

SIGNATURE DOCUMENT FOR HHSC CONTRACT NO. HHS00132610001

The **HEALTH AND HUMAN SERVICES COMMISSION** (“System Agency” or “HHSC”), an administrative agency within the executive branch of the state of Texas, and **RELIAS LLC** (“Contractor”), each a “Party” and collectively the “Parties”, enter into the following agreement (“Contract”) for 2-1-1 Texas Subscription Services from Relias a Learning Management System.

I. LEGAL AUTHORITY

This Contract is entered into pursuant to Section 2157.006(a)(2) of the Texas Government Code. Contractor was selected by HHSC as the successful bidder under Invitation for Bids No. HHS0013261 issued February 17, 2023 (the “Solicitation”).

II. DURATION

The Contract is effective on the signature date of the latter of the Parties to sign this agreement and expires on February 28, 2024, unless sooner terminated or renewed or extended.

Notwithstanding the limitation in the preceding paragraph, at the end of the initial term or any renewal period, System Agency, at its sole discretion, may extend this Contract as necessary to ensure continuity of service, for purposes of transition, or as otherwise determined by System Agency to serve the best interest of the State for up to 12 months, in one-month intervals, at the then-current contract rate or rates (if applicable) as modified during the term of the Contract.

III. STATEMENT OF WORK

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

The Solicitation, including all addenda, is incorporated into and made a part of this Contract for all purposes and included as **ATTACHMENT D, SOLICITATION**.

IV. BUDGET

The total amount of this Contract will not exceed **\$25,067.00**. By executing this Contract, Contractor agrees to the contracted rates and budget for the Contract term, including the initial term and all renewals and extensions exercised. However, at System Agency’s sole discretion or by mutual agreement of the Parties as authorized under the Contract, the budget or contract amounts may be amended. All expenditures under the Contract will be in accordance with **ATTACHMENT B, BUDGET**.

V. CONTRACT REPRESENTATIVES

The following will act as the representative authorized to administer activities under this Contract on behalf of its respective Party.

System Agency Contract Representative

Esmeralda Miller & James Valdenegro
Health and Human Services Commission
909 W. 45th St. Building II
Austin, Texas 78751

Contractor Contract Representative

Will Sapp and Evan Atherton
Relias
1010 Sync St. #100
Morrisville, NC 27560
wsapp@relias.com or eatherton@relias.com

VI. NOTICE REQUIREMENTS

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

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

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

VII. CONTRACT SUPPLEMENTAL CONDITIONS

A. **Exhibit B, HHS Contract Affirmations (“Contract Affirmations”) of ATTACHMENT D, SOLICITATION**, of this Contract is revised as follows. Unless expressly modified, amended, or replaced in this Section, the Contract Affirmations shall remain in full force and effect:

1. **SECTION 5, ASSIGNMENT**, is deleted in its entirety and replaced with the following:

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, such consent not to be unreasonably withheld. Any attempted assignment in violation of this provision is void and without effect.
 - B. System Agency may not assign or transfer this Contract without Contractor’s prior written consent, such consent not to be unreasonably withheld. Notwithstanding any provision of this Contract to the contrary, System Agency may assign this Contract, without prior approval or consent by Contractor, to another state agency as designated by the Texas Legislature.
2. **SECTION 25, CYBERSECURITY TRAINING**, is deleted in its entirety and replaced with the following:

25. [Reserved]

B. **Exhibit B, HHS Uniform Terms and Conditions (“UTCs”) of ATTACHMENT D, SOLICITATION**, of this Contract is revised as follows. Unless expressly modified, amended, or replaced in this Section, the UTCs shall remain in full force and effect:

1. **SECTION 3.1, EXCESS OBLIGATIONS PROHIBITED**, is deleted in its entirety and replaced with the following:

3.1 EXCESS OBLIGATIONS PROHIBITED

The Contract is subject to termination or cancellation, without penalty to the System Agency, either in whole or in part, subject to the availability of state funds. System Agency is a state agency whose authority and appropriations are subject to actions of the

Texas Legislature. If System Agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either System Agency's or 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. If System Agency terminates this Contract for appropriation or budget shortfalls, System Agency will pay Contractor for amounts due to Contractor for Services provided up to the effective date of such termination, subject to funding availability. Contractor shall not refund fees paid for the current subscription services term in the event of termination for appropriation or budget shortfalls.

2. **SECTION 5.2, CONTRACTOR'S PRE-EXISTING WORKS**, is deleted in its entirety and replaced with the following:

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. This section is subject to the attached Relias Master Services Agreement (Attachment C).
- 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.

3. **SECTION 9.2, TERMINATION FOR CONVENIENCE**, is deleted in its entirety and replaced with the following:

9.2 TERMINATION FOR CONVENIENCE

The System Agency may terminate the Contract, in whole or in part, upon 30 days written notice when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas, subject to the requirement that System

Agency pay the unpaid fees for the then remaining part of the applicable term through the termination date. The termination will be effective on the date specified in the System Agency's notice of termination. Termination under this section shall not result in a refund of fees paid for the current subscription term.

4. **SECTION 9.4, CONTRACTOR RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS**, is deleted in its entirety and replaced with the following:

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 direct costs incurred by the System Agency and the State of Texas attributable to Contractor's failure to perform any Work in accordance with the terms of the Contract.

5. **SECTION 10.1, GENERAL INDEMNITY**, is deleted in its entirety and replaced with the following:

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 BODILY INJURY, DEATH, OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY OCCURRING WHOLLY OR IN PART DUE TO ACTION OR INACTION BY CONTRACTOR (OR ANY OF CONTRACTOR'S EMPLOYEES, AGENTS, SUBCONTRACTORS, OR BY ANYONE ELSE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE).**
- 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.

6. **SECTION 11.5, CHANGE IN LAWS AND COMPLIANCE WITH LAWS**, is deleted in its entirety and replaced with the following:

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. Contractor may terminate the Contract upon 30 days' written notice without penalty if, after engaging in good faith discussions, Contractor determines that such modifications create a material compliance issue with which Contractor cannot agree or materially interferes with Contractor's ability to perform its obligations under the Contract. In the event Contractor terminates the Contract pursuant to this Section, Contractor will refund to System Agency the pro-rata portion of the amounts already paid by System Agency under the Contract covering the remainder of the term after the date that Contractor's termination becomes effective.

7. **SECTION 11.17, NO MARKETING ACTIVITIES**, is deleted in its entirety and replaced with the following:

11.17 NO MARKETING ACTIVITIES

Contractor is prohibited from using the Work (excluding Incorporated Pre-existing Works which are subject to the attached Relias Master Services Agreement (Attachment C)) 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.

8. **SECTION 11.24, DISCLOSURE OF LITIGATION**, is deleted in its entirety and replaced with the following:

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 which may impact Contractor's ability to perform its obligations under this Contract. "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 which may impact Contractor's ability to perform its obligations under this Contract. 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.

VIII. SERVICES PROVIDED PRIOR TO EFFECTIVE DATE

HHSC acknowledges that Contractor provided services described on Attachment A prior to the Effective Date of this Contract. Such services provided by Contractor from the period

commencing March 1, 2023 and concluding the day before the Effective Date are hereby ratified, incorporated into, and governed by this Contract as of the Effective Date of this Contract. For purposes of Chapter 2251 of the Texas Government Code, such services are authorized by HHSC on the Effective Date of this Contract.

IX. CONTRACT DOCUMENTS

The following documents are incorporated by reference and made a part of this Contract for all purposes.

- ATTACHMENT A – STATEMENT OF WORK**
- ATTACHMENT B – BUDGET**
- ATTACHMENT C – RELIAS MASTER SERVICES AGREEMENT**
- ATTACHMENT D – SOLICITATION**
- ATTACHMENT E – CONTRACTOR'S SOLICITATION RESPONSE**

In the event of conflict, ambiguity, or inconsistency between or among any contract documents, the following documents, including any amendments thereto, shall control in the specified order of precedence:

- 1. THIS SIGNATURE PAGE DOCUMENT**
- 2. ATTACHMENT A – STATEMENT OF WORK**
- 3. ATTACHMENT B – BUDGET**
- 4. ATTACHMENT C – RELIAS MASTER SERVICES AGREEMENT**
- 5. ATTACHMENT D – SOLICITATION**
- 6. ATTACHMENT E – CONTRACTOR'S SOLICITATION RESPONSE**

X. SIGNATURE AUTHORITY

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

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR SYSTEM AGENCY CONTRACT No. HHS00132610001

SYSTEM AGENCY

DocuSigned by:

89E99E8047E74B4...

Name: Craig Howard

Title: Director

Date of execution: April 21, 2023

RELIAS LLC

DocuSigned by:

40074BA3CF8240E...

Name: Ross Golden

Title: CFO

Date of execution: 07-Apr-2023

ORIGINAL

RFI No. HHS0013261



Texas Health and Human Services Commission

2-1-1 Texas Subscription Service

March 3, 2023

Will Sapp
Account Manager
wsapp@relias.com
(919) 459-9689

1010 Sync Street | Suite 100 | Morrisville, NC | 27560

DEMONSTRATION OF ABILITY TO PERFORM

Relias is pleased to respond to your recent invitation for bid number HHS0013261 for 2-1-1 Texas Subscription Service. As 2-1-1 Texas' current provider of the requested services, we are excited at the prospect of renewing and expanding our rewarding partnership.

Since the emergence of Relias in 2012, our organization has become a national leader in Software as a Service (SaaS) online learning solutions for organizations across the entire continuum of healthcare. Our staff education and behavior change solutions have been adopted by more than 11,000 clients across the nation. As a healthcare-specific learning company, we dedicate many of our resources to developing educational content that will not only engage your learners, but also fulfill continuing education requirements for your clinical staff.

But Relias knows having access to high quality, accredited content is only half the battle. By delivering this content over our proprietary Relias Platform, 2-1-1 Texas has a variety of administrative tools at their fingertips to ensure a cohesive and engaging training experience for your entire staff. The Relias Platform is designed to educate individuals and change behavior, as well as to reduce training cost and effort, streamline recruiting and onboarding, increase trainee satisfaction, strengthen compliance, mitigate risk, and improve quality of service among healthcare professionals.

Relias is passionate about driving meaningful results. Our proprietary Relias Platform is designed to reduce training cost and effort, increase trainee productivity and satisfaction, strengthen compliance, mitigate risk and improve quality of service among your healthcare professionals. Currently, Relias provides over 9,000 unique courses to more than 5 million daily learners. Our learning modules support over 133 unique accreditation board licenses. Users of our system have completed more than 50 million courses and have collected over 15 million hours in continuing education credits in 2020.

Relias goes above and beyond simply serving healthcare clients - we also employ a host of current and former healthcare experts who help us develop the robust libraries of content we provide. Our staff and experts alike live by the company mission: *striving to measurably improve the lives of the most vulnerable members of our society and those who care for them*. We support this mission with a set of unique core values:

- Prioritizing the ability to get stuff done
- Relying on data-driven decision making
- Maintaining a thirst for learning
- Driving passion for our mission
- Stimulating healthy debate

Relias is staffed with over 1,000 full time employees who work to ensure our business runs smoothly and our clients receive excellent service levels and care. Our headquarters is located in Morrisville, North Carolina.

Approach

Our solution offers benefits in three key areas: **Platform**, **Content**, and **Services**.

Platform

Our proposal includes unlimited access to our industry leading Relias Platform and all its features, including the ability to upload custom content, run reports on user statistics and manage learning across your entire organization all from one centralized system. See below for a listing of the benefits offered by our platform:

Feature Name	Description/Benefits
Relias Platform	<p>A unified, seamless experience for both administrators and learners. The Platform includes our Management Platform and Experience Platform, two platforms in one that drive both ease of use for managers and high completion rate for users.</p> <ul style="list-style-type: none"> • Scalable and modular platform • Intuitive design • Seamless HRIS integration
Management Platform	<p>A user-friendly platform that simplifies assigning, monitoring, and reporting staff training.</p> <ul style="list-style-type: none"> • Quickly assign compliance training and continuing education • Easily track completion progress for all staff • Create organizational and individualized training plans <p><i>Tools Included</i></p> <ul style="list-style-type: none"> • Reports • Real-time dashboards • License & certification tracker • Mobile app, and more

Content

Also included in our proposal price is unlimited access to a wide variety of approved, accredited, engaging courses across the spectrum of behavioral health and human services settings. Additionally, our subscription fee includes ongoing maintenance, platform enhancements, and client support throughout the duration of the contract. Relias is the only vendor who offers the unique training content bundles listed in the RFP, including:

- AIRS

- Legacy Custom Library
- Compliance/OSHA
- RLMS Portal
- OSHA Requirements
- Compliance/Safety
- Compliance/Safety HHS

Services

Relias provides both initial and ongoing services to set your organization up for continued success. 2-1-1 Texas administrators can get on-demand assistance from the Relias Learning Client Care team through several different channels, including phone, web form or live chat. Our business hours are 8 a.m. – 8 p.m. EST, Monday through Friday, with the exception of major U.S. holidays. Administrators will find that our Client Care team is excited to assist and extremely responsive to working with our customers to resolve any questions or concerns.

Both learners and administrators will have access to on-demand help resources directly in the Relias Platform, including a robust contextual wizard tool called the Support Center which can be used to walk users through common procedures like printing a transcript or searching the catalog. Online tutorials and documentation are also available via the Relias Connect social hub, which can be accessed by users of all permission levels. Within Relias Connect is a vast knowledgebase of information and help articles. These resources are highly comprehensive and cover a variety of commonly asked questions and issues.

Summary

With our unparalleled breadth of staff development resources and first-hand experience serving 2-1-1 Texas, Relias believes our proposed solution will not only continue to meet your needs, but also adapt to new goals and initiatives as the healthcare landscape changes. As you review our proposal you will find that we meet your requirements and have a product development road map that positions both your organization and ours for the future of e-learning. Thank you for your consideration. Please do not hesitate to contact Account Manager Will Sapp further clarification or information.

Note Regarding Section 7.1.8, 24-Hour Contact

24-hour support is not included in our standard subscription level, nor does the proposed contract value qualify 211 Texas for more than one named contact person. Instead, Relias' systems are monitored around the clock for critical performance issues via remote application monitoring. This system automatically sends alerts to our on-call system support team as soon as a connectivity issue is detected, and requires no involvement from individual clients. We hope this satisfies this contract requirement; if not, please alert Account Executive Will Sapp so that we can discuss alternative options.



Note Regarding Exhibit B, Contract Affirmations

In accordance with Addendum #1, Relias has redlined Exhibit B with our proposed exceptions to the state's Contract Affirmations. We have also submitted our Master Services Agreement, which governs our existing agreement with 211 Texas, for consideration in the final contract. We are willing to discuss and negotiate proposed exceptions and terms as part of future discussions beyond this RFP.

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

Relias LLC

Legal Name of Respondent

Assumed Business Name of Respondent, 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.

DocuSigned by:
Ross Golden
40074DA3CE8246E

03/02/2023

Signature of Authorized Representative

Date Signed

Ross Golden

Chief Financial Officer

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

Title of Authorized Representative

1010 Sync Street, Suite 100

Morrisville, NC 27560

Physical Street Address

City, State, Zip Code

Mailing Address, if different

City, State, Zip Code

(877) 200-0020

Phone Number

Fax Number

contracts@relias.com

139896372

Email Address

DUNS Number

472092038

10107301573

Federal Employer Identification Number

Texas Identification Number (TIN)

N/A

N/A

Texas Franchise Tax Number

Texas Secretary of State Filing Number

SQ12J6HJ7SK7

SAM.gov Unique Entity Identifier (UEI)

MASTER SERVICES AGREEMENT

1. DEFINITIONS

1.1 Affiliate means any company that (i) controls, (ii) is controlled by, or (iii) is under common control with either party or its parent corporation. A company shall be deemed to control a company if it has the power to direct or cause the direction of the management or policies of such company, whether through the ownership of voting securities, by contract, or otherwise.

1.2 Agreement or MSA means this Master Services Agreement, Ordering Document(s), Schedules, and such other documents, attachments, and exhibits to which the parties' authorized representatives mutually agree in writing.

1.3 Client means the entity set forth on the Ordering Document(s) and receiving Subscription Services under the Agreement.

1.4 Client Data means all required electronic data or information submitted by Client to Company for the provision of Subscription Services and/or Professional Services.

1.5 Company means the entity set forth on the Ordering Document(s) and providing Subscription Services under the Agreement.

1.6 Content means materials provided or posted by Company in connection with Subscription Services, including but not limited to training courses, tests, assessments, surveys, text, images, graphics, audio and sound recordings, and videos, including modifications, enhancements, or new versions thereof.

1.7 Intellectual Property means any and all intellectual property rights recognized in any country or jurisdiction in the world, now or hereafter existing, and whether or not perfected, filed or recorded, including without limitation inventions, technology, patent rights (including patent applications and disclosures), copyrights, trade secrets, trademarks, service marks, trade dress, methodologies, procedures, processes, know-how, tools, utilities, techniques, various concepts, ideas, methods, models, templates, software, source code, algorithms, generalized features of the structure, sequence and organization of software, user interfaces and screen designs, general purpose consulting and software tools, utilities and routines, logic, coherence and methods of operation of systems, training methodology and materials, which Company has created, acquired, or otherwise has rights in, and may, in connection with the performance of Subscription Services or Professional Services hereunder, create, employ, provide, modify, acquire, or otherwise obtain rights in.

1.8 Ordering Document means the document(s) executed by the parties, that incorporates by reference the terms of this Agreement and describes order-specific information such as Subscription Services, Professional Services, Subscription Metrics, fees, and other business terms. Statement of Work (SOW) shall be synonymous with Ordering Document.

1.9 Professional Services means consulting, implementation, training, creation of custom Content, or other professional services to be performed by the Company. Professional Services will be described in an Ordering Document executed by the parties.

1.10 Schedule means a product-specific set of terms and conditions that serves as an addendum to this Agreement and will either come attached or be referenced within the Ordering Document(s).

1.11 Site means the web interface at a URL designated by Company.

1.12 Subscription Metrics means the per-unit metric(s) specified in the Ordering Document(s) or amendments in the aggregate, as applicable, that describes the Client's access to or utilization of Subscription or Professional Services. Subscription Metrics may take the form of per-User license, per-facility license, or any other measurement agreed upon by the parties.

1.13 Subscription Quantity means the number of Subscription Metrics.

1.14 Subscription Services means services described in the relevant Ordering Document and/or Schedule.

1.15 Subscription Start Date means the date specified on the Ordering Document(s).

1.16 User(s) means those persons who (i) have been authorized by Client to access and use Subscription Services and Professional Services; (ii) have complied with any registration requirements reasonably requested by Company; (iii) have been issued a personal and unique User ID and password; and (iv) have acknowledged the terms and conditions applicable to Subscription Services. Only current employees and independent contractors of Client are eligible to be Users.

2. USE RIGHTS

2.1 Grant of Use. Subject to the terms of the Agreement, Company grants to Client the right to access and use Subscription Services, solely for its internal business purposes and solely in connection with the personal training, analysis, or assessment of its Users or business.

2.2 Authorized Users. Client shall provide Company with the required demographic data for all Users in the specified electronic format provided by Company to complete the initial registration process. Activating and deactivating Users as a method of keeping the number of Users within range of the Subscription Metrics shall be a material breach of the Agreement.

2.3 Acceptable Use. Client and all Users shall use Subscription Services exclusively for authorized and legal purposes, consistent with all applicable laws and regulations. Client agrees and shall ensure that Users do not post or upload any content or data which (i) is libelous, defamatory, obscene, pornographic, abusive, harassing, or threatening; (ii) contains computer viruses, worms, time bombs, trojan horses or other harmful or malicious code, files, scripts, agents, or programs; (iii) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; or (iv) otherwise violates any applicable law. Client further agrees and shall ensure that Users do not interfere or disrupt networks connected to Subscription Services, do not interfere with another entity's use of similar services, and comply with all regulations, policies, and procedures of networks connected to Subscription Services. Company may remove any violating content posted on Subscription Services or transmitted through Subscription Services without notice. Company may suspend or terminate any User's access to Subscription Services if Company determines that such User has violated the terms and conditions of this Agreement. Client is responsible for maintaining the confidentiality of all passwords and for ensuring that each password is used only by the authorized User. As between the parties, Client is entirely responsible for all activities that occur under its account. Client shall immediately notify Company of any unauthorized use or any other breach of security known to Client. Company shall have no liability for any loss or damage arising from Client's failure to comply with these requirements.

2.4 Restrictions. Client shall not itself, or through any Affiliate, employee, contractor, agent, or other third party (i) sell, resell, distribute, host, lease, rent, license, or sublicense, in whole or in part, Subscription Services, Content, or the Site, or access thereto; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer, or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure, or other elements of Subscription Services or Content, in whole or in part; (iii) allow access to, provide, divulge, or make available the Site, Subscription Services, or Content to anyone other than an authorized User; (iv) create derivative works based upon Subscription Services or Content, or modify, adapt, translate, or otherwise make any changes to Subscription Services, Content, or any part thereof; (v) use Subscription Services to provide processing services to third parties, or otherwise use the same on a service bureau basis; (vi) disclose or publish, without Company's prior written consent, performance or capacity statistics or the results of any benchmark test performed on Subscription Services; or (vii) remove from any Subscription Services or other materials owned by Company identification, patent, copyright, trademark, or other notices. Proprietary notices, including without limitation

patents, copyrights, and trademarks notices, as well as disclaimer notices, must be reproduced on any such authorized copies.

2.5 Enforcement. Client shall (i) ensure that all Users of Subscription Services comply with the terms and conditions of this Agreement, (ii) promptly notify Company of any actual or suspected violation thereof, and (iii) cooperate with Company with respect to investigation and enforcement of the Agreement. Client shall be solely responsible for all acts and omissions of its Users in connection with their access and use of Subscription Services.

2.6 Environment. Subscription Services will be hosted on a server that is maintained by Company or its designated third-party subcontractor. User access to Subscription Services is provided through the Site. Client is solely responsible for obtaining and maintaining, at its own expense, all equipment and services needed to access the Site.

2.7 Availability. Company shall use commercially-reasonable efforts to make Subscription Services continually available except for scheduled downtime events where notice is provided to Client, emergency downtime events, or Internet service provider failures or delays. Company will use commercially reasonable efforts to perform scheduled downtime events outside of normal business hours. Client acknowledges that Subscription Services may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications; Company is not responsible for any delays, delivery failures, or other damage resulting from such problems.

2.8 Content. Access to Content, if applicable, shall be provided by Company through Subscription Services. Client is responsible for selecting which Content will be available to authorized Users. Company continuously reviews and updates Content based on an ongoing-needs analysis. Company reserves the right to add, revise, or withdraw from its Content any item or part of an item in its sole discretion.

2.9 Site Administrator. Client shall designate a primary contact who shall function as the liaison to Company and who shall be trained by Company so that the contact shall be able to train and support Users on the use of Subscription Services (**Site Administrator**). The Site Administrator shall be the primary point of contact with Company on all issues related to Subscription Services.

2.10 Client Data Responsibilities. Client shall be solely responsible for the accuracy, quality, integrity, and legality of data uploaded in connection with Subscription Services by Client. Client shall own or shall obtain all proprietary rights necessary, including copyrights, patents, and trade secrets, in and to any content or data it provides, develops, or uploads for use in Subscription Services. Client authorizes Company and its third-party subcontractors to serve as the hosts and repository for the data Client enters into Subscription Services.

2.11 Changes. Company reserves the right to add or substitute functionally-equivalent products in the event of product unavailability, product end of life, or changes to software requirements. Company regularly updates Subscription Services, meaning that such Subscription Services are continually evolving. Some of these changes will occur automatically while others may require Client cooperation. Where required, Client shall reasonably cooperate in implementing such changes.

3. PROFESSIONAL SERVICES

3.1 Cooperation. Client shall provide Company with good-faith cooperation and access to such information, facilities, personnel, and equipment that Company may reasonably require in order to provide Professional Services. Client acknowledges that Company's performance is dependent upon the timely and effective completion of Client's responsibilities and Client's timely decisions and approvals in connection with Professional Services. Company may reasonably rely on all such decisions and approvals.

4. FINANCIAL TERMS

4.1 Fees, Payment Terms, and Taxes. Fees, billing frequency, and method of payment are specified in the Ordering Document. Fees shall be based upon the Subscription Metrics, Subscription Quantity, and Professional Services. Payments shall be in US dollars. After the first twelve (12) months of the initial term, but not more than once in any twelve-(12) month period, Company may modify the fees for Subscription Services upon sixty (60) days' prior written notice. Any change in pricing for the first twelve (12) months of any renewal term shall be provided by Company to Client in writing at least sixty (60) days prior to the end of the current term. Payment of all fees is due thirty (30) days after the invoice date. Company may invoice up to thirty (30) days in advance. Interest accrues on past-due balances at 1% per month. Failure to make timely payments shall be a material breach of the Agreement, and Company will be entitled to (i) suspend Subscription or Professional Services upon thirty (30) days' prior written notice to Client, (ii) modify the payment terms, and/or (iii) request full payment before additional performance is rendered by Company. Prices quoted within Ordering Documents and quotes do not include taxes. Client shall consult with its tax advisors concerning applicable tax requirements. If required by law, Company shall invoice Client for applicable taxes and pay them on Client's behalf.

4.2 Subscription Metrics. Client may only reduce its Subscription Quantity by giving written notice to Company at least sixty (60) days prior to the end of the current term. The reduction will be effective as of the start of the subsequent term. If actual use exceeds the licensed quantity, additional Subscription Quantity must be purchased at then-current fees. Additional Subscription Quantity shall be prorated for the remainder of the then-current Subscription Services Term. There shall be no fee adjustments or refunds for any decrease in usage during Subscription Services Term.

4.3 No Contingencies. Client agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Company regarding future functionality or features.

5. CONFIDENTIALITY

5.1 Confidential Information. Each party hereby agrees that it will not use or disclose any Confidential Information received from the other party other than as expressly permitted under the terms of this Agreement or as expressly authorized in writing by the other party. **Confidential Information** means any and all information disclosed by either party to the other which is marked confidential or proprietary or which should be reasonably understood by each party to be confidential or proprietary, including, but not limited to, the terms and conditions (but not the existence) of this Agreement, all trade secrets, Intellectual Property, and results of testing and benchmarking of Subscription Services. Client Data is excluded from the definition of Confidential Information. Each party will protect the other party's Confidential Information from unauthorized dissemination with the same degree of care used to protect its own confidential information, but in no event less than a reasonable amount of care. Company may use, for any purpose, Client Data or data arising out of a combination of Client Data and Subscription or Professional Services, so long as the relevant data has been anonymized and de-identified; however, Company agrees not to use or disclose this information to the extent prohibited by applicable law. Information shall not be considered Confidential Information to the extent, but only to the extent, that the receiving party can establish that such information (i) is or becomes generally known or available to the public through no fault of the receiving party; (ii) was lawfully in the receiving party's possession before receipt from the disclosing party without a duty of confidentiality; (iii) is lawfully obtained from a third-party who has the right to make such disclosure on a non-confidential basis; or (iv) has been independently developed by one party without reference to any Confidential Information of the other.

5.2 Compelled Disclosure. A party may disclose Confidential Information if it is compelled to do so by law. In any such case, the disclosing party must, to the extent legally permitted, provide prior notice and reasonable assistance to the other party (whose Confidential Information would be disclosed), at the other party's cost, if the other party desires to contest disclosure.

6. OWNERSHIP

6.1 All rights not expressly granted in this Agreement are reserved by Company and its licensors.

6.2 Subscription Services. Company and its licensors shall retain sole and exclusive ownership of, and all rights, title, and interest in Subscription Services, Content, and the Site, including without limitation (i) Intellectual Property embedded or associated therein, and (ii) all derivative works and copies thereof.

6.3 Professional Services. Company shall retain all rights, title, and interest in Intellectual Property used or in any manner employed by Company in the provision of Professional Services.

7. WARRANTIES, DISCLAIMERS, AND LIMITATION OF LIABILITY

7.1 General. Each party represents and warrants that it has the legal power and authority to enter into this Agreement.

7.2 Professional Services. Company warrants that the Professional Services will be performed in a workmanlike manner. As Client's exclusive remedy for any claim under this warranty, Client shall notify Company in writing of its claim within thirty (30) days of Company's completion of the applicable services and, provided that such claim is reasonably determined by Company to be Company's responsibility, Company shall re-perform the applicable service. Company's entire liability and Client's exclusive remedy for any breach of the warranty set forth in this section shall be the re-performance of the applicable service.

7.3 EXCEPT AS EXPRESSLY STATED IN THIS SECTION 7, ALL SUBSCRIPTION SERVICES AND PROFESSIONAL SERVICES ARE PROVIDED ON AN AS IS, AS AVAILABLE BASIS. COMPANY, ITS LICENSORS, THIRD-PARTY SUBCONTRACTORS, AND SUPPLIERS EXPRESSLY DISCLAIM, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ANY WARRANTY THAT ANY SOFTWARE, DATABASE, SUBSCRIPTION SERVICES, DELIVERABLES, OR PROFESSIONAL SERVICES ARE ERROR FREE, ACCURATE, RELIABLE, WILL OPERATE WITHOUT INTERRUPTION, OR THAT ALL ERRORS WILL BE CORRECTED, OR THAT SUBSCRIPTION SERVICES WILL COMPLY WITH ANY LAW, RULE, OR REGULATION; (ii) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE; AND (iii) IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. NO ADVICE, STATEMENT, OR INFORMATION GIVEN BY COMPANY, ITS AFFILIATES, CONTRACTORS, OR EMPLOYEES SHALL CREATE OR CHANGE ANY WARRANTY PROVIDED HEREIN. COMPANY DISCLAIMS ALL LIABILITY OR LOSS ARISING OUT OF ANY ACTION TAKEN IN RELIANCE ON ITS SITE, CONTENT, ASSESSMENTS, PRODUCTS, OR SUBSCRIPTION OR PROFESSIONAL SERVICES.

7.4 AS BETWEEN COMPANY AND CLIENT, CLIENT ASSUMES SOLE RESPONSIBILITY AND LIABILITY FOR ITS USERS' COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT. COMPANY SHALL HAVE NO LIABILITY FOR ANY CLAIMS, LOSSES, OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH CLIENT'S OR ANY OF ITS USERS' USE OF THE SUBSCRIPTION OR PROFESSIONAL SERVICES ALONE OR IN COMBINATION WITH ANY THIRD-PARTY PRODUCTS, SERVICES, SOFTWARE, OR WEB SITES, INCLUDING THOSE THAT ARE ACCESSED VIA LINKS FROM WITHIN SUBSCRIPTION SERVICES.

COMPANY'S TOTAL LIABILITY (INCLUDING ATTORNEYS' FEES AWARDED UNDER THIS AGREEMENT) TO CLIENT FOR ANY CLAIM BY CLIENT OR ANY THIRD PARTIES UNDER THIS AGREEMENT, WILL BE LIMITED TO THE FEES PAID FOR SUCH ITEMS THAT ARE THE SUBJECT MATTER OF THE CLAIM FOR THE PRIOR TWELVE (12) MONTHS. IN NO EVENT WILL COMPANY, ITS LICENSORS, OR ITS SUPPLIERS BE LIABLE TO CLIENT OR THIRD PARTIES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, TREBLE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, STAFF TIME, GOODWILL, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NO CLAIM ARISING OUT OF THE AGREEMENT, REGARDLESS OF FORM, MAY BE BROUGHT MORE THAN THE SHORTER OF ONE YEAR OR THE PERIOD ALLOWED BY LAW AFTER THE CAUSE OF ACTION HAS ACCRUED.

THIS SECTION 7 SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDY.

8. INDEMNIFICATION

8.1 Indemnification. To the extent permitted by law, each Party shall indemnify and hold harmless the other and its principals, officers, directors, agents, and employees (**Indemnified Party[ies]**), and at the indemnifying party's option, either defend Indemnified Parties or pay their attorney's fees and court costs, from any loss, cost, damage, or expense incurred by the Indemnified Party that is finally awarded by a court of law to any third party as a result of a claim (i) arising from or in connection with a breach of sections 2.3 or 5 (and its subparts) above; or (ii) alleging infringement or misappropriation of a third party's U.S. patent, U.S. copyright, U.S. trademark, or U.S. trade secret.

Company shall have no indemnity obligation to Client where the alleged infringement or misappropriation arises from (i) a modification of Subscription Services as delivered to Client; (ii) the combination of Subscription Services with any other process, hardware, software, data, or functionality; (iii) any Client-originating data or content communicated using such Subscription Services; or (iv) any use of Subscription Services by Client in a manner inconsistent with the documentation or instructions provided by Company or otherwise in breach of this Agreement.

To the extent permitted by law, Client shall indemnify Company, its principals, officers, directors, agents, and employees (**Company Indemnified Party[ies]**), and at Client's option, either defend Company Indemnified Parties or pay their attorney's fees and court costs, from any loss, cost, damage, or expense incurred by the Company Indemnified Party that is finally awarded by a court of law to any third party as a result of a claim arising out of or in connection with any use or reliance by Client or any User of any Subscription Services, Professional Services, Content, or the Site.

8.2 Indemnification Procedure. The indemnifications made hereunder are provided upon the following conditions: (i) the indemnifying party controls any settlement or any suit or claim indemnified hereunder; (ii) the indemnified party's prior written consent, which shall not be unreasonably withheld or delayed, must be obtained prior to any settlement by the indemnifying party that affects the Indemnified Party's rights and obligations; (iii) the indemnifying party is promptly informed of any third-party claim indemnified hereunder; and (iv) in the case of Client, Client ceases any alleged infringing activity upon actual or constructive notice of any claim or allegation of infringement.

9. TERM AND TERMINATION

9.1 Agreement Effective Date. This Agreement shall become effective the earlier of (i) the date of placement of the last-required signature, (ii) the date of first provision of Professional or Subscription Services, or (iii) the Subscription Start Date and shall continue in full force and effect until the expiration or termination of all Ordering Documents and attachments, unless otherwise terminated as provided hereunder.

9.2 Subscription Services Term. The initial term of Subscription Services commences on the Subscription Start Date specified in the Ordering Documents and continues for the length of time set forth therein. Subscription Services shall automatically renew at the end of a term (whether the initial term or a renewal term) unless either party gives written notice of termination at least sixty (60) days prior to the end of the term. The length of the renewal term shall be the same as that of the ending term. The initial term and renewal term(s) are collectively referred to as the **Subscription Services Term**.

9.3 Termination. Either party may terminate the Agreement including all Ordering Documents executed thereunder immediately upon written notice (i) in the event that the other party commits a non-remediable material breach of the Agreement, or if the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching party within thirty (30) days of being notified in writing of such breach; (ii) in the event of institution of bankruptcy, receivership, insolvency, reorganization, or other similar proceedings by or against the other party under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, if such proceedings have not been dismissed or discharged within thirty (30) calendar days after they are instituted; or (iii) in the event of insolvency, an assignment for the benefit of creditors, the admittance by either party of any involuntary debts as they mature, or the institution of any reorganization arrangement or other readjustment of debt plan of either party not involving the United States Bankruptcy Code.

9.4 Partial Termination. Where a party has rights to terminate, the non-breaching party may at its discretion either terminate the entire Agreement or the applicable Ordering Documents. Ordering Documents that are not terminated shall continue in full force and effect under the terms of this Agreement.

9.5 Effect of Termination. Following termination of this Agreement, upon written request by Company, Client shall certify that Client has returned or destroyed all copies of Subscription Services, Confidential Information, Intellectual Property of Company, and all materials or documents relating to Subscription Services in any format and residing on any media. Client acknowledges that its rights to use the same are relinquished. Company has no obligation to retain Client Data more than three (3) months following the expiration or termination of Subscription Services; however, in cases where Client is current on all fees under the Agreement, Company shall provide Client Data to Client, upon reasonable request and during Company's normal business hours, for no additional fee during these three (3) months, after which additional fees may be incurred.

Termination for any reason shall not excuse Client's obligation to pay in full all amounts due or that become due through such termination or that arise under section 10.19. Nor shall termination result in a refund of fees paid, except where such termination is due to Company's breach or as expressly provided otherwise in this Agreement.

Upon termination of a Professional Services engagement, all work product, including all drafts and works in progress of deliverables, shall be delivered to Client upon payment of all relevant fees. Upon its receipt of a notice of termination, Company shall cease, and shall cause any agent or subcontractor to cease, all work under the applicable Ordering Documents and minimize any additional costs or reimbursable expenses unless otherwise directed in writing by Client. Except as may be expressly set forth in the applicable Ordering Documents, Client shall pay Company's fees for services performed to the date of termination on a T&M basis together with any expenses reasonably incurred in connection therewith.

10. GENERAL PROVISIONS

10.1 Suspension. Company will be entitled to suspend any or all Subscription and Professional Services (i) immediately in the event Client is in breach of sections 2.1, 2.2, 2.3, or 2.4, above, or (ii) upon thirty (30) days' written notice to Client in the event Client is otherwise in breach of this Agreement. Company may impose an additional charge to reinstate service following such suspension.

10.2 Force Majeure. Delay or failure to perform any part of this Agreement (except for payment obligations), to the extent caused by events, occurrences, or causes beyond the control of the party seeking protection under this subsection, shall not constitute a breach of this Agreement, nor shall such delay or failure form the basis of any claim of loss, damage, or liability to the other party. Such events may include, but are not limited to, acts of God, epidemic, pandemic, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire, or explosions. Dates by which performance obligations are scheduled to be met will be extended for a period equal to the time lost due to any such delay.

10.3 Subcontractors. Company may subcontract or delegate Subscription and/or Professional Services to any third party without Client's prior written consent. Company shall remain responsible to Client for any services which it subcontracts or delegates.

10.4 Assignment. Company may assign this Agreement and any or all of its rights and obligations herein without Client's approval. Client may not assign or transfer this Agreement without Company's prior written consent.

10.5 Non-solicitation. During the term of this Agreement and for a period of one (1) year following its termination, neither party will solicit for employment directly or through other parties, without the other party's written permission, any individual employed by the other party, provided however that the solicitation or hiring of individuals responding to general public marketing and recruiting advertisements and events shall not be a violation of this provision; only active, targeted solicitation is prohibited.

10.6 Compliance. Company reserves the right to utilize Client Data to verify compliance with the terms of this Agreement. Company may monitor the usage, performance, and operation of Subscription Services using electronic, remote, or other means, without notice to Client.

10.7 Notices. Any notice required or permitted to be sent under this Agreement (except for invoices and notices related to payment of fees and price increases) shall be delivered by hand, by overnight courier, or by registered mail, return receipt requested, to the address of the parties first set forth in the Agreement signature page or to such other address of the parties designated in writing in accordance with this subsection.

10.8 Relationship. This Agreement shall not create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor.

10.9 Invalidity. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

10.10 No Waiver. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right.

10.11 Entire Agreement. This Agreement constitutes the parties' entire agreement relating to its subject matter. It cancels and supersedes all prior or contemporaneous oral or written communications, agreements, proposals, conditions, representations, warranties, or other communication between the parties relating to its subject matter. No modification of this Agreement will be binding unless in writing, signed by an authorized representative of each party. All pre-printed or standard terms of any of Client's purchase order or other business processing document shall have no effect.

10.12 No Third-Party Beneficiaries. This Agreement is for the benefit of the parties, their successors, and permitted assigns and does not confer any rights or benefits on any third party.

10.13 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to its principles of conflict of laws. Any dispute arising from or relating to this Agreement shall be litigated in the state or federal courts located in Wake County, North Carolina, to whose exclusive jurisdiction the parties hereby consent.

10.14 Headings and Drafting. The headings in this Agreement shall not be used to construe or interpret this Agreement. This Agreement shall not be construed in favor of or against a party based on the author of the document.

10.15 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an enforceable original of this Agreement, and the parties agree that facsimile, scanned copies of signatures, and electronic signatures shall be as effective and binding as original signatures.

10.16 Notice of U.S. Government Restricted Rights. If the Client hereunder is the U.S. Government, or if Subscription Services are acquired hereunder on behalf of the U.S. Government with U.S. Government funding, notice is hereby given that Subscription Services are commercial computer software and documentation developed exclusively at private expense and are furnished as follows: "U.S. GOVERNMENT RESTRICTED RIGHTS. Software delivered subject to the FAR 52.227-19. All use, duplication and disclosure of the Software by or on behalf of the U.S. Government shall be subject to this Agreement and the restrictions contained in subsection (c) of FAR 52.227-19, Commercial Computer Software - Restricted Rights (June 1987)."

10.17 OFAC Compliance. Client warrants that it is currently in compliance with and shall at all times during the term of this Agreement remain in compliance with, and cause its Users to comply with, the regulations of the OFAC of the Department of the Treasury and any statute, executive order, or other governmental action relating thereto.

10.18 Conflict of Documents. If there is a conflict between the provisions of this Agreement and any other documents concerning Subscription Services performed under

this Agreement, the order of precedence for purposes of resolution shall be: (i) this Agreement, (ii) any applicable Schedule identified in the Ordering Document(s), (iii) the Ordering Document(s), and (iv) any other document executed by the parties.

10.19 Survival. The following provisions will survive any termination or expiration of this Agreement or Ordering Documents: sections 4, 5, 6, 7, 8, 9.5, 10, all corresponding sections in the attached Schedule(s), and all those provisions that, whether expressly or implied by their nature, are intended to survive the rescission, termination, or expiration of this Agreement.

[END DOCUMENT]

SCHEDULE A – LEARNING

DEFINITIONS

- 1.1 **Administrative Site** means the main Site that is designated for administrative functions related to a group of Sub-Portals in an Enterprise System. The Administrative Site will have administrative capabilities over every Sub-Portal in the Enterprise System, including the ability to run reports, assign Content, and designate other Site Administrators.
- 1.2 **Enterprise System** means an Administrative Site linked to Sub-Portals.
- 1.3 **Client Organization** means an organization that has a corporate or contractual relationship with or is a member of Client. Client may specify Client Organizations that will receive Subscription Services through a Sub-Portal to this Agreement in an attached Exhibit. The addition of Sub-Portals shall require the execution of an amendment to this Agreement.
- 1.4 **Documentation** means the LMS User instructions, release notes, and online help files in the form generally made available by Company to its Clients, as updated from time to time by Company.
- 1.5 **LMS** means Company's proprietary learning management system and other software access provided in connection with Subscription Services, including the Documentation, modifications, enhancements, and new versions thereof.
- 1.6 **Subscription Services** means access to the LMS and Content through the Site for Client's internal training purposes.
- 1.7 **Sub-Portal** means an individual Site that is included in an Enterprise System that has a direct relationship with other Sub-Portals and the Administrative Site.
- 1.8 **Sub-Portal Administrator** means a User who has been authorized by Client or Client's Site Administrator to have access to all administrative functionality within the individual Sub-Portal.

2. CONFIDENTIALITY

2.1 **No Protected Health Information.** Client will not provide Company with access to any Protected Health Information (as defined in 45 CFR § 160.103, **PHI**). Company reserves the right not to accept access to Client Data that contains PHI. Client represents and warrants that: (i) Client has the right and authority necessary to provide the Client Data to Company as provided hereunder, (ii) Client will disclose to Company only such Client Data as Client is authorized to disclose to Company, and (iii) such disclosure will be provided at all times in compliance with all applicable law, including, to the extent applicable, with the Health Insurance Portability and Accountability Act of 1996, Public Law 104 191, and regulations promulgated thereunder by the U.S. Department of Health and Human Services, each as amended from time to time (**HIPAA**). The parties acknowledge that, under the terms of this Agreement, Company does not collect or possess PHI, and that Company shall not be required to execute a Business Associate Agreement or similar agreement. Client warrants and represents that it shall not upload in any of the Subscription Services or otherwise provide Company or its suppliers access to any such PHI.

3. OWNERSHIP

3.1 **Modified Content; Client Content.** Certain Users designated by Client may have authority to modify portions of the Content to meet certain of Client's needs or requirements (**Modified Content**) or to create unique content to meet certain of Client's needs or requirements (**Client Content**). In the case of Modified Content, Client shall own the specific modifications made by authorized Users (but not the underlying Content). In the case of Client Content, as between Company and Client, Client shall own the Client Content created or uploaded by authorized Users. Client shall be solely responsible for the accuracy, quality, integrity, and legality of data, Client Data, Modified Content, and Client Content uploaded in the LMS by Client.

3.2 **De-Identified Data.** Client acknowledges and agrees that Company has the unrestricted right to use Client's de-identified data for any purpose, in accordance with applicable law, including but not limited to quality assessment and improvements to the Subscription Services.

4. WARRANTIES, DISCLAIMERS, AND LIMITATION OF LIABILITY

4.1 **LMS Limited Warranty.** Company warrants that the LMS will operate in all material respects in conformity with the functional specifications described in the Documentation. If the LMS does not perform as warranted and there is a material failure of the LMS to conform to its functional specifications described in the Documentation that is reported by the Client to, and replicable by, Company (**Errors**), Company shall use commercially reasonable efforts to correct Errors. As Client's exclusive remedy for any claim under this warranty, Client shall promptly notify Company in writing of its claim. Provided that such claim is reasonably determined by Company to be Company's responsibility, Company shall, within thirty (30) days of its receipt of Client's written notice, (i) correct such Error; (ii) provide Client with a plan reasonably acceptable to Client for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from Company, then Company or Client may terminate the affected Subscription Services, and Client will be entitled to a refund of the pre-paid portion of the fees paid for the affected Subscription Services. The preceding warranty cure shall constitute Company's entire liability and Client's exclusive remedy for cure of the warranty set forth herein in this Section 4.1 of Schedule A. If Client elects not to terminate the Subscription Services, Client waives all rights for the applicable warranty cure set forth herein. Company is not responsible for any claimed breach of any warranty set forth in this section caused by: (i) modifications made to the LMS by anyone other than Company; (ii) Company's adherence to Client's specifications or instructions; (iii) Errors caused by or related to Internet connections; (iv) Client deviating from the LMS operating procedures described in the Documentation; (v) discrepancies that do not significantly impair or affect the operation of the Subscription Service; or (vi) any systems or programs not supplied by Company.

4.2 **Links.** The Subscription Services may include links to third-party Internet sites or other resources provided by third parties. Because Company has no control over such sites and resources, Client acknowledges and agrees that Company is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources. Client further acknowledges and agrees that Company shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by, or in connection with, use of or reliance on any such content, goods, or services available on or through any such third-party site or resource.



TEXAS

Health and Human Services

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 Textravel](#)” 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.