are arrested, indicted, or convicted of any criminal activity.

8.8. NOTICE OF INSOLVENCY OR INDEBTEDNESS

At the time of submission, Applicants shall provide with the Application detailed written descriptions of any insolvency, incapacity, and outstanding unpaid obligations of Applicant owed to the Internal Revenue Service or the State of Texas, or any agency or political subdivision of the State of Texas. This is a continuing disclosure requirement; prior to Contract award, if any, Applicants must notify the point of contact assigned to the Applicant's region within five days of the date Applicant learns of such financial circumstances after submission of the Application. Additionally, Contractors are under a continuing obligation to notify the DSHS contract manager, as applicable, within five days of the date Contractor learns of such financial circumstances after Contract award.

8.9. BACKGROUND CHECKS FOR PERSONNEL

The Contractor will conduct background checks on all Contractor personnel (e.g., permanent, and temporary personnel and/or Subcontractor and Subcontractor personnel) who will be assigned as key personnel to perform services under the Contract. The Contractor is responsible for all background check expenses.

Supporting documentation for the background checks is subject to review upon request by DSHS. Failure to produce the requested documentation, as with any violation of the Contract, may constitute grounds for termination of the Contract and/or Purchase Order for cause.

The background checks shall include, but not be limited to:

- Social Security Number verification.
- Statewide criminal and sex offender records for all Texas counties and out-of-state counties based on the current and previous addresses of the key personnel for the last seven years.

8.10. INVOICE REQUIREMENTS AND PAYMENT

8.10.1. INVOICE REQUIREMENTS

Contractor shall submit to DSHS detailed and accurate invoice(s) which include the information below. Each invoice must be submitted by email or fax in the format prescribed by DSHS, not later than 30 calendar days after completion of service.

Please submit directly to the DSHS Public Health Region – TB Program under which the Contractor falls, via any of the methods listed above.

The invoice shall include, at a minimum:

- a. Contractor's Name;
- b. Remit to Address;
- c. Federal ID or Texas CPA Payee ID;
- d. Accounts Receivable telephone number;
- e. Contract and/or Purchase Order Number;
- f. Identification of services provided;
- g. Service date(s)

No payment will be made under this Contract without submission of detailed, accurate invoices submitted as outlined.

8.10.2. PAYMENT

Contracts issued under this OE will be paid using fee for service, utilizing the fee schedule listed in the executed Contract Statement of Work.

8.11. DATA USE AGREEMENT (DUA)

By submitting an Application and, if applicable, signing a Contract resulting from this OE, Applicant agrees to the terms of the **Data Use Agreement, Exhibit B**. The Applicant must complete, sign, and return with its Application Exhibit B, Attachment 2, (Texas HHS System - Data Use Agreement – Attachment 2, Security and Privacy Initial Inquiry (SPI)).

8.12. TERMS AND CONDITIONS

Submission of an Application in response to this OE constitutes acceptance of all Terms and Conditions attached to, referenced, or set forth in the OE. Applicant shall not submit additional or different terms and conditions.

Any term, condition, or other part of an Applicant's submitted application that has been rejected by DSHS, that is not accepted in writing by DSHS, or that conflicts with applicable law, this OE, any resulting Contract, or applicable terms and conditions will not constitute part of the Contract.

8.13. STANDARDS OF CONDUCT FOR VENDORS

Pursuant to 1 TAC 391.405(a), contractors, respondents, and vendors interested in working with HHS are required to implement standards of conduct to apply to all matters involving, or related to, those solicitations and contracts between

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themselves and HHS. These standards must adhere to ethics requirements adopted in rule, in addition to any ethics policy, or code of ethics approved by the HHSC Executive Commissioner and must be at least as restrictive as those applicable to HHS personnel in the applicable ethics law and policy provisions.

The standards of conduct must include the ten standards of ethical conduct set forth in Section I of the HHS Ethics Policy and requirements to comply with ethical standards set forth in federal and state law (including, but not limited to, 1 TAC Chapter 391, Subchapter D).

The standards of conduct, together with the responsibilities and restrictions incorporated herein, also apply to subcontractors of contractors, respondents, and vendors.

Standards of conduct of any contractor, respondent or vendor may be reviewed and/or audited by the State Auditor and HHSC. Additionally, pursuant to 1 TAC 391.405(a), HHS may examine a respondent's standards of conduct in the evaluation of a bid, offer, proposal, quote, or other applicable expression of interest in a proposed purchase of goods or services.

Any vendor or contractor that violates a provision of 1 TAC Chapter 391, Subchapter D may be barred from receiving future contracts or have an existing contract canceled. Additionally, HHSC may report the vendor's actions to the Comptroller of Public Accounts for statewide debarment, or law enforcement.

SECTION 9. DSHS CONTRACT ADMINISTRATION

DSHS will designate a Contract Manager and provide the manager's contact information to the Contractor.

After award of any Contract resulting from this OE, all communications related to the Contract will be processed through the designated Contract Manager. Additional requirements apply to legal notices which must be provided to the HHS Chief Counsel as well as the Contract Manager.

SECTION 10. CONFIDENTIAL OR PROPRIETARY INFORMATION

10.1. PUBLIC INFORMATION ACT

Applicant Requirements Regarding Disclosure

Applications 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. Other legal authority also requires HHSC to post certain contracts and

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Applications on HHSC's website and to provide such information to the Legislative Budget Board for posting on its website.

Under the PIA, certain information is protected from public release. If Applicant asserts that information provided in its Application is exempt from disclosure under the PIA, Applicant must:

a. Mark Original Application:

- (1) Mark the original Application, on the top of the front page, the words "CONTAINS CONFIDENTIAL INFORMATION" in large, bold, capitalized letters (the size of, or equivalent to, 12-point Times New Roman font or larger); and
- (2) Identify, adjacent to each portion of the Application that Applicant claims is exempt from public disclosure, the claimed exemption from disclosure (NOTE: no redactions are to be made in the original Application);

b. Certify in Original Application - Affirmations and Solicitation

Acceptance (attached as Exhibit A to this OE): certify, in the designated section of the Affirmations and Solicitation Acceptance, Applicant's confidential information assertion and the filing of its Public Information Act Copy; and

c. Submit Public Information Act Copy of Application: submit a separate "Public Information Act Copy" of the original Application (in addition to the original and all copies otherwise required under the provisions of this OE). The Public Information Act Copy must meet the following requirements:

- (1) The copy must be clearly marked as "Public Information Act Copy" on the front page in large, bold, capitalized letters (the size of, or equivalent to, 12-point Times New Roman font or larger);
- (2) Each portion Applicant claims is exempt from public disclosure must be redacted; and
- (3) Applicant must identify, adjacent to each redaction, the claimed exemption from disclosure. Each identification provided as required in subsection (c) of this section must be identical to those set forth in the original Application as required in section a.(2), above. The only difference in required markings and information between the original Application and the "Public Information Act Copy" of the Application will be redactions - which can only be included in the "Public Information Act Copy." There must be no redactions in the original Application.

By submitting an Application to this OE, Applicant agrees that, if Applicant does not mark the original Application, provide the required

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certification in the Affirmations and Solicitation Acceptance, and submit the Public Information Act Copy, Applicant's Application will be considered to be public information that may be released to the public in any manner including, but not limited to, in accordance with the Public Information Act, posted on HHSC's and/or DSHS's public website, and posted on the Legislative Budget Board's website.

If Applicants submit partial, but not complete, information suggesting inclusion of confidential information and failure to comply with the requirements set forth in this section, DSHS, in its sole discretion, reserves the right to (1) disqualify all Applicants that fail to fully comply with the requirements set forth in this section, or (2) to offer all Applicants that fail to fully comply with the requirements set forth in this section additional time to comply.

Applicant should not submit a Public Information Act Copy indicating that the entire Application is exempt from disclosure. Merely making a blanket claim that the entire Application is protected from disclosure because it contains any amount of confidential, proprietary, trade secret, or privileged information is not acceptable, and may make the entire Application subject to release under the PIA.

Applications should not be marked or asserted as copyrighted material. If Applicant asserts a copyright to any portion of its Application, by submitting an Application, Applicant agrees to reproduction and posting on public websites by the State of Texas, including HHSC and all other state agencies, without cost or liability.

DSHS will strictly adhere to the requirements of the PIA regarding the disclosure of public information. As a result, by participating in this OE process, Applicant acknowledges that all information, documentation, and other materials submitted in the Application in response to this OE may be subject to public disclosure under the PIA. HHSC does not have authority to agree that any information submitted will not be subject to disclosure. Disclosure is governed by the PIA and by rulings of the Office of the Texas Attorney General. Applicants are advised to consult with their legal counsel concerning disclosure issues resulting from this process and to take precautions to safeguard trade secrets and proprietary or otherwise confidential information. DSHS assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by Applicants.

For more information concerning the types of information that may be withheld under the PIA or questions about the PIA, refer to the *Public Information Act Handbook* published by the Office of the Texas Attorney General, or contact the attorney general's Open Government Hotline at (512) 478-OPEN (6736) or

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toll-free at (877) 673-6839 (877-OPEN TEX). The *Public Information Act Handbook* may be accessed at:

<https://www.texasattorneygeneral.gov/open-government/members-public>

10.2. APPLICANT WAIVER – INTELLECTUAL PROPERTY

SUBMISSION OF ANY DOCUMENT TO ANY HHS AGENCY IN RESPONSE TO THIS OE CONSTITUTES AN IRREVOCABLE WAIVER, AND AGREEMENT BY THE SUBMITTING PARTY TO FULLY INDEMNIFY THE STATE OF TEXAS, DSHS FROM ANY CLAIM OF INFRINGEMENT BY DSHS REGARDING THE INTELLECTUAL PROPERTY RIGHTS OF THE SUBMITTING PARTY OR ANY THIRD PARTY FOR ANY MATERIALS SUBMITTED TO HHS BY THE SUBMITTING PARTY.

SECTION 11. BINDING OFFER

All Applications should be responsive to the OE as issued or amended through written and posted Addenda, not with any assumption that DSHS will negotiate any or all terms, conditions, or provisions of the OE. Furthermore, all Applications constitute binding offers. **Any Application that includes any type of disclaimer or other statement indicating that the Application submitted in response to this OE does not constitute a binding offer may be disqualified.**

SECTION 12. REQUIRED APPLICATION DOCUMENTS

<p>Documentation Required for Submission All documentation listed must be returned for a complete Application. The Applicant must provide the documentation in the same sequence as outlined below by using the item numbers and titles as necessary.</p>
<p>1. Exhibit A – HHS Solicitation Affirmations – Completion and Signature Required Applications received without the signed Exhibit A will be disqualified.</p>
<p>2. Public Information Act Copy, if applicable under Section 10.1</p>
<p>3. OE Addenda, if applicable - Signed</p>
<p>4. Minimum Qualifications – Section 7 Licensure or Accreditation The Applicant must provide current copies of all required licensures and accreditations for the Applicant and Applicant’s personnel as applicable.</p>

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5. Exhibit B - DUA (Security and Privacy Inquiry) - Completion and Signature Required
6. Exhibit C – Federal Assurances Non-Construction - Completion and Signature Required
7. Exhibit D – Lobbying Certification - Completion and Signature Required
8. Exhibit E – Uniform Terms and Conditions (UTCs) – For Reference
9. Form A - Face Page – Completion and Signature Required
10. Form B - Open Enrollment Submission Checklist – Completion Required
11. Form C - Contact Person Form - Completion Required
12. Form D – Vendor Information Form – Completion and Signature Required
13. Form E – Service Selection Form – Completion required by selecting all applicable services
14. Form F - Notice of Criminal Offense – Self reporting – Completion and Signature Required Required
15. Form G – Map of Health Service Regions by County – For reference only

SECTION 13. APPLICATION SUBMISSION REQUIREMENTS

The Application must be submitted in accordance with this section and Section 12.

The complete Application must be submitted to:

Contract Management Section

Email: cms_phr_tb-openenrollment@dshs.texas.gov

Each Applicant is solely responsible for ensuring its Application is submitted in accordance with all OE requirements and ensuring timely receipt by DSHS.

In no event will DSHS be responsible or liable for any delay or error in submission or delivery.

The Application must be submitted by email.

13.1. E-MAIL SUBMISSION

Each Applicant is solely responsible for ensuring its Application is submitted in accordance with all OE requirements, including, but not limited to, the Appendix A, Checklist for Submission and ensuring timely email receipt by DSHS.

The Application, including all documentation outlined in Appendix A, Checklist for Submission, must be sent in its entirety in one or more emails.

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In no event will DSHS be responsible or liable for any delay or error in delivery. Applications must be RECEIVED by DSHS before the OE period closes as identified in Schedule of Events, Section 1, or subsequent Addenda.

The e-mail subject line should contain the OE number, title as indicated on the cover page and number of emails if more than one (e.g., Email 1 of #, etc.). The Applicant is solely responsible for ensuring that Applicant's complete electronic Application is sent to, and received, by DSHS at the proper destination server before the submission deadline.

IMPORTANT NOTE: DSHS recommends a 10MB limit on each attachment. This may require Applicants to send multiple emails to DSHS at cms_phr_tb-openenrollment@dshs.texas.gov to ensure all documentation contained in an Application is received.

All documents should be submitted in Microsoft office® formats (Word® and Excel®, as applicable) or in a form that may be read by Microsoft office® software. Any documents with signatures shall be submitted as an Adobe® portable document format (pdf) file. DSHS is not responsible for documents that cannot be read or converted. Unreadable applications may be, in DSHS's sole discretion, rejected as nonresponsive.

Please be aware Internet Service Providers may limit file sizes on outgoing emails; therefore, it is recommended Applications not contain graphics, pictures, letterheads, etc., which consume a lot of space. These typically include *.tif/*.tiff, *.gif, & *.bmp file extensions, but may use others, as well. DSHS's firewall virus protection runs at all times, so during times of new active virus alerts, incoming traffic may be delayed while virus software scans emails with attachments. DSHS takes no responsibility for e-mailed Applications that are captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any DSHS anti-virus or other security software.

Applicants may email the points of contact listed in section 4.1 to request confirmation of receipt.

13.2. RECEIPT OF APPLICATION

All Applications become the property of DSHS upon receipt and will not be returned to Applicants.

DSHS will NOT be held responsible for any Application that is mishandled by the Applicant, any Applicant's delivery or mail service or for Applications sent by e-

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mail that are captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any DSHS anti-virus or other security software.

Applications received after the OE Period closes will not be considered.

SECTION 14. SCREENING OF APPLICATIONS

Neither issuance of this OE nor retention of Applications constitutes a commitment on the part of DSHS to award a Contract. DSHS maintains the right to reject any or all Applications and to cancel this OE if DSHS in its sole discretion, considers it to be in the best interests of DSHS to do so.

Submission and retention of Applications by DSHS confers no legal rights upon any Applicant.

DSHS reserves the right to select qualified Applicants to this OE with or without discussion of the Applications with Applicants. It is understood by Applicant that all Applications, contracts, and related documents are subject to the Texas Public Information Act.

14.1. INITIAL SCREENING OF APPLICATIONS

An initial screening of Applications will be conducted by DSHS to determine which Applications are deemed to be responsive and qualified for further consideration for award. This screening includes a review to determine that each Applicant meets the minimum requirements, qualifications and each Application includes all required documentation.

DSHS reserves the right to:

- a. Ask questions or request clarification from any Applicant at any time during the OE and screening process, and
- b. Conduct studies and other investigations as necessary to evaluate any Application.

Informalities:

DSHS reserves the right to waive minor informalities in an Application. A "minor informality" is an omission or error that, in DSHS's determination if waived or modified when screening Applications, would not give an Applicant an unfair

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advantage over other Applicants or result in a material change in the Application or OE requirements.

DSHS, at its sole discretion, may give an Applicant the opportunity to submit missing information or make corrections. The missing information or corrections must be submitted to the Point of Contact e-mail address in Section 4.1 by the deadline set by DSHS. Failure to respond before the deadline may result in DSHS's rejecting the Application and the Applicant not being considered for award.

Note: Any disqualifying factor set forth in this OE does not constitute an informality (e.g., for example, failure to sign and submit Exhibit A, Affirmations and Solicitation Acceptance as required by Application would not be an informality).

14.2. VERIFICATION OF PAST VENDOR PERFORMANCE

DSHS reserves the right to conduct studies and other investigations as necessary to evaluate any Application. By submitting an Application, the Applicant generally releases from liability and waives all claims against any party providing information about the Applicant at the request of DSHS.

Applicants may be rejected as a result of unsatisfactory past performance under any contracts as reflected in vendor performance reports, reference checks, or other sources.

An Applicant's past performance may be considered in the initial screening process and prior to making an award determination.

Reasons for which an Applicant may be denied a contract include but are not limited to:

- a. Applicant has an unfavorable report or grade on the CPA Vendor Performance Tracking System (VPTS). VPTS may be accessed at:
<https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>
OR,
- b. Applicant is currently under a corrective action plan through DSHS,
OR,
- c. Applicant has had repeated, negative vendor performance reports for the same reason, OR,
- d. Applicant has a record of repeated non-responsiveness to vendor performance issues, OR,

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- e. Applicant has contracts or purchase orders that have been cancelled in the previous 12 months for non-performance or sub-standard performance.

In addition, DSHS may examine other sources of vendor performance which may include information provided by any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the Federal government.

The performance information may include, but is not limited to:

- Notices of termination,
- Cure notices,
- Assessments of liquidated damages,
- Litigation,
- Audit reports, and
- Non-renewals of contracts.

Further, DSHS, at its sole discretion, may initiate investigations or examinations of vendor performance based upon media reports. Any negative findings, as determined by DSHS in its sole discretion, may result in DSHS's removing the Applicant from further consideration for award.

SECTION 15. AWARD PROCESS

15.1. CONTRACT AWARD AND EXECUTION

DSHS, at its sole discretion, reserves the right to cancel this OE at any time or decline to award any contracts as a result of this OE.

DSHS intends to award one or more contracts as a result of this OE.

All awards are contingent upon approval of the DSHS Executive Commissioner or the DSHS Executive Commissioner's designee.

15.2. COMPLIANCE FOR PARTICIPATION IN STATE CONTRACTS

15.2.1. REQUIRED PRE-AWARD VERIFICATIONS

In addition to the initial screening process, the following verification checks are required to be conducted for each Applicant to determine compliance for participating in State contracts.

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The Applicant's Legal Name and, if applicable, Assumed Business Name (D.B.A.) will be used to conduct these checks.

Applicants found to be barred, prohibited, or otherwise excluded from contract award will be disqualified from further consideration.

A. State of Texas Debarment

Must not be debarred from doing business with the State of Texas through the Comptroller of Public Accounts (CPA):
<https://comptroller.texas.gov/purchasing/programs/vendorperformance-tracking/debarred-vendors.php>

B. System of Award Management (SAM) Exclusions List - Federal

Must not be excluded from contract participation at the federal level. This verification is conducted through SAM, official website of the U.S. Government which may be accessed at this link:
<https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>

Note: If the link does not work, copy/paste the link into browser bar.

C. Divestment Statute Lists

Must not be listed on the Divestment Statute Lists provided by CPA which may be accessed at:
<https://comptroller.texas.gov/purchasing/publications/divestment.php>

1. Companies that boycott Israel;
2. Scrutinized Companies with Ties to Sudan;
3. Scrutinized Companies with Ties to Iran;
4. Designated Foreign Terrorist Organizations; and
5. Scrutinized Companies with Ties to Foreign Terrorist Organizations.

D. HHS Office of Inspector General

Must not be listed on the HHS Office of Inspector General Texas Exclusions List for people or businesses excluded from participating as provider: <https://oig.hhsc.texas.gov/exclusions>

E. U.S. Department of Health and Human Services

Must not be listed on the U.S. Department of Health and Human Services Office of Inspector General's List of Excluded Individuals/Entities (LEIE), excluded participation as provider, unless a valid waiver is currently in effect: <https://exclusions.oig.hhs.gov/>

15.2.2. ADDITIONAL REQUIRED PRE-AWARD VERIFICATIONS

After the checks performed in Section 15.2.1, the following verifications will be conducted for each Applicant. The verifications will be based on the legal name and, if applicable, the Assumed Business Name (D.B.A.), and/or the Secretary of State (SOS) charter number, the Federal ID or Texas Payee ID numbers, or the CPA Franchise Tax number provided, as applicable, on Exhibit A, Affirmations and Solicitation Acceptance.

The results of the checks below will be used to further consider an Applicant for award and may result in disqualification.

A. Texas Franchise Tax Status

The Texas franchise tax is a privilege tax imposed on each taxable entity formed or organized in Texas or doing business in Texas. Although not all entities are required to file or pay franchise taxes, DSHS will process a search of the Applicant through the CPA Franchise Tax system to verify the Applicant is in good standing.

Franchise tax checks may reveal as to applicable entities (1) debts or delinquencies owed to the state (implicating contracting limitations) and (2) forfeiture of the right to transact business in Texas.

B. Texas Warrant Hold Status

The check for warrant holds through the CPA is required to determine if an Applicant is on hold for any reason. [Texas Government Code Section 2252.903](#) requires agencies to verify the warrant hold status no earlier than the seventh day before and no later than the day of contract execution for transactions involving a written contract. In accordance with Section 3.3 of Exhibit E, Uniform Terms and Conditions, payments under any contract resulting from this OE will

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be applied directly toward eliminating the Applicant's debt or delinquency regardless of when it arises.

C. Texas Secretary of State

Must be registered, if required by law, with the Texas Secretary of State as a public or private entity eligible to do business in Texas:

<https://direct.sos.state.tx.us/acct/acct-login.asp>

15.3. AWARD TO GOVERNMENTAL ENTITIES

If Applicant is a governmental entity, responding to this OE in its capacity as a governmental entity, certain terms and conditions may not be applicable including, but not limited to, any HSP requirement. Furthermore, to the extent permitted by law, if an Application is received from a governmental entity, DSHS reserves the right to enter into an interagency or interlocal agreement with the governmental entity.

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
19. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL 	TITLE 
APPLICANT ORGANIZATION 	DATE SUBMITTED 

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.


(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

* APPLICANT'S ORGANIZATION	
Physicians Preferred Laboratory, Ltd	
* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
Prefix: <input type="text"/>	* First Name: Charlyn Middle Name: <input type="text"/>
* Last Name: Snow	Suffix: <input type="text"/>
* Title: Administrator	
* SIGNATURE: 	* DATE: 9/29/22