

**SIGNATURE DOCUMENT FOR
TEXAS HEALTH AND HUMAN SERVICES CONTRACT
FOR
PROFESSIONAL SERVICES OF A PHYSICIAN**

The Health and Human Services Commission (“**HHSC**” or “**System Agency**”), for and on behalf of the Kerrville State Hospital located at 721 Thompson Drive, Kerrville, Texas 78028 (the “**Facility**”), and YS Orthopedics, PLLC (“**Contractor**”), each a “**Party**” and collectively the “**Parties,**” enter into the following agreement (“**Contract**”) for physician orthopedic and pain management services.

1. Legal Authority

This Contract is entered into pursuant to Tex. Gov’t Code § 2254.008, and authorized by Tex. S.B. 1, Art. II, HHSC, G. Goal: Facilities, 87th Leg., R.S. (the General Appropriations Act), and Tex. Gov’t Code ch. 531.

2. Duration

The Contract is effective on the signature date of the latter of the Parties to sign this agreement and expires on **August 31, 2023**, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. HHSC, in its sole discretion, may renew or extend this Contract up to four (4) additional years for a maximum term of five (5) years.

Notwithstanding the limitation in the preceding paragraph and with at least thirty (30) calendar days’ advance written notice to the Contractor, at the end of the initial term or any renewal period, HHSC, at its sole discretion, may extend this Contract as necessary to ensure continuity of service, for purposes of transition, or as otherwise determined by HHSC to serve the best interest of the State in accordance with applicable law for up to two (2) months, in one-month intervals, at the then-current contract rate or rates (if applicable) as modified during the term of the Contract.

3. Statement of Services to be Provided

The statement of services is included as **Attachment A** and is incorporated into and made a part of this Contract for all purposes.

4. Budget

The total amount of this Contract shall not exceed **\$10,000.00**. By executing this Contract, the Contractor agrees to the contracted budget amounts and rates for the Contract term, including the initial term, and any extensions that may be exercised. However, at HHSC’s sole discretion, or by mutual agreement of the Parties as authorized under the Contract, the contract amount, budget amounts, or rates may be amended. All expenditures under the Contract must be in accordance with **Attachments A and B**, respectively.

Notwithstanding anything to the contrary in this Contract, nothing herein expresses or guarantees any volume, usage, or total compensation to be paid to the Contractor, or that HHSC will request or utilize any services under this Contract.

5. Designated Representatives

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

HHSC

Maria Elena Cabrera, CTCM
Health and Human Services Commission
San Antonio State Hospital
6711 S. New Braunfels, Suite 100
San Antonio, Texas 78223
(210) 531-7256
mariaelena.cabrera1@hhs.texas.gov

Contractor

JoAnn Guerrero
YS Orthopedics, PLLC
1650 Lockhill Selma Road
San Antonio, Texas 78213
(210) 224-8100
joann.guerrero@ysorthopedics.com

6. Notice Requirements

- 6.1. 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 HHSC's designated Representative identified above.
- 6.2. Contractor shall send legal notices to HHSC at the address below and provide a copy to the HHSC's designated Representative:

**Health and Human Services Commission
Attention: Office of Chief Counsel
4601 W. Guadalupe Street, Mail Code 1100
Austin, Texas 78751-3411**

- 6.3. Notices given by HHSC to Contractor may be emailed, mailed or sent by common carrier. Email notices shall be deemed delivered when sent by HHSC. Notices sent by mail shall be deemed delivered when deposited by HHSC in the United States mail, postage paid, certified, return receipt requested. Notices sent by common carrier shall be deemed delivered when deposited by HHSC with a common carrier, overnight, signature required.
- 6.4. Notices given by Contractor to HHSC shall be deemed delivered when received by HHSC.
- 6.5. Either Party may change its designated Representative or legal notice contact by providing written notice to the other Party.

7. Alterations to the HHS Uniform Terms and Conditions

The HHS Uniform Terms and Conditions – Vendor, incorporated as Attachment C of this Contract, is revised, modified, or supplemented as follows:

7.1. Section 9.2, Termination for Convenience, is amended to read as follows:

“Either Party may terminate the Contract, with at least thirty (30) calendar days’ advance written notice to the other Party at any time when, in its sole discretion, it determines that termination is in its best interest. The termination will be effective on the date specified in the terminating Party’s notice of termination.”

8. Contract Documents

In addition to this Signature Document, the documents listed are incorporated by reference and made a part of this Contract for all purposes. Unless expressly stated otherwise in this Contract, in the event of conflict, ambiguity or inconsistency between or among any documents, all HHSC documents take precedence over Contractor’s documents, and the HHS Data Use Agreement or HHS Covered Entity Privacy, Security, and Breach Notification Terms takes precedence over all other contract documents.

- Attachment A, Statement of Services to be Provided**
- Attachment B, Payment for Services Provided**
- Attachment C, HHS Uniform Terms and Conditions – Vendor (Version 3.3)**
- Attachment D, HHS Additional Provisions**
- Attachment E, HHS Contract Affirmations (Version 2.2)**
- Attachment F, HHS Covered Entity Privacy, Security, and Breach Notification Terms**

9. 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.

**Health and Human Services
Commission**

By: Leigh Ann Fitzpatrick
Leigh Ann Fitzpatrick
Superintendent, Kerrville State Hospital

Date of Execution: 9/30/22

YS Orthopedics, PLLC

By: Yury Sless
Yury Sless, MD
Managing Member

Date of Execution: 9/29/22

Statement of Services to be Provided

1. Purpose

The purpose of this Contract is for the Contractor to make available Yury Sless, MD (“**Physician**”) to provide general orthopedic and pain management services including, but not limited to, orthopedic surgery, pain management, hand, wrist upper extremity, joint replacement foot and ankle surgery, and hand therapy (the “**Services**”) up to ten (10) patients or residents per month of the Facility (collectively referred to herein as “**Patients**”), and provided based on the hours of service required under this Contract, or upon request from HHSC on an as-needed basis.

The Contractor’s Services will be the same no matter if the service is provided for or at a State Hospital, a State Supported Living Center, the Contractor’s office, or a local clinic or hospital. The only difference will be the patient population served with the State Hospital’s population comprising of inpatient patients dually diagnosed with mental health and physical illness and the State Supported Living Center’s population comprising of residents with developmental disabilities.

2. Contractor’s Responsibilities

2.1. Description of Services/Specifications

To provide the services required under this Contract, the Contractor agrees the Contractor and Physician must:

- 2.1.1. Provide Services to Patients that comply with all applicable federal and state laws, rules, regulations, standards, guidelines, and policies including, but not limited to, HHSC, the State Hospital System’s, and the State Supported Living Center System’s policies and procedures (e.g. immunization policies) in effect on the beginning date of this Contract, and any modifications thereto, during the term of this Contract. Additionally, the Contractor and Physician must adhere to the Facility regulations, policies, and procedures, as well as to any requests from the Facility’s Medical Director or his/her designee, regarding personal and professional conduct. The Contractor and Physician must also comply with any managed care notification procedures that may be required in provided the Services under this Contract;
- 2.1.2. Provide Services to Patients that comply with, and are conducted in accordance with, the rules of the Texas licensing entity applicable to the to the Physician as set forth in **Section 2.3.2(A)** of this Attachment;
- 2.1.3. Provide Services to Patients referred to the Contractor by the Facility’s Medical Director or his/her designee, during the hours referenced in **Subsection 2.2** of this Attachment and at the rate set forth in **Section 2** of Attachment B to this Contract;
- 2.1.4. Provide Services to Patients as requested thru consultation or referral by the Facility’s physicians/providers, subject to approval by the Facility’s Medical Director or his/her

designee, to include, but not limited to, all necessary pre-op work up, medical procedures, and post op follow-up including complications related to the Services;

- 2.1.5. Provide initial and yearly medical evaluations to Patients as scheduled by the Facility's medical staff that includes, but is not limited to, the Physician establishing treatment goals with assessment, treatment and recommendations for additional Services as indicated, subject to the approval by the Facility's Medical Director or his/her designee;
- 2.1.6. Provide unbiased Services to Patients regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, ethnicity, age, disability, political affiliations or belief, education, socioeconomic status, geographic location, weight or obesity, or disability, and in accordance with all medically accepted standards of care;
- 2.1.7. Consult with and receive the approval of the Facility's Medical Director or his/her designee, prior to recommending or making any referrals for the Patients;
- 2.1.8. Communicate, cooperate, and coordinate the evaluation, assessment, care, and treatment process with the Facility's medical and support staff. Additionally, the Contractor agrees that the Physician shall discuss and provide copies of medical records, test results, and any other applicable treatment documentation, to the Facility's Medical Director or his/her designee, concerning Patients medical conditions and treatments received while under the Physician's care;
- 2.1.9. Document in writing all evaluations, assessments, orders for medications, precautions, and treatments, for Patients under the Physician's care, including dictating note(s) for the procedure(s) performed, and verified pathology and labs, within the Facility's established timelines;
- 2.1.10. Complete and file, in a timely manner, any reports, records, or other documentation required by HHSC in providing the Services, and in the format specified by the Facility. These reports, records, or other documentation include, but are not limited to the following records and must meet the following deadlines: Within twenty-four (24) hours of providing the Services to Patients assigned to the Physician, a finalized written report must be submitted to the Facility's Medical Record Department with copies provided to the Medical Director, or his/her designee;
- 2.1.11. If the Services will be provided at the Facility, perform other duties as requested by the Facility's Medical Director or his/her designee, including, but not limited to, supervision or guidance to the Facility's nurses or medical staff, actively participating and/or serving in a supporting role to meet HHSC's obligations for disaster response and/or efforts to ensure continuity of operations at the Facility. The Contractor's or Physician's participation in the duties referenced within the proceeding sentence are voluntary but within the scope of this Contract and may require a change or increase in rate for the Services provided, or a change in location. Any such services provided under this Subsection will be paid in accordance with **Section 2** of Attachment B to this Contract;
- 2.1.12. Provide written or electronic notification of any issue(s) that affect the Contractor's or Physician's ability to provide the Services required under this Contract to the

Facility's Medical Director or his/her designee, with a copy to HHSC's designated Representative identified in **Section 5** of the Signature Document within 24 hours of the issue(s) arising or being discovered by the Contractor;

2.1.13. If the Services will be provided at the Facility, attend all core training courses required by the HHSC Competency Training and Development Department (**CTD**) including, but not limited to, Abuse, Neglect, and Exploitation, Civil Rights, Safety and Security Awareness, HHS Ethics, HHS Information Security/Cyber Security, HHS Privacy, Rights of Consumers, Infection Control, and Customer Service, and provide a copy of the completion certificate to the Facility's Medical Director or Chief of Medical Services, or his/her designee, and HHSC's designated Representative identified in **Section 5** of the Signature Document within 24 hours of completing said training. HHSC will provide the training at no cost to the Contractor i rrots applicable staff. All incidental expenses associated with attending a training course will be the Contractor's sole responsibility;

2.1.14. Maintain familiarity with and provide services in compliance with all applicable laws and regulations including, but not limited to, the following:

- A. 42 U.S.C. Chapter 7, Subchapter XI, Part C, Administrative Simplification, the relevant portions of the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") and Pub Law 111-5, Title XIII, the Health Information Technology for Economic and Clinical Health Act ("**HITECH Act**");
- B. 25 Tex. Admin. Code pt.1, ch. 417, subch. K (relating to Abuse, Neglect and Exploitation in State Facilities);
- C. HHS Covered Entity Privacy, Security and Breach Notification Terms, attached hereto as **Attachment F**; and
- D. HHS Acceptable Use Agreement.

2.2. Hours of Services

2.2.1. Off-Campus Services. The Services when requested by HHSC will be provided at the Contractor's office or medical facility/hospital during the Contractor's set office schedule.

2.2.2. Observed Holidays. HHSC does not specifically require the Contractor to provide the Services on observed holidays; however, HHSC does require the Contractor to fulfill his/her duties, obligations, and requirements under this Contract. If HHSC requests the Physician provide Services, or the Contractor's or Physician's duties require that he/she provide Services, on holidays observed by the United States Government or the State of Texas, then Contractor must fulfill this obligation at **no additional expense to HHSC**.

2.3. Credentials, Experience, and Background Checks

2.3.1. Prior to providing any services under this Contract, the Contractor must meet all of the following qualifications and experience:

- A. Be authorized to do business under the laws of the State of Texas.

2.3.2. Prior to providing any services under this Contract, the Contractor must meet all of the following qualifications and experience:

- A. Be currently licensed to practice medicine by the Texas Medical Board with no sanctions;
- B. Hold the degree of a Medical Doctor (“**M.D.**”) or Doctor of Osteopathy (“**D.O.**”) from an accredited medical school in the United States, or have an Educational Commission for Foreign Medical Graduates (“**ECFMG**”) Certification, with a minimum of at least two (2) years of experience providing the Services;
- C. Completed an accredited residency training program in the area of Services being provided that included at least four (4) years of residency training with both adults and child/adolescent patients, and be Board Eligible or Board Certified in the Services;
- D. Be credentialed with local hospitals utilized by the Facility with admitting, courtesy, and surgical privileges;
- E. Have an active US Department of Justice Drug Enforcement Administration (“**DEA**”) Certification; and
- F. Fluent (read, write, and speak) in English and (speak) Spanish.

2.3.3. The Contractor and Physician must maintain professional licenses or certifications needed to provide the Services without any restrictions throughout the term of this Contract. Any complaints, investigations, restrictions, suspensions, or revocation by against the Contractor or the Physician by the Texas licensing entity applicable to the Physician as set forth in **Section 2.3.2(A)** of this Attachment, a Texas agency, or a federal agency, must be reported by the Contractor to the Facility’s Medical Director or his/her designee, with a copy to the designated HHSC Representative identified in **Section 5** of the Signature Document within 24 hours of the issue(s) of official notice.

2.3.4. The Contractor or Physician must maintain professional liability coverage throughout the term of this Contract. Prior to providing any Services under this Contract, Contractor will provide a copy of the Contractor’s or Physician’s current professional liability coverage, or a written exception request that must be approved in writing, to the Facility’s Medical Director or his/her designee, with a copy to the designated HHSC Representative identified in **Section 5** of the Signature Document.

2.3.5. Prior to providing Services under this Contract, the Physician must submit to and pass a drug screening and criminal history checks, including fingerprint checks, and registry clearance checks:

These background checks will be conducted in accordance with Tex. Gov’t Code §§ 411.1103 and 411.1144; Tex. Health & Safety Code §§ 533.007 and 555.021; 25 Tex. Admin. Code pt. 1, ch. 414, subch. K, § 414.504; and 40 Tex. Admin. Code pt. 1, ch. 3, subch. B, § 3.201, together with all applicable HHSC policies and regulations. Please note this list is not intended to be exhaustive, and the Contractor and Physician may be subject to additional requirements. Background checks may be conducted by HHSC, the Facility, or by an independent company approved by HHSC or the Facility. The Contractor, Physician, nor any individual, will be allowed to provide Services under this Contract who:

- i. Has been convicted of or has received deferred adjudication for any of the criminal offenses listed in Tex. Health & Safety Code § 250.006(a);
- ii. Has been convicted of or has received deferred adjudication for any of the criminal offenses listed in Tex. Health & Safety Code § 250.006(b);
- iii. Has a criminal history record which, in HHSC or the Facility's sole discretion, indicates that the individual is not qualified or suitable for the assignment under HHSC's HR Policy Manual and Guidance Handbook;
- iv. Is listed as revoked in the Texas Medical Board Healthcare Provider Database, if applicable;
- v. Is listed as revoked in the Texas Board of Nursing License Verification Portal, if applicable;
- vi. Is listed as revoked in the Nurse Aide Registry, if applicable;
- vii. Is listed as revoked in the Medication Aide Registry, if applicable;
- viii. Is listed as unemployable in the Employee Misconduct Registry;
- ix. Has a confirmation of abuse or neglect in the Client Abuse and Neglect Reporting System ("CANRS"); or
- x. HHS Office of Inspector General List of Excluded Individuals/Entities.

2.3.6. If the Services will be provided at the , during the COVID-19 pandemic, the Contractor must submit to screening, or provide evidence of negative COVID-19 testing results from a laboratory, prior to entering the Facility's campus as part of the due diligence process. The screening includes symptom and travel history, as well as a temperature check. The extent to which personal protective equipment is used, and the screening and/or testing requirements, will depend on the COVID-19 status of the Facility, the protocols put in place at that time, and the area(s) that the Contractor will or may access on the Facility's campus.

3. HHSC's Responsibilities

HHSC and the Facility will provide the Contractor:

- 3.1. A advanced schedule of Patients being referred for evaluation, assessment, care, and treatment;
- 3.2. All forms, or information reading all documentation, required by the Facility in providing the Services; and
- 3.3. If applicable, access and guidance for taking all HHSC-mandatory trainings required under this Contract that may be above and beyond those required to maintain the Contractor's medical license.

4. Performance Measures

- 4.1. HHSC will monitor Contractor's performance of the requirements set forth in this Attachment and monitor for compliance with the Contract's terms and conditions. The Contractor must fully cooperate with all performance monitoring activities initiated by or on behalf of HHSC. All Services under the Contract must be provided at a quality level and in a manner consistent with industry standards, custom, and practice.

- 4.2. Goals: (1) 100% of Patients presenting to the Contractor are appropriately evaluated and assessed by the Contractor with a treatment plan developed; and (2) 100% of Patients referred to the Contactor for Services are evaluated and assessed with a treatment procedure performed as approved by the Facility's Medical Director or his/her designee.
- 4.3. Outputs: The Services by the Contractor are provided to 100% of Patients evaluated and assessed with 100% of treatment plans, dictated procedure notes, and reports, records, or other documentation provided to the Facility's within the timeframes established by the Facility's Medical Director or his/her designee.
- 4.4. Measurable Outcomes: Total number of Patients presenting to the Contractor for appointments that were evaluated and assessed by the Physician per month, and received medical care, and each medical treatment procedure, was properly documented by the Contractor and/or Physician with all documentation provided to the Facility's within the timeframes established by the Facility's Medical Director or his/her designee.

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Payment for Services Provided

1. Payment

HHSC will pay the Contractor for the contracted services invoiced in accordance with the terms and conditions of this Contract, for which HHSC is liable as payor of last resort. The Contractor shall not invoice HHSC for Services provided to Patients covered by Medicare, Medicaid, or a third-party insurer, but shall file claims directly with those healthcare programs or insurer. The total not-to-exceed amount of this shall not exceed the amount set forth in **Section 4** of the Signature Document, unless amended.

The Contractor is solely responsible for paying all expenses incurred in providing the Services under this Contract. HHSC will not pay or reimburse for any per diem, travel, meals, hotel, equipment, phone calls, paper, reproductive services, office space, clothing, medical supplies, or other expenses related to the performance of the contracted Services herein.

2. Budget Amounts or Rates Schedule

- 2.1. The authorized rates for Services provided under this Contract are **the currently published Texas Medicare Fee-for-Service Reimbursement rates** for the term of this Contract that are all inclusive for the Services provided to Patients of the Facility.
- 2.2. The rates set forth in **Section 2.1** of this Attachment, will not change or increased based on the Services provided, number of hours, time of day, day of week, or recognized holiday, unless revised rates are officially published and this Contract is amended.

3. Submittal of Invoices

The Contractor may only invoice HHSC for services performed that were requested, approved, provided, and accepted by HHSC, and based on the authorized budget amounts or rates at the time of invoice submittal. Contractor shall submit invoices to HHSC for payment monthly by the fifth day of the month following the month within the Contract term in which services were provided.

To receive payment, the Contractor must submit a detailed invoice with any supporting documentation to HHSC within the time frames established under the preceding paragraph in a secure, non-alterable digital format (.pdf is acceptable) via electronic mail directly to sahaccounting@dshs.texas.gov, using the following naming convention for the subject line of the email: "Contractor's Legal Name, HHSC Contract No., Invoice No., Purchase Order No., Invoice Amount, and Months Year." *For example, the email subject line for an invoice submitted to HHSC by Dr. John Smith, for services provided during the third quarter of 2022 would look like this: "Dr. John Smith, Contract No. HHS1234554321, Invoice No. 00001, \$100.00, March-May 2022."* Alternative submission arrangements must be approved in writing by the designated HHSC Representative identified in **Section 5** of the Signature Document.

Each invoice submitted must be in accordance with [34 Tex. Admin Code pt. 1, ch. 20, subch. F, div. 1, § 20.487\(a\)](#), Invoicing Standards, and include:

- Contractor's legal name;
- Contractor's Texas identification number or federal tax identification number;
- Contractor's address;
- Contractor's telephone number;
- Contractor's invoice number;
- State agency contract number;
- State agency purchase order number;
- State agency and division name;
- Detailed description of services and/or goods provided;
- Date(s) of service;
- Hours and rates being billed that correspond to the amount of the invoice;
- The name and telephone number of a person designated by the Contractor to answer questions regarding the invoice; and
- Documentation supporting the services, and substantiating costs incurred for the invoice being submitted including, but not limited to, the record of time reviewed and approved by an authorized Facility representative with signature authority.

The final invoice shall be submitted by the Contractor within 30 calendar days following the termination date of this Contract.

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

4. Dispute of Invoices

Notwithstanding anything to the contrary in this Contract, HHSC may withhold payment of any charges that it disputes in good faith and may set-off amounts the Contractor owes HHSC or the State of Texas as credits against charges payable to the Contractor under this Contract.

5. Verification of Invoices

HHSC reserves the right to verify the details set forth in the Contractor's invoices, either before or after payment, by requesting any additional information HHSC deems necessary to support the invoiced amount. HHSC has the right to inspect or audit the Contractor's books or records related to an activity or expense invoiced. Any revisions deemed necessary to the invoices by HHSC will require the Contractor to resubmit the invoice.

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Health and Human Services (HHS)
Uniform Terms and Conditions - Vendor
Version 3.3

Effective: July 2022

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.

“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.

“Health and Human Services Commission” or “HHSC” means the administrative agency established under Chapter 531, Texas Government Code, or its designee.

“Health and Human Services” or “HHS” includes the Department of State Health Services (DSHS), in addition to the Health and Human Services Commission.

“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 Travel” means the State Travel Management Program through the Texas Comptroller of Public Accounts website and Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, 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 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 State of Texas *Textravel* available at the Texas Comptroller of Public Accounts State Travel Management Program website.

2.3 NO QUANTITY GUARANTEES

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

2.4 TAXES

Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. 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 sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes.
- 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 audit, claim, litigation, or dispute matters involving the Contract are resolved, whichever is later.

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.
- 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. If the Contract includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority.
- C. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, 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.

- E. Contractor shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

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, or inspection 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.

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.

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 section will survive termination or expiration of this Contract. The obligations of Contractor under this section 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://hhs.texas.gov/about-hhs/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 Code W206
 Austin, Texas 78751
 Phone Toll Free: (888) 388-6332
 Phone: (512) 438-4313
 Fax: (512) 438-5885
 Email: HHSCivilRightsOffice@hhsc.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.

HHS 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 HHS Uniform Terms and Conditions – Vendor.

1. Notice of Criminal Activity and Disciplinary Actions

A. Contractor shall immediately report in writing to the designated HHSC designated Representative 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.

2. Notice of IRS or TWC Insolvency

Contractor shall notify in writing the designated HHSC designated Representative 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.

3. Notice of a License Action

Contractor shall notify the designated HHSC designated Representative 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.

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Attachment E

HEALTH AND HUMAN SERVICES CONTRACT AFFIRMATIONS (Version 2.2, Effective May 2022)

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: <https://sao.fraud.texas.gov/>

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
P.O. Box 85200, Mail Code 1300
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. 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.

40. **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.
41. **Entities that Boycott Energy Companies.** In accordance with Senate Bill 13, Acts 2021, 87th Leg., R.S., pursuant to Section 2274.002 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 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.
42. **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.
43. **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.
44. **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.
45. **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) is applicable to this Contract, Contractor affirms that it possesses the necessary occupational licenses and experience.

- 46. 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.
- 47. Foreign-Owned Companies in Connection with Critical Infrastructure.** If Texas Government Code, Section 2274.0102(a)(1) (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, 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, or (2) headquartered in any of those countries.
- 48. 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.
- 49. 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.
- 50. 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.
- 51. 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.

- 52. 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.
- 53. 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.
- 54. Equal Employment Opportunity.** Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.
- 55. 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).
- 56. 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

Signature Page for HHS Contract Affirmations

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

YS Orthopedics, PLLC
Legal Name of Contractor

N/A
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]
Signature of Authorized Representative

9.9.22
Date Signed

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

MD - owner.
Title of Authorized Representative

[Redacted]
Physical Street Address

San Antonio, Tx 78213
City, State, Zip Code

N/A
Mailing Address, if different

(210) 224-8109
City, State, Zip Code

Phone Number

Fax Number

[Redacted]
Email Address

DUNS Number

26-0609849
Federal Employer Identification Number

Texas Identification Number (TIN)

32033410203
Texas Franchise Tax Number

0800848757
Texas Secretary of State Filing Number

SAM.gov Unique Entity Identifier (UEI)

HHS Covered Entity Privacy, Security, and Breach Notification Terms

1. Definitions

- 1.1. **“Breach”** means the acquisition, access, use, or disclosure of Confidential Information in an unauthorized manner which compromises the security or privacy of the Confidential Information.
- 1.2. **“HHSC Confidential Information”** means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to the Contractor electronically or through any other means that consists of or includes any or all of the following:
 - (a) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information (as these terms are defined in 45 Code of Federal Regulations (“**C.F.R.**”) §160.103);
 - (b) Sensitive Personal Information defined by *Texas Business and Commerce Code*, Chapter 521;
 - (c) Federal Tax Information (as defined in Internal Revenue Service Publication 1075);
 - (d) Personal Identifying Information (as defined in *Texas Business and Commerce Code*, Chapter 521);
 - (e) Social Security Administration Data (defined as information received from a Social Security Administration federal agency system of records), including, without limitation, Medicare or Medicaid information (defined as information relating to an applicant or recipient of Medicare or Medicaid benefits);
 - (f) Substance Use Disorder Treatment Records (as defined in 42 C.F.R. Part 2);
 - (g) Education Records (as defined in the Family Educational Rights and Privacy Act (“**FERPA**”) (Title 20 United States Code (“**U.S.C.**”) §1232g and 34 C.F.R. Part 99); and
 - (h) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the *Texas Health and Safety Code* and the “**Texas Public Information Act**,” *Texas Government Code*, Chapter 552.

2. HHSC Confidential Information

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

- (a) Title 5 U.S.C. Part I, Chapter 5, Subchapter II, Section 552a, Records Maintained on Individuals, The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988;

- (b) Title 26 U.S.C., Internal Revenue Code;
- (c) Title 42 U.S.C. Chapter 7, Subchapter XI, Part C, Administrative Simplification, the relevant portions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and Pub Law 111-5, Title XIII, the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”);
- (d) Title 42 U.S.C. Chapter 7, the relevant portions of the Social Security Act;
- (e) Title 42 U.S.C. Chapter I, Subchapter A, Part 2, Confidentiality of Substance Use Disorder Patient Records
- (f) Title 45 C.F.R. Chapter A, Subchapter C, Part 160, General Administrative Requirements
- (g) Title 45 C.F.R. Chapter A Subchapter C, Parts 160, 162 and 164, Security and Privacy;
- (h) 20 U.S.C. § 1232g; 34 C.F.R. Part 99, FERPA;
- (i) Internal Revenue Service Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies, Safeguards for Protecting Federal Tax Returns and Return Information;
- (j) Office of Management and Budget Memorandum 17-12, Preparing for and Responding to a Breach of Personally Identifiable Information;
- (k) *Texas Business and Commerce Code*, Title 11, Subtitle B, Chapter 521 Unauthorized Use of Identifying Information;
- (l) *Texas Government Code*, Title, 5, Subtitle A, Chapter 552, Public Information, as applicable,
- (m) *Texas Health and Safety Code*, Title 2, Subtitle D, Chapter 81, Section 81.006, Funds
- (n) *Texas Health and Safety Code*, Title 2, Subtitle I, Chapter 181, Medical Records Privacy;
- (o) *Texas Health and Safety Code*, Title 7, Subtitle E, Chapter 611, Mental Health Records;
- (p) *Texas Human Resources Code*, Title 2, Subtitle A, Chapter 12, Section 12.003, Disclosure of Information Prohibited;
- (q) *Texas Occupations Code*, Title 3, Health Professions, as applicable;
- (r) Constitutional and common law privacy; and
- (s) Any other applicable law controlling the release of information created or obtained in the course of providing the services described in this Contract.

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

3. Cybersecurity Training

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

4. Business Associate Agreement

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

5. Contractor’s Incident Notice, Reporting and Mitigation

The Contractor’s obligation begins at discovery of any unauthorized disclosure of Confidential Information or any privacy or security incident that may compromise Confidential Information.

“**Incident**” is defined as an attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. The Contractor’s obligation continues until all effects of the Incident are resolved to HHSC’s satisfaction, hereafter referred to as the “**Incident Response Period.**”

6. Notification to HHSC

6.1. The Contractor must notify HHSC within the timeframes set forth in **Section 6.3** below.

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

6.3. Incident Notice:

6.3.1. Initial Notice:

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

This initial notice must, at a minimum, contain: (i) all information reasonably available to Contractor about the Incident, (ii) confirmation that the Contractor has met any applicable federal Breach notification requirements, and (iii) a single point of contact for the Contractor for HHSC communications both during and outside of business hours during the Incident Response Period.

6.3.2. Formal Notice:

No later than 3 Business Days after discovery of an Incident, or when the Contractor should have reasonably discovered the Incident, the Contractor must provide written formal notification to HHSC using the Potential Privacy/Security Incident Form which is currently available on the HHSC website at: <https://www.hhs.texas.gov/laws-regulations/forms/0-999/form-0402-potential-privacysecurity-incident>. The formal notification must include all available information about the Incident, and the Contractor’s investigation of the Incident.

7. Contractor Investigation, Response, and Mitigation

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

- (a) Immediately commence a full and complete investigation;
- (b) Cooperate fully with HHSC in its response to the Incident;

- (c) Complete or participate in an initial risk assessment;
- (d) Provide a final risk assessment;
- (e) Submit proposed corrective actions to HHSC Privacy and Security Offices infosecurity@hhsc.state.tx.us and privacy@hhsc.state.texas.us for review and approval, and include a submission of the Incident to the HHSC designated Representative identified in Section 5 of the Signature Document to this Contract;
- (f) Commit necessary and appropriate staff and resources to expeditiously respond;
- (g) Report to HHSC as required by HHSC and all applicable federal and state laws for Incident response purposes and for purposes of HHSC's compliance with report and notification requirements, to the satisfaction of HHSC;
- (h) Fully cooperate with HHSC to respond to inquiries and/or proceedings by federal and state authorities about the Incident;
- (i) Fully cooperate with HHSC's efforts to seek appropriate injunctive relief or to otherwise prevent or curtail such Incidents;
- (j) Recover, or assure destruction of, any Confidential Information impermissibly disclosed during or as a result of the Incident; and
- (k) Provide HHSC with a final report on the Incident explaining the Incident's resolution.

8. Breach Notification to Individuals and Reporting to Authorities

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

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