

**INTERAGENCY COOPERATION CONTRACT  
DEPARTMENT OF STATE HEALTH SERVICES  
CONTRACT NO. HHS00133560001**

THE DEPARTMENT OF STATE HEALTH SERVICES (“System Agency”) and THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT TYLER (“Contractor”), each a “Party” and collectively the “Parties,” enter into the following Interagency Cooperation Contract (the “Contract”) pursuant to the provisions of “The Interagency Cooperation Act,” Chapter 771 of the Texas Government Code.

**I. CONTRACT REPRESENTATIVES**

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

System Agency

Department of State Health Services

1100 W. 49th Street, MC 1990

Austin, Texas 78756

Contact Person: Simonetta McKenzie,  
CTCM

Telephone: 512-776-2739

Fax number: 512-776-7391

[Simonetta.Mckenzie@dshs.texas.gov](mailto:Simonetta.Mckenzie@dshs.texas.gov)

Agency Number: 537

Contractor

The University of Texas Health Science  
Center at Tyler

11937 US Highway 271

Tyler, Texas 75708

Contact Person: Daniel Deslatte, Senior Vice  
President, Business Affairs

Telephone: 903-877-5077

Fax number: 903-877-2811

[Daniel.Deslatte@uthct.edu](mailto:Daniel.Deslatte@uthct.edu)

Agency Number: 785

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

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

**III. CONTRACT PERIOD AND RENEWAL**

The Contract is effective on November 1, 2023, and terminates on August 31, 2025, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract.

**IV. AMENDMENT**

The Parties may modify this Contract only through the execution of a written amendment signed by both Parties, except for in the following instance:

- A. The Parties agree that any modifications that Contractor makes to Attachment A – Statement of Work and Attachment B – Budget, to the extent that those modifications do not reflect a change in the distribution of greater than 10% of the Contract value, do not require an amendment to this Contract. However, Contractor must request written approval from DSHS before implementing any changes.

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

The total amount of this Contract shall not exceed \$809,462.51 for Fiscal Year (FY) 2024 and will not exceed \$1,718,843.25 for the entire duration of the Contract. All expenditures under the Contract will be in accordance with Attachment B – Budget.

The total not-to-exceed amount includes the following:

- Total Federal Funds: \$71,760.00
- Total State Funds: \$737,702.51

**VI. FEDERAL AWARD INFORMATION**

Grantee’s Unique Entity Identifier is: NFHJD7V9MGN3

Federal funding under this Grant Agreement is a subaward under the following federal award.

Federal Award Identification Number (FAIN): NE11OE000001

- A. Assistance Listings Title, Number, and Dollar Amount: CDC's Collaboration with Academia to Strengthen Public Health, 93.967, NE11OE000001
- B. Federal Award Date: 11/29/2022
- C. Federal Award Period: 12/1/2022-11/30/2027
- D. Name of Federal Awarding Agency: Centers for Disease Control and Prevention
- E. Federal Award Project Description: Texas DSHS Strengthening Public Health Infrastructure, Workforce and Data Systems
- F. Awarding Official Contact Information: Lakita Reid, Grants Management Specialist; [wtl9@cdc.gov](mailto:wtl9@cdc.gov); (770) 488-2742
- G. Total Amount of Federal Funds Awarded to System Agency: \$187,971,495.00
- H. Amount of Funds Awarded to Grantee: \$71,760.00
- I. Identification of Whether the Award is for Research and Development: No

**VII. PRIVACY, SECURITY, AND BREACH NOTIFICATION**

- A. “HHS Confidential Information” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided or made available by one Party to this IAC to the other Party to this IAC electronically or through any other means that consists of or includes any or all of the following:
  - 1. Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information;
  - 2. Sensitive Personal Information as defined by Texas Business and Commerce Code Ch. 521;
  - 3. Federal Tax Information;
  - 4. Personally Identifiable Information;
  - 5. Social Security Administration Data, including, without limitation, Medicaid information;
  - 6. All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

- B. Any HHS Confidential Information received by either Party under this IAC may be disclosed only in accordance with applicable law. By signing this IAC, each Party certifies that it is, and intends to remain for the term of this IAC, in compliance with all applicable state and federal laws and regulations with respect to privacy, security, and breach notification, including without limitation the following:
1. The relevant portions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. Chapter 7, Subchapter XI, Part C;
  2. 42 CFR Part 2 and 45 CFR Parts 160 and 164;
  3. The relevant portions of The Social Security Act, 42 U.S.C. Chapter 7;
  4. The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a;
  5. Internal Revenue Code, Title 26 of the United States Code including IRS Publication 1075;
  6. OMB Memorandum 07-16;
  7. Texas Business and Commerce Code Chapter 521;
  8. Texas Health and Safety Code, Section 81.006 and Chapters 181 and 611;
  9. Texas Human Resources Code § 12.003;
  10. Texas Government Code, Chapter 552, as applicable;
  11. Title 3 of the Texas Occupations Code, as applicable;
  12. Constitutional and Common Law Privacy; and
  13. Any other applicable law controlling the release of information created or obtained in the course of providing the services described in this IAC.

Each Party to this IAC further certifies that the Party will comply with all amendments, regulations, and guidance relating to those laws, to the extent applicable.

- C. Each Party will ensure that each entity with which the Party contracts that performs services related to this IAC and who has access to HHS Confidential Information will sign a HIPAA-compliant agreement with the Party. Each Party must provide a copy of all such agreements to the other Party upon request.

## VIII. CERTIFICATIONS

The undersigned Parties certify that:

- A. The services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of state government;
- B. Each Party executing this Contract on its behalf has full power and authority to enter into this Contract;
- C. The proposed arrangements serve the interest of efficient and economical administration of state government; and

- D. The services contracted for are not required by Section 21, Article XVI of the Constitution of Texas to be supplied under a contract awarded to the lowest responsible bidder.

The Receiving Party further certifies that it has statutory authority to contract for the services described in this Contract under Texas Government Code Chapter 771, Texas Health and Safety Code Chapter 12 and Chapter 13.

The Performing Party further certifies that is has statutory authority to contract for the services described in this Contract under Institutions of Higher Education Contracting Authority, Texas Higher Education Code Chapter 65.

**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR DEPARTMENT OF STATE HEALTH SERVICES**

**CONTRACT NO. HHS001335600001**

**DEPARTMENT OF STATE HEALTH SERVICES**

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

DocuSigned by:  
**Kirk Cole** \_\_\_\_\_  
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Kirk Cole

Printed Name

Deputy Commissioner

Title

October 30, 2023

Date

DocuSigned by:  
*Daniel Deslatte* \_\_\_\_\_  
AB89D1B941594B5...

Daniel Deslatte

Printed Name

Senior Vice President, Business Affairs & COO

Title

October 29, 2023

Date

**THE FOLLOWING ATTACHMENTS TO SYSTEM AGENCY CONTRACT NO. HHS001335600001 ARE  
HEREBY INCORPORATED BY REFERENCE:**

**ATTACHMENT A – STATEMENT OF WORK**

**ATTACHMENT B – BUDGET**

**ATTACHMENT C – UNIFORM TERMS AND CONDITIONS – GRANT V.3.2, JULY 2022**

**ATTACHMENT D – UT SYSTEM SUPPLEMENTAL CONDITIONS**

**ATTACHMENT E – UT DATA USE AGREEMENT**

**ATTACHMENT E-1 – SECURITY AND PRIVACY INQUIRY (SPI)**

**ATTACHMENT F – FFATA**

**ATTACHMENT G – ASSURANCES**

## **ATTACHMENT A STATEMENT OF WORK**

### **I. PURPOSE**

The purpose of this Contract is for UTHealth (“Contractor”) to provide Physician Services and medical services to individuals receiving inpatient and outpatient care (“Hospital Patients”), at the Texas Center for Infectious Disease (TCID) (the “Hospital”). The Parties agree that UTHealth will be responsible for the provision of Physician Services to the Hospital for the purpose of providing medical care to Hospital patients.

### **II. UTHEALTH’S RESPONSIBILITIES**

To provide Physician Services and satisfy the objectives of this Contract, UTHealth shall meet the obligations, goals, and requirements as set forth within **ATTACHMENT A - STATEMENT OF WORK**; as well as **EXHIBIT A, UTHEALTH MEDICAL DIRECTOR CORE FUNCTIONS AND TASKS** and **EXHIBIT B, UTHEALTH MEDICAL PROVIDER CORE FUNCTIONS AND TASKS**.

#### **A. General Responsibilities**

1. UTHealth shall provide Physician Services to Hospital for the purpose of provision of medical care for Hospital patients.
  - a. “Physician Services” include but are not limited to professional recruitment of qualified medical providers, as defined in Section II, subsection C, Personnel Standards and Requirements, directing and overseeing the day to day medical operations at the Hospital, human resource support, establishing medical staffing plans to ensure medical provider availability 24 hours a day, providing medical services for Hospital Patients, engaging in activities supporting the Hospital’s maintenance of accreditation, and coordinating with the Hospital on quality improvement and management efforts.
2. UTHealth must ensure compliance with all responsibilities, obligations, and requirements under this Contract.
3. UTHealth must ensure Physician Services support the Hospital maintaining accreditation with the Joint Commission (“TJC”), or other accrediting body granted deeming authority by the Centers for Medicare and Medicaid Services (“CMS”), as a hospital throughout the term of this Contract. UTHealth shall ensure medical providers maintain compliance with all standards set forth by TJC, or other accrediting body, including conducting quarterly peer review of all contracted licensed medical providers, to evaluate the quality of work and ensure that prevailing standards of care are being met and regulatory agency requirements are being followed.
4. UTHealth must ensure compliance with all applicable federal and state laws, rules, regulations, standards, guidelines, and policies in effect on the beginning date of this Contract unless amended, including but not limited to, the Emergency Medical Treatment and Labor Act of 1986, and *Texas Health and Safety Code* Chapters 13, 81, 241 and 243.

5. UTHealth must ensure compliance with its policies and procedures related to the provision of Physician Services as well as all applicable state and federal statutes, and regulations, and Texas administrative rules governing the provision of inpatient care for the treatment of certain infectious diseases, including tuberculosis, outpatient care of Hansen's disease, any co-occurring conditions such as Human Immunodeficiency Virus, mental health and substance abuse, and employee health. Those rules include but are not limited to *Texas Administrative Code* Title 25, Part 1, Chapter 97, Subchapters A and F; Title 26, Part 1, Chapter 306, Subchapter A §306.1, 3, 5, 7, 9, 11, 13, 15, 17, and 19.
6. UTHealth must ensure detailed financial and human resource records are maintained throughout the life of this Contract that accounts for all expenditures of funding allocated by DSHS to UTHealth for the provision of Physician Services to the Hospital. Financial records are defined to include but are not limited to all detailed expenditures related to the provision of Physician Services, third-party payor billing and associated revenue. Human resource records are defined to include, but are not limited to professional license verification, training records, performance counseling and evaluation, peer review documentation, credentialing forms and documentation, and privileges delineation form.
7. UTHealth must designate a primary and secondary faculty member that is appointed to be UTHealth's liaison between the Hospital, DSHS and UTHealth within 30 days of the Contract effective date.
8. UTHealth must notify the Hospital of any medical provider staffing coverage changes that are due to vacancies or absence from work due to, but not limited to illness, leave of absence, etc. Coverage for medical provider staffing needs will be provided to TCID by UTHealth to ensure there is the equivalent of three medical providers providing medical services to ensure patient safety and business operations are met, as further specified in Section II, subsection D, Medical Provider Staffing.
9. UTHealth will maintain responsibility of oversight to assure that high quality care is provided to every patient, exercising the appropriate amount of supervision over a licensed healthcare provider, which will ensure the maintenance of quality medical care and patient safety following existing state and federal laws.
10. UTHealth (one medical provider designee) *and* the TCID Medical Director (or another healthcare provider designee) will collaboratively review complex patient cases with medical providers, specifically cases with Multi-Drug Resistant (MDR) and Extremely Drug Resistant (XDR) Tuberculosis.
11. UTHealth Faculty (one medical provider designee) *and* the TCID Medical Director (or another medical provider designee) will attend monthly meetings as determined by the Hospital or DSHS, including but not limited to DSHS Tuberculosis and Hansen's Disease Unit meetings, and TCID TB Case Conference and Utilization Review Meetings.

12. UTHealth must designate one medical provider to participate as a voting member in the Hospital's governing body meetings and subcommittees, as appropriate and requested by the Hospital or DSHS.

13. UTHealth will, in accordance with its current policies and procedures, collaborate with other educational institutions, to offer students, interns, or residents of those educational institutions the opportunity for placement with, and training at, the Hospital when feasible, and to the extent such placement will not interfere with Hospital Operations.

14. UTHealth will establish a process for coordinating and approving medical provider time off requests with the Hospital as part of the medical staffing plan.

#### **B. Telehealth and Telemedicine Medical Services**

1. UTHealth may use telehealth services (“a health service, other than a telemedicine medical service, delivered by a health professional licensed, certified, or otherwise entitled to practice in the state of Texas and acting within the scope of the health professional’s license, certification, or entitlement to a patient at a different physical location than the health professional using telecommunications or information technology,”) and telemedicine medical services (“a health care service delivered by a physician licensed in the state of Texas, or a health professional acting under the delegation and supervision of a physician licensed in the state of Texas, and acting within the scope of the physician’s or health professional’s license to a patient at a different physical location than the physician or health professional using telecommunications or information technology”) pursuant to *Texas Occupations Code* Chapter 111, and other applicable state and federal laws regarding payment sources, including *Texas Government Code* Chapter 531 regarding Medicaid reimbursement.
2. UTHealth, in providing telehealth and telemedicine services must comply with all of the following:
  - a. Patients, or a legally authorized representative of the patients, must give written consent that they agree to receive services via telehealth and telemedicine;
  - b. Telehealth and telemedicine services must comply with all Texas Medicaid requirements for telehealth, as well as the licensure/practice act requirements for each physician or health professional; and
  - c. Technology used to provide telehealth services must be compliant with HIPAA and FERPA, as may be applicable to the patient.

#### **C. Personnel Standards and Requirements**

1. UTHealth must maintain qualified medical providers, which includes physicians and, if approved by DSHS, physician extenders, which may include advanced practice nurse practitioners or physician assistants, in accordance with all TJC, Texas statutory, and Texas administrative rule requirements, and established industry standards for inpatient hospital and outpatient treatment and care. This requirement includes, but is not limited to credentialing of medical providers to obtain, verify and organize information that documents a medical provider’s training, qualifications and work history to ensure the provider has the skills and appropriate licensure to properly care for patients, Ongoing



Professional Practice Evaluation (OPPE) evaluations for identifying trends and issues that could adversely affect patient outcomes, and Focused Professional Practice Evaluation (FPPE) to provide a snapshot evaluation of privilege specific competencies or when a medical provider's ability to provide safe, high-quality patient care is questioned.

2. UTHealth is responsible for hiring, directing, supervising, terminating, and compensating the medical providers performing services under this Contract. UTHealth shall coordinate with the Hospital's Administrator on the development of job descriptions for positions related to the services provided under this Contract. UTHealth shall have no claim against DSHS 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.
3. UTHealth must use funding allocated by DSHS to only pay medical provider personnel hourly rates, salaries, or benefits based on the actual percentage of time their job duties are related to provision of Physician Services at the Hospital, if medical provider personnel duties are split between the Hospital, UTHealth, or any other UTHealth facility, department, or position, which must be evidenced by weekly time and attendance records that detail the percentage of time Hospital personnel split between the Hospital and non-Hospital related duties.
4. UTHealth must conduct criminal background checks on all medical provider personnel, including but not limited to, clinical faculty, medical fellowships, medical residents, medical students, or interns whose primary duty station is the Hospital. All background checks/clearances must be conducted in accordance with applicable state and federal laws, including *Texas Government Code §411.110*. If the results of any criminal background check show an individual has been convicted of or received deferred adjudication for any of the criminal offenses listed in *Texas Health and Safety Code §250.006* or other applicable laws, that individual will be barred from the Hospital premises, and from participating in any activities or services related to this Contract.
5. UTHealth must provide written notification to DSHS and TCID of changes in executive or clinical leadership positions that are involved with this Contract within 30 days after the change.

#### **D. Medical Provider Staffing**

1. UTHealth will provide the equivalent of three (3) full-time TCID Medical Providers, with (1) of the three TCID medical providers hired as the on-site TCID Medical Director on the effective date of the Contract.
  - a. In selecting Medical Providers to devote primary or major attention to DSHS program activities or TCID, UTHealth will involve and secure the advice of designated DSHS and TCID representatives. UTHealth will notify and provide a copy of this Contract to all providers employed to ensure providers understand UTHealth responsibilities under the Contract.
  - b. UTHealth medical providers credentialed to practice at TCID must take part in orientation and education programs conducted by the Hospital. They shall perform

such other functions within TCID as required by TCID to aid the Hospital in compliance with requirements of CMS, TJC or other accrediting body. As members of the TCID Medical Staff, such providers shall assist in the training and development of TCID employees and contractors.

- c. UTHealth will bill third party payors for all Physician Services based upon records generated by the medical providers at TCID. All revenue from these services will be retained by UTHealth, unless directed otherwise by mutual agreement of the Parties. Medical Providers will submit medical records to be maintained by TCID that adequately and accurately reflect the type and quality of care rendered, the instructions given to each patient, and documentation of physician charges. TCID agrees to transmit all necessary billing information to UTHealth within a reasonable time not to exceed thirty (30) business days from the billable service.
2. UTHealth will ensure the TCID Medical Director will perform general and infectious disease-specific medical care and engage in activities related to TCID's core functions. The TCID Medical Director will:
    - a. Take part in administrative decision-making and recommend and approve policies and procedures.
    - b. Organize and coordinate Physician Services and services provided by other professionals as they relate to patient care.
    - c. Take part in the process to ensure the appropriateness and quality of medical care and medically related care.
    - d. Take part in the development and delivery of educational programs.
    - e. Take part in the surveillance and promotion of the health, safety, and welfare of employees.
    - f. Help communicate the acute care facility's mission to the community.
    - g. Participate in establishing policies and procedures for assuring that the rights of individuals (residents, staff members, and community members) are respected.
    - h. Acquire, maintain, and apply knowledge of social, regulatory, political, and economic factors that relate to patient care services.
    - i. Support and promote person-directed care, which supports the involvement of patients or others involved in a patient's care, in directing their treatment in conjunction with the treatment team.

The functions and tasks associated with each as found in **Exhibit A** of this Contract will be used to assess annual performance of the TCID medical director by UTHealth and TCID.

3. UTHealth Chair of Medicine shall ensure the following:
  - a. UTHealth Chair of Medicine will collaborate with TCID Hospital Administrator or designee and annually establish strategic goals and a portfolio of continuing education for the TCID Medical Director and TCID Medical Providers.

- b. UTHealth Chair of Medicine will conduct annual and OPPE evaluations for the Medical Director and Medical Providers to ensure deliverables of the Contract are met, TCID Core Functions are completed, strategic goals are understood and followed, and continuing education is completed.
    - i. FPPE shall be completed after 6 months for a new hire for a TCID Medical Director or TCID Medical Provider.
    - ii. OPPE shall be completed twice a year and reviewed for the TCID Medical Director. In the absence of a TCID Medical Director, the UTHealth Chair of Medicine will be responsible for the completion of OPPE for the TCID Medical Providers. OPPE will be provided to the TCID Staff Services Officer within 90 days (about 3 months) after the due date for TCID Hospital Administrator or designee to review.
    - iii. If annual or OPPE evaluations are below performance standards, TCID Hospital Administrator or designee and UTHealth Chair of Medicine will establish a plan of correction no later than 45 days after annual evaluation.
  - c. UTHealth Chair of Medicine will assist the TCID Medical Director to ensure that the TCID Medical Providers are following TCID Medical Staff Bylaws and/or UTHealth Medical Staff Bylaws.
  - d. UTHealth Chair of Medicine will meet quarterly or as needed with TCID Hospital Administrator or designee.
4. All UTHealth medical providers employed through this Contract, including the TCID medical director must:
- a. Perform general and infectious-disease specific medical care for inpatient and outpatient needs.
  - b. Actively support administrative decision-making and recommendations of approved policies and procedures.
  - c. Assist in organizing and coordinating Physician Services and services provided by other professionals as they relate to patient care.
  - d. Take part in the performance improvement process to ensure the appropriateness and quality of medical care and medically related care.
  - e. Take part in conducting staff educational programs.
  - f. Take part in the surveillance and promotion of the health, safety, and welfare of employees.
  - g. Help communicate the acute care facility's mission to the community.
  - h. Take part in establishing policies and procedures for assuring that the rights of individuals (residents, staff members, and community members) are respected.
  - i. Acquire, maintain, and apply knowledge of social, regulatory, political, and economic factors that relate to patient care services.
  - j. Support and promote patient-directed care.

The functions and tasks associated with each as found in **Exhibit B** of this Contract will be used to assess annual performance of the TCID medical providers by UTHealth

and TCID.

### **III. DSHS RESPONSIBILITIES**

- A.** DSHS, through TCID, is authorized to separately contract with individual providers, associates, or groups to perform either part-time or specialized roles in the provision of services at TCID. Such individuals shall be subject to the rules, regulations, and policies for practice at TCID and will be subject to the supervision of UTHealth's TCID Medical Director regarding clinical standards and practices for clinical care and services. Any medical provider who is granted clinical privileges at TCID under contract shall be deemed to have accepted those privileges. Any such medical provider shall be deemed to have relinquished all clinical privileges at TCID upon termination of such contractual relationship for any reason.
- B.** TCID will supply facilities, office space and furnishings, and such equipment as is required for the proper conduct of clinical practice and services for TCID patients, subject to proper and adequate documentation and to DSHS' financial and programmatic circumstances. TCID will maintain said equipment in good order and repair, and shall furnish utilities, environmental services, maintenance, and other services as may be required by the Medical Staff, subject to DSHS' financial and programmatic circumstances. UTHealth shall notify DSHS immediately and in writing of facts related to any unsafe premises, unsafe conditions, unsatisfactory facility service, or equipment malfunctions that need to be repaired or remedied. UTHealth agrees to notify DSHS of any such condition and allow a reasonable time for the repair or remedy prior to pursuing a complaint with an outside oversight authority unless law requires such notice.
- C.** All non-physician personnel required for proper operation of TCID will be employed or assigned by TCID. The Parties further agree that any conflict that may arise in matters related to institutional or hospital policy and administration will be resolved in favor of policies established by Health & Human Services Commission (HHSC), DSHS, or TCID. However, UTHealth may notify the designated DSHS or TCID representative of quality, competence, efficiency, or behavior issues related to TCID personnel. TCID will solicit the advice of UTHealth regarding the appointment of the TCID Hospital Administrator. All employee policies including salaries, wages, taxes, insurance, workers' compensation coverage, and expenses of any kind or character incident to the employment of personnel not eligible for medical staff membership and other benefits shall be the responsibility and obligation of HHSC, DSHS, and TCID.
- D.** TCID will supply support services for the directors and Medical Providers for TCID-based and other designated services in at least the following:
1. Patient case management.
  2. Patient care conferencing, including review of all TCID admissions, transfers, discharges, complications, other designated morbidity, and mortality.
  3. Communications for admissions, transfer, and discharge.
  4. Performance improvement.
  5. Risk management.
  6. Infection control.
  7. Utilization review.

8. Electronic health record management support.
9. Radiographic digital communication.
10. Audio/video teleconferencing.
11. Administrative assistance.
12. Quarantine and other patient-related legal assistance.
13. Consultant scheduling and documentation for reimbursement.
14. Meeting/minutes assistance.
15. Policies/procedures development and distribution.
16. Research assistance.
17. Computer-assisted and other library services through DSHS' library and internet.
18. Transportation and patient care assistance for inter- and intra-city patient movement for consultations, procedures, and inter-hospital transfer.
19. Orientation and continuing education.
20. Coordination of referrals and consultations pursuant to the direction of the Medical Director, and
21. Diagnostic and therapeutic services.

#### **IV. MUTUAL RESPONSIBILITIES**

- A. All TCID and UTHealth personnel and contractors shall recognize, as part of each individual's agreement with his/her institution, the expectation to fully collaborate and cooperate in sharing information about policies, procedures, protocols, competency requirements, and training to enhance quality of care and services provided to inpatients in the Hospital.
- B. All such personnel and contractors further agree to share relevant program knowledge with one another and to fully coordinate any suggestions for improvements about policies, procedures, protocols, competency requirements, and training following the respective institutional procedures of each Party.
- C. All such personnel and contractors shall work collaboratively and achieve the highest level of coordination and cooperation in fulfillment of this agreement, and each such individual shall be subject to sanction, including adverse personnel action for contract violation, for failure to do so.

#### **V. PERFORMANCE MEASURES**

DSHS will monitor the Contractor's performance of the requirements in, and compliance with, the Contract's terms and conditions. The Contractor's performance of the following non-exhaustive list shall be monitored by DSHS:

- A. UTHealth medical providers will achieve 100% performance for creating original (non-replicated) weekly progress notes per patient and entered in the electronic medical record.
- B. UTHealth medical providers will achieve 100% performance for completing the patient history and physical in the electronic medical record no later than twenty-four (24) hours after admission.
- C. UTHealth medical providers will achieve 100% performance goal for resident notes reviewed and co-signed in the electronic medical record.
- D. UTHealth medical providers will achieve 90% or higher performance goal for all orders entered in the electronic health record by the physicians with less than 5% entered by

- phone, less than 5% entered verbally.
- E. UTHHealth medical providers will achieve 100% performance for completing the patient discharge summary in the electronic medical record no later than seven (7) days after the date of discharge.
  - F. The UTHHealth Psychiatric provider will achieve 100% performance for completing the patient session reports (assessments) within seven (7) business days or sooner from the date each service was provided.

**EXHIBIT A**  
**UT Health Medical Director Core Functions and Tasks**

EXHIBIT A: UTHealth Medical Director Core Functions and Tasks			
FUNCTION	TASK	REFERENCE: SECTION II, UTHealth's RESPONSIBILITIES, OF THIS STATEMENT OF WORK	MET/NOT MET
ADMINISTRATIVE	1	ATTENDS WEEKLY SENIOR LEADERSHIP MEETINGS; WEEKLY TB CASE CONFERENCE; MONTHLY EXECUTIVE COMMITTEE MEETING	
	2	ATTENDS THE MONTHLY EXECUTIVE POLICY COMMITTEE MEETING AND QUARTERLY MEDICAL EXECUTIVE SERVICE COMMITTEE (MESC)	
	3	ATTENDS THE QUARTERLY MEDICATION AND FALLS COMMITTEE; MONTHLY INFECTION CONTROL MEETING	
	4	COMPLETES ASSIGNED INTRACYCLE MONITORING ELEMENTS OF PERFORMANCE REVIEWS (ICM (INTRACYCLE MONITORING)) AND ACTIVELY PARTICIPANTS IN JOINT COMMISSION SURVEYS OR CENTERS FOR MEDICARE & MEDICAID SERVICES REVIEWS	
	5	PERFORMS WEEKLY TURN OVER HUDDLES AND SUPPLIES SIGN IN SHEETS QUARTERLY	
	6	ATTENDS WEEKLY HOSPITAL OPERATIONS MEETING	
PROFESSIONAL SERVICES	1	ACTIVELY PARTICIPANTS IN JOINT COMMISSION SURVEYS; CENTERS FOR MEDICARE & MEDICAID SERVICES REVIEWS; ATTENDS QUARTERLY MESC, AND BIENNIAL GOVERNING BODY	
	2	ATTENDS WEEKLY SENIOR LEADERSHIP MEETINGS AND AD HOC CONTRACT SERVICES MEETINGS AS DIRECTED BY DSHS/CONTRACT SERVICES	
	3	FOLLOWS TCID MEDICAL STAFFING PLAN	



	<b>4</b>	COMPLETES DAILY ROUNDS AND ENSURES TCID MEDICAL PRACTITIONER PROVIDERS COMPLETES DAILY ROUNDS AS OUTLINED IN THE MEDICAL STAFFING PLAN	
	<b>5</b>	ATTENDS MONTHLY EXECUTIVE POLICY COMMITTEE MEETING; QUARTERLY MEDICAL EXECUTIVE SERVICE COMMITTEE (MESC)	
	<b>6</b>	ATTENDS WEEKLY HOSPITAL OPERATIONS MEETINGS; ATTENDS QUARTERLY MESC MEETINGS	
	<b>7</b>	ATTENDS THE MONTHLY EXECUTIVE POLICY COMMITTEE MEETING AND COMPLETES ASSIGNED POLICIES BY ASSIGNED DUE DATES	
QUALITY ASSURANCE	<b>1</b>	ATTENDS WEEKLY TB CASE CONFERENCE; ATTENDS MONTHLY INFECTION CONTROL MEETING (INCLUDING AD HOC MEETINGS DURING PANDEMICS)	
	<b>2</b>	ANNUAL EVALUATIONS TURNED IN TO STAFF SERVICES OFFICER 30 DAYS (ABOUT 4 AND A HALF WEEKS) AFTER DUE DATE	
	<b>3</b>	ATTENDS QUARTERLY MESC MEETINGS; TAKES PART IN QUALITY ASSURANCE AND PERFORMANCE IMPROVEMENT PROJECTS (QAPI) AS ASSIGNED BY THE QUALITY MANAGEMENT DEPARTMENT	
	<b>4</b>	ATTENDS THE MONTHLY EXECUTIVE POLICY COMMITTEE MEETING AND COMPLETES ASSIGNED POLICIES BY ASSIGNED DUE DATES. INCORPORATES JOINT COMMISSION ELEMENTS OF PERFORMANCE INTO POLICY REVISIONS OR CREATIONS	

	5	ATTENDS QUARTERLY MEDICAL EXECUTIVE SERVICE COMMITTEE (MESC); AD HOC DEATH REVIEWS, AD HOC ROOT CAUSE ANALYSIS; BIENNIAL GOVERNING BODY; QUARTERLY MEDICATION AND FALLS COMMITTEE	
	6	IDENTIFIES POSSIBLE RESEARCH AND WORKS WITH INSTITUTIONAL REVIEW BOARD (IRB) APPROVAL. REPORTS UPDATES IN QUARTERLY MESC MEETINGS, WEDNESDAY WEEKLY SENIOR LEADERSHIP MEETINGS, AND BIENNIAL GOVERNING BODY	
	7	COMPLETES ONE RESEARCH WITH PEER REVIEWED PUBLICATION EVERY 5 YEARS ON THE INITIATION OF THE CONTRACT.	
	1	ATTENDS WORLD TB EVENTS AND PRESENTS INFORMATION ON TCID INITIATIVES TO THE COMMUNITY AND NATIONAL ORGANIZATIONS. ASSISTS EDUCATION DEPARTMENT WITH ANNUAL INFECTION CONTROL TRAINING	
EDUCATION	2	COMPLETES PEER REVIEW LITERATURE REVIEWS AND SHARES ARTICLES OF INTEREST IN THE MONTHLY EXECUTIVE STAFF COMMITTEE	
	3	SUPPLIES A LIST OF STUDENTS DURING ROTATIONS AT THE MONTHLY EXECUTIVE STAFF COMMITTEE MEETING AND BIENNIAL GOVERNING BODY	
EMPLOYEE HEALTH	1	UPDATES EMPLOYEE SAFETY CONCERNS/INFECTION COMMUNITY PROTOCOLS MONTHLY EXECUTIVE STAFF COMMITTEE MEETING	
	2	ATTENDS RISK MANAGEMENT MEETINGS AS NEEDED TO ADDRESS EMPLOYEE AND PATIENT SAFETY CONCERNS	

	<b>3</b>	FOLLOWS TCID CODE OF CONDUCT OUTLINED IN THE MISSION STATEMENT AND ADHERES TO THE CONTRACT AGREEMENT AS OUTLINED	
COMMUNITY	<b>1</b>	ATTENDS 50% COMMUNITY SPONSORED EVENTS AS OUTLINED ANNUALLY BY COMMUNITY RELATIONS DEPARTMENT AND NATIONAL TUBERCULOSIS CONTROLLERS' ASSOCIATION. WILL COLLABORATE WITH THE TCID HOSPITAL ADMINISTRATOR ON WHICH EVENTS TO ATTEND	
	<b>2</b>	ATTENDS THE MONTHLY DSHS TB AND HANSEN'S DISEASE UNIT; AND MONTHLY DSHS INFECTIOUS DISEASE CONTROL UNIT (IDCU) MEETINGS	
	<b>3</b>	ADVISES TCID HOSPITAL ADMINISTRATOR AS NEEDED	
	<b>4</b>	COMPLETES AND UPDATES IDT/MEDICAL CARE PLANS MONTHLY	
RIGHTS OF INDIVIDUALS	<b>1</b>	SATISFACTION SURVEY FROM PATIENT	
	<b>2</b>	ATTENDS WEEKLY TB CASE CONFERENCES	
	<b>3</b>	HISTORY AND PHYSICAL REVIEW AS OUTLINED IN THE PROVISION OF CARE AND RECORD OF CARE JOINT COMMISSION ELEMENTS OF PERFORMANCE	
	<b>4</b>	ATTENDS AD HOC ETHICS COMMITTEE, ROOT CAUSE ANALYSIS AND DEATH REVIEWS	
SOCIAL, REGULATORY, POLITICAL, AND ECONOMIC FACTORS	<b>1</b>	ATTENDS WEEKLY SENIOR LEADERSHIP MEETINGS	
	<b>2</b>	ATTENDS BIENNIAL GOVERNING BODY PROVIDES OUTLINE UPDATES AS DEFINED BY QUALITY MANAGEMENT DEPARTMENT	
	<b>3</b>	ICM JOINT COMMISSION SURVEYS OR CMS REVIEWS	

Person-Directed Care	<b>1</b>	ATTENDS WEEKLY SENIOR LEADERSHIP MEETINGS; ATTENDS MONTHLY HEALTH INFORMATION MANAGEMENT COMMITTEE MEETINGS	
	<b>2</b>	ATTENDS WEEKLY TB CASE CONFERENCE; THE MONTHLY DSHS TB AND HANSEN'S DISEASE UNIT AND MONTHLY DSHS INFECTIOUS DISEASE CONTROL UNIT (IDCU) MEETINGS; ATTENDS AD HOC RISK MANAGEMENT MEETINGS; COMPLETES WEEKLY TURN OVER HUDDLES AS OUTLINED IN THE MEDICAL STAFFING SECTION OF THIS CONTRACT	

**EXHIBIT B**  
**UTHealth Medical Provider Core Functions and Tasks**

EXHIBIT B: UTHealth MEDICAL PROVIDER CORE FUNCTIONS AND TASKS			
FUNCTION	TASK	REFERENCE: SECTION III, DSHS RESPONSIBILITIES, OF THIS STATEMENT OF WORK	MET/ NOT MET
ADMINISTRATIVE	1	ATTENDS WEEKLY TB CASE CONFERENCE AND READS UPDATED TCID POLICIES	
	2	ATTENDS THE MONTHLY EXECUTIVE POLICY COMMITTEE MEETING AND QUARTERLY MEDICAL EXECUTIVE SERVICE COMMITTEE (MESC)	
PROFESSIONAL SERVICES	1	ATTENDS WEEKLY TB CASE CONFERENCES; ACTIVELY PARTICIPANTS IN JOINT COMMISSION SURVEYS; CENTERS FOR MEDICARE & MEDICAID SERVICES REVIEWS; ATTENDS QUARTERLY MESC; COMPLETES/UPDATES IDT/MEDICAL CARE PLAN MONTHLY	
	2	PATIENT CARE DOCUMENTATION COMPLETED TO MEET CMS/JOINT COMMISSION STANDARDS	
	2A	TB400BS UPDATED WITHIN ONE (1) WEEK OF THE QUARTERLY REVIEW REQUIREMENT FOR SUBMISSION TO THE HEALTH DISTRICTS	
	2B	ORIGINAL (NON-REPLICATED) NOTES COMPLETED WITHIN TWENTY-FOUR (24) HOURS AND ENTERED IN THE ELECTRONIC HEALTH RECORD	
	2C	DISCHARGE SUMMARY NEEDS TO BE COMPLETED IN THE ELECTRONIC MEDICAL RECORD NO LATER THAN SEVEN (7) DAYS AFTER THE DATE OF DISCHARGE AND SHALL INCLUDE: <ol style="list-style-type: none"> <li>1. REASON FOR INPATIENT ADMISSION;</li> <li>2. MAJOR PROCEDURES AND TESTS PERFORMED DURING INPATIENT STAY AND SUMMARY OF RESULTS;</li> <li>3. PRINCIPAL DIAGNOSIS AT DISCHARGE;</li> <li>4. CURRENT MEDICATION LIST;</li> <li>5. STUDIES PENDING AT DISCHARGE;</li> <li>6. PATIENT INSTRUCTIONS;</li> <li>7. ADVANCE DIRECTIVES.</li> </ol>	
	2D	HISTORY AND PHYSICAL COMPLETED IN THE ELECTRONIC MEDICAL RECORD WITHIN TWENTY-FOUR (24) HOURS AFTER ADMISSION.	
	3	DOCUMENTATION MEETS ADEQUATE TCID QUALITY MEASURES	
	3A	WILL ACHIEVE 90% OR HIGHER PERFORMANCE GOAL FOR RESIDENT NOTES REVIEWED AND CO-SIGNED.	
	3B	WILL ACHIEVE 90% OR HIGHER PERFORMANCE GOAL FOR ALL ORDERS ENTERED IN AVATAR BY PHYSICIANS WITH LESS THAN 5% ENTERED BY PHONE, LESS THAN 5% ENTERED VERBALLY.	
	4	ATTENDS WEEKLY UTILIZATION REVIEW MEETING; ATTENDS WEEKLY WAITING LIST ADMISSION AND DISCHARGE MEETING	
	5	COMPLETES DAILY ROUNDS AS OUTLINED IN THE MEDICAL STAFFING PLAN; AD HOC WEEKLY ROUNDS IDENTIFIED IN THE WEEKLY TB CASE CONFERENCE IDENTIFIED PATIENTS	
	6	ATTENDS WEEKLY TB CASE CONFERENCE AND AD HOC RISK MANAGEMENT MEETINGS	
QUALITY ASSURANCE	1	ATTENDS QUARTERLY MESC MEETINGS; TAKES PART IN QUALITY ASSURANCE AND PERFORMANCE IMPROVEMENT PROJECTS (QAPI) AS ASSIGNED BY THE QUALITY MANAGEMENT DEPARTMENT.	
	2	IDENTIFIES POSSIBLE RESEARCH AND WORKS WITH INSTITUTIONAL REVIEW BOARD (IRB) APPROVAL. REPORTS UPDATES IN QUARTERLY MESC MEETINGS, WEDNESDAY WEEKLY SENIOR LEADERSHIP MEETINGS, AND BIENNIAL GOVERNING BODY.	
	3	ATTENDS WEEKLY WAIT LIST ADMISSION AND DISCHARGE MEETING	
	4	CONDUCTS TWO LUNCH AND LEARN FOR STAFF OF TCID AND DSHS	

	5	ATTENDS QUARTERLY MEDICAL EXECUTIVE SERVICE COMMITTEE (MESC); AD HOC DEATH REVIEWS, AD HOC ROOT CAUSE ANALYSIS; BIENNIAL GOVERNING BODY; QUARTERLY MEDICATION AND FALLS COMMITTEE	
	6	ATTENDS QUARTERLY MESC MEETINGS; TAKES PART IN QUALITY ASSURANCE AND PERFORMANCE IMPROVEMENT PROJECTS (QAPI) AS ASSIGNED BY THE QUALITY MANAGEMENT DEPARTMENT.	
EDUCATION	1	COMPLETES 100 CREDIT HOURS OF CONTINUING MEDICAL EDUCATION	
	2	CONDUCTS TWO LUNCH AND LEARN FOR STAFF OF TCID, DSHS, RHLO	
	3	COMPLETES ONE RESEARCH WITH PEER REVIEWED PUBLICATION EVERY 5 YEARS AS A TEAM ON THE INITIATION OF THE CONTRACT.	
	4	SUPPLIES A LIST OF STUDENTS DURING ROTATIONS TO THE MEDICAL DIRECTOR TO PRESENT AT THE MONTHLY EXECUTIVE STAFF COMMITTEE MEETING AND BIENNIAL GOVERNING BODY.	
	5	PERFORMS PROFESSIONAL DEVELOPMENT WITH ROTATIONAL HEALTHCARE PROVIDERS WITH EXPECTED PRESENTATION IN THE TCID ALL-STAFF MEETING WITH A CASE STUDY FROM THE PATIENT POPULATION.	
EMPLOYEE HEALTH	1	SUPPLIES INPUT DURING RISK MANAGEMENT MEETINGS AS NEEDED TO ADDRESS EMPLOYEE AND PATIENT SAFETY CONCERNS	
	2	UPDATES EMPLOYEE SAFETY CONCERNS/INFECTION COMMUNITY PROTOCOLS MONTHLY EXECUTIVE STAFF COMMITTEE MEETING	
COMMUNITY	1	SUPPLIES A LIST OF STUDENTS DURING ROTATIONS TO THE MEDICAL DIRECTOR TO PRESENT AT THE MONTHLY EXECUTIVE STAFF COMMITTEE MEETING AND BIENNIAL GOVERNING BODY	
	2	SEEKS OPPORTUNITIES TO ATTEND ONE CONFERENCE WITH ACUTE CARE OR INFECTIOUS DISEASE PROVIDERS PER YEAR.	
RIGHTS OF INDIVIDUALS	1	HISTORY AND PHYSICAL REVIEW AS OUTLINED IN THE PROVISION OF CARE AND RECORD OF CARE JOINT COMMISSION ELEMENTS OF PERFORMANCE	
	2	ATTENDS AD HOC RISK MANAGEMENT MEETINGS AS DIRECTED BY THE ON-SITE TCID MEDICAL DIRECTOR AND FOLLOWS SAFETY PLANS	
	3	ATTENDS WEEKLY TB CASE CONFERENCES AND ATTENDS AD HOC ETHICS MEETINGS AS DIRECTED BY THE ON-SITE TCID MEDICAL DIRECTOR	
SOCIAL, REGULATORY, POLITICAL, AND ECONOMIC FACTORS	1	ASSISTS WITH ICM JOINT COMMISSION SURVEYS OR CENTERS FOR MEDICARE & MEDICAID SERVICES REVIEWS; ATTENDS UTILIZATION REVIEW MEETINGS	
	2	ATTENDS UTILIZATION REVIEW MEETINGS AND REVIEWS CONSULTS/REFERRALS AD HOC	
Person-Directed Care	1	REVIEWS PATIENT SATISFACTION SURVEY.	
	2	FOLLOWS TCID CODE OF CONDUCT OUTLINED IN THE MISSION STATEMENT AND ADHERES TO THE CONTRACT AGREEMENT AS OUTLINED	
	3	ASSISTS WITH ICM JOINT COMMISSION SURVEYS OR CENTERS FOR MEDICARE & MEDICAID SERVICES REVIEWS	
	4	COMPLETES/UPDATES MONTHLY THE MASTER TREATMENT PLAN/IDT CARE PLAN	
	5	WILL ACHIEVE 90% OR HIGHER PERFORMANCE GOAL FOR ALL ORDERS ENTERED IN AVATAR BY PHYSICIANS WITH LESS THAN 5% ENTERED BY PHONE, LESS THAN 5% ENTERED VERBALLY.	

	<b>6</b>	ATTENDS THE WEEKLY WAITLIST ADMISSION AND DISCHARGE MEETING; ATTENDS WEEKLY TB CASE CONFERENCE	
	<b>7</b>	PATIENT CARE DOCUMENTATION COMPLETED TO MEET CMS/JOINT COMMISSION STANDARDS: ORIGINAL (NON-REPLICATED) NOTES COMPLETED WITHIN TWENTY-FOUR (24) HOURS AND ENTERED IN THE ELECTRONIC HEALTH RECORD	



## ATTACHMENT B BUDGET

### I. BUDGET

The total amount of this Contract shall not exceed \$809,462.51 for Fiscal Year (FY) 2024 and will not exceed \$1,718,843.25 for the entire duration of the Contract.

DSHS will reimburse Contractor for services provided, excluding Psychiatric Services invoiced under Section II below, and invoiced in accordance with the terms and conditions of this Contract as follows:

**Invoice Due Dates.** Contractor will invoice DSHS on a quarterly basis as follows:

1. Quarter 1: December 15, 2023 in the amount of \$147,917.06\*;  
\*September and October were paid through the previous FY23 contract extension (Contract No. HHS000741600001) therefore reducing FY24 contract amount.
2. Quarter 2: March 15, 2024 in the amount of \$220,515.14;
3. Quarter 3: June 15, 2024 in the amount of \$220,515.14; and
4. Quarter 4: September 15, 2024 in the amount of \$220,515.14.

### II. CONTRACT BUDGET

DSHS TCID - UT Tyler Contract Revised Budget as of October 13, 2023				
		Year 1	Year 2	
Position title	FTE %	Annualized Base Salary	Annualized Base Salary	
TCID Medical Director	100.0%	\$237,118.00	\$244,231.54	
TCID Physician	100.0%	\$227,118.00	\$233,931.54	
TCID Physician/Physician Pool	100.0%	\$227,118.00	\$233,931.54	
UT TB Program Director	15.00%	\$36,057.60	\$37,139.33	
<b>Sub-total</b>		\$727,411.60	\$749,233.95	
Benefits		\$145,482.32	\$149,846.79	
Travel		\$4,583.33	\$5,150.00	
Other Maintenance & Operations (M&O)		\$4,583.33	\$5,150.00	
<b>Sub-total</b>		\$882,060.59	\$909,380.74	
Funds Re-allocated to FY23 Contract Extension		-\$72,598.08		
<b>Total</b>		<b>\$809,462.51</b>	<b>\$909,380.74</b>	

### III. INVOICE AND PAYMENT

- A. Contractor shall request payment using the State of Texas Purchase Voucher (Form B-13),

which can be downloaded at <http://www.dshs.state.tx.us/grants/forms.shtm>. When required by this Contract, Contractor shall also submit supporting documentation for reimbursement of the services/deliverables.

**B. Invoice Content.** Contractor will submit invoices that include:

1. Name, address, and telephone number of Contractor, and the address to which payments are to be sent, if different from the Contractor's address;
2. DSHS Contract Number;
3. Identification of service(s) or goods provided;
4. Dates services or goods were delivered;
5. Total invoice amount; and
6. Any additional payment information that is required by the Contract or DSHS.

**C. Invoice Address.** Contractor shall submit all invoices with supporting documentation to the Claims Processing Unit at:

Texas Center for Infectious Disease  
Finance Department  
2303 S.E. Military Drive  
San Antonio, TX 78223  
EMAIL: [GRTCIDFiscalServices@dshs.texas.gov](mailto:GRTCIDFiscalServices@dshs.texas.gov)

**D. Payment.** DSHS will pay Contractor in accordance with Texas Government Code Chapter 771 for services delivered as provided in this Contract and under the terms and conditions in Attachment A, Statement of Work.



# TEXAS

## Health and Human Services

**Health and Human Services (HHS)**

**Uniform Terms and Conditions -  
Governmental Entity**

**Version 3.2**

Published and Effective - May 2020

Responsible Office: Chief Counsel

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## ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

### 1.1 DEFINITIONS

As used in this Contract, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

“Amendment” means a written agreement, signed by the Parties, which documents changes to the Contract.

“Contract” means the Signature Document, these Uniform Terms and Conditions, along with any attachments, and any Amendments, purchase orders, and Work Orders that may be issued by the System Agency.

“Deliverables” means the goods, services, Work, and Work Product to be provided to System Agency under the Contract.

“DSHS” means the Department of State Health Services.

“Effective Date” means the date on which the Contract takes effect.

“Federal Fiscal Year” means the period beginning October 1 and ending September 30 each year, which is the annual accounting period for the United States government.

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“HHSC” means the Health and Human Services Commission.

“Health and Human Services” or “HHS” includes HHSC and DSHS.

“HUB” means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

“Intellectual Property Rights” means the worldwide proprietary rights or interests, including patent, copyright, trade secret, and trademark rights, as such rights may be evidenced by or embodied in:

- i. any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement;
- ii. any work of authorship, including any compilation, computer code, website or web page design, literary work, pictorial work, or graphic work;
- iii. any trademark, service mark, trade dress, trade name, branding, or other indicia of source or origin;
- iv. domain name registrations; and
- v. any other proprietary or similar rights. The Intellectual Property Rights of a Party include all worldwide proprietary rights or interests that the Party may have acquired by assignment, by exclusive license, or by license with the right to grant sublicenses.

“Local Government” means a Texas governmental unit defined under and authorized to enter this contract by Texas Government Code, Chapter 791.

“Parties” means the System Agency and Performing Agency, collectively.

“Party” means either the System Agency or Performing Agency, individually.

“Performing Agency” means the State Agency or Local Government providing the goods or services defined in this Contract.

“Receiving Agency” means HHSC or DSHS, as applicable, Agency receiving the benefit of the goods or services provided under this Contract.

“Signature Document” means the document executed by both Parties that sets forth all the documents that constitute the Contract.

“Solicitation” means the document, if any, issued by the System Agency (including any published addenda, exhibits, and attachments) under which the goods or services provided under the Contract were initially requested, which is incorporated by reference for all purposes in its entirety.

“Solicitation Response” means Performing Agency’s full and complete response (including any attachments and addenda) to the Solicitation, which is incorporated by reference for all purposes in its entirety.

“State Agency” means a Texas “Agency” as defined under Texas Government Code, Chapter 771.

“State Fiscal Year” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“State of Texas Textravel” means the Texas Comptroller of Public Accounts’ state travel laws, rules, and policies.

“System Agency” means HHSC or DSHS, as applicable.

“Third Party IP” means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not a subcontractor.

“Work” means all services to be performed, goods to be delivered, and any appurtenant actions performed, and items produced, conceived, or developed, including Deliverables.

“Work Order” means an individually negotiated document that is executed by both Parties and which authorizes a Project, if any, in an indefinite quantity Contract.

“Work Product” means any and all works, including work papers, notes, materials, approaches, designs, specifications, systems, innovations, improvements, inventions, software, programs, source code, documentation, training materials, audio or audiovisual recordings, methodologies, concepts, studies, reports, whether finished or unfinished, and whether or not included in the Deliverables, that are developed, produced, generated, or provided by Performing Agency in connection with Performing Agency’s performance of its duties under the Contract or through use of any funding provided under this Contract.

## 1.2 INTERPRETIVE PROVISIONS

- A. The meanings of defined terms include the singular and plural forms.
- B. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a



whole and not to any particular provision, section, attachment, or schedule of this Contract unless otherwise specified.

- C. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute, rule, or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, or supplementing the statute or regulation.
- D. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
- E. All attachments, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- F. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative.
- G. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver will be deemed modified by the phrase “in its sole discretion.”
- H. Time is of the essence in this Contract.

## **ARTICLE II. PAYMENT PROVISIONS**

### **2.1 PAYMENT**

Payment shall be made in accordance with Government Code, Chapter 771, Government Code, Chapter 791, or Government Code, Chapter 2251.051, as applicable.

### **2.2 ANCILLARY AND TRAVEL EXPENSES**

- A. Except as otherwise provided in the Contract, no ancillary expenses incurred by the Performing Agency in connection with its provision of the services or Deliverables will be reimbursed by the System Agency. Ancillary expenses include, but are not limited to costs associated with transportation, delivery, and insurance for each Deliverable.
- B. When the reimbursement of travel expenses is authorized by the Contract, all such expenses will be reimbursed in accordance with the rates set by the Texas Comptroller of Public Accounts’ *Texttravel* accessible at the Texas Comptroller of Public Accounts website.

### **2.3 NO QUANTITY GUARANTEES**

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

### **2.4 TAXES**

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

## **ARTICLE III. STATE AND FEDERAL FUNDING**

### **3.1 EXCESS OBLIGATIONS PROHIBITED**

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

### **3.2 NO DEBT AGAINST THE STATE**

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

### **3.3 DEBT AND DELINQUENCIES**

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

### **3.4 REFUNDS AND OVERPAYMENTS**

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

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

### **4.1 WARRANTY**

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

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

### **4.2 CONTRACT AFFIRMATIONS**

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

### **4.3 FEDERAL ASSURANCES**

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

### **4.4 FEDERAL CERTIFICATIONS**

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

## **ARTICLE V. INTELLECTUAL PROPERTY**

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

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

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

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

## 5.2 PERFORMING AGENCY'S PRE-EXISTING WORKS

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

## 5.3 THIRD PARTY IP

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

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

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

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

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

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

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

#### **5.6 SURVIVAL**

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

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

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

## ARTICLE VI. PROPERTY

### 6.1 USE OF STATE PROPERTY

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

### 6.2 DAMAGE TO GOVERNMENT PROPERTY

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

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

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

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

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

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

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

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

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

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

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

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

### **7.5 CONFIDENTIALITY**

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

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

### **8.1 CONTRACT REMEDIES**

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

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



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

## **8.2 TERMINATION FOR CONVENIENCE**

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

## **8.3 TERMINATION FOR CAUSE**

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

### **i. Material Breach**

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

### **ii. Failure to Maintain Financial Viability**

The System Agency may terminate the Contract if, in its sole discretion, the System Agency has a good faith belief that Performing Agency no longer maintains the financial viability required to complete the Work, or otherwise fully perform its responsibilities under the Contract.

## **8.4 PERFORMING AGENCY RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS**

If the System Agency terminates the Contract for cause, the Performing Agency shall be responsible to the System Agency for all costs incurred by the System Agency and the State of Texas to replace the Performing Agency. These costs include, but are not limited to, the costs of procuring a substitute vendor and the cost of any claim or litigation attributable to Performing Agency's failure to perform any Work in accordance with the terms of the Contract.

# **ARTICLE IX. GENERAL PROVISIONS**

## **9.1 AMENDMENT**

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

## **9.2 INSURANCE**

A. Unless otherwise specified in this Contract, Performing Agency shall acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper

fulfillment of this Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the System Agency. Performing Agency shall provide evidence of insurance as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the System Agency the nature and extent of coverage granted by each such policy, upon request by the System Agency. In the event that any policy is determined by the System Agency to be deficient to comply with the terms of this Contract, Performing Agency shall secure such additional policies or coverage as the System Agency may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Performing Agency must produce renewal certificates for each type of coverage.

- B. These and all other insurance requirements under the Contract apply to both Performing Agency and its subcontractors, if any. Performing Agency is responsible for ensuring its subcontractors' compliance with all requirements.

### **9.3 LIMITATION ON AUTHORITY**

- A. The authority granted to Performing Agency by the System Agency is limited to the terms of the Contract.
- B. Performing Agency shall not have any authority to act for or on behalf of the System Agency or the State of Texas except as expressly provided for in the Contract; no other authority, power, or use is granted or implied. Performing Agency may not incur any debt, obligation, expense, or liability of any kind on behalf of System Agency or the State of Texas.
- C. Performing Agency may not rely upon implied authority and is not granted authority under the Contract to:
- i. Make public policy on behalf of the System Agency;
  - ii. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of a System Agency program; or
  - iii. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the System Agency regarding System Agency programs or the Contract. However, upon System Agency request and with reasonable notice from System Agency to the Performing Agency, the Performing Agency shall assist the System Agency in communications and negotiations regarding the Work under the Contract with state and federal governments.

### **9.4 LEGAL OBLIGATIONS**

Performing Agency shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including all federal and state accessibility laws relating to direct and indirect use of information and communication technology. Performing Agency shall be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.

### **9.5 CHANGE IN LAWS AND COMPLIANCE WITH LAWS**

Performing Agency shall comply with all laws, regulations, requirements and guidelines applicable to a vendor providing services and products required by the Contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended

throughout the term of the Contract. System Agency reserves the right, in its sole discretion, to unilaterally amend the Contract to incorporate any modifications necessary for System Agency's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

#### **9.6 E-VERIFY PROGRAM**

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

- i. all persons employed by Performing Agency to perform duties within Texas; and
- ii. all persons, including subcontractors, assigned by the Performing Agency to perform Work pursuant to the Contract within the United States of America.

#### **9.7 PERMITTING AND LICENSURE**

At Performing Agency's sole expense, Performing Agency shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Performing Agency to provide the goods or services required by this Contract. Performing Agency shall be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Performing Agency shall be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

#### **9.8 SUBCONTRACTORS**

Performing Agency may not subcontract any or all of the Work and/or obligations under the Contract without prior written approval of the System Agency. Subcontracts, if any, entered into by the Performing Agency shall be in writing and be subject to the requirements of the Contract. Should Performing Agency subcontract any of the services required in the Contract, Performing Agency expressly understands and acknowledges that in entering into such subcontract(s), System Agency is in no manner liable to any subcontractor(s) of Performing Agency. In no event shall this provision relieve Performing Agency of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract.

#### **9.9 INDEPENDENT PERFORMING AGENCY**

Performing Agency and Performing Agency's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the Contract. Neither Performing Agency nor System Agency is an agent of the other and neither may make any commitments on the other party's behalf. Performing Agency shall have no claim against System Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The Contract shall not create any joint venture, partnership, agency, or employment relationship between Performing Agency and System Agency.

## **9.10 GOVERNING LAW AND VENUE**

This Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the System Agency.

## **9.11 SEVERABILITY**

If any provision of the Contract is held to be illegal, invalid or unenforceable by a court of law or equity, such construction will not affect the legality, validity or enforceability of any other provision or provisions of this Contract. It is the intent and agreement of the Parties this Contract shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that achieves the same objective. All other provisions of this Contract will continue in full force and effect.

## **9.12 SURVIVABILITY**

Expiration or termination of the Contract for any reason does not release Performing Agency from any liability or obligation set forth in the Contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the Contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

## **9.13 FORCE MAJEURE**

Neither Party shall be liable to the other for any delay in, or failure of performance of, any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

## **9.14 DISPUTE RESOLUTION**

A. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the Contract. If the Performing Agency's claim for breach of contract cannot be resolved informally with the System Agency, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Performing Agency shall submit written notice, as required by Chapter 2260, to the individual identified in the Contract for receipt of notices. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under §2260.051 of the Texas Government Code. Compliance by the Performing Agency with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

- B. The contested case process provided in Chapter 2260 is the Performing Agency's sole and exclusive process for seeking a remedy for an alleged breach of contract by the System Agency if the Parties are unable to resolve their disputes as described above.
- C. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the System Agency, the Performing Agency shall continue performance and shall not be excused from performance during the period of any breach of contract claim or while the dispute is pending. However, the Performing Agency may suspend performance during the pendency of such claim or dispute if the Performing Agency has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

### **9.15 NO IMPLIED WAIVER OF PROVISIONS**

The failure of the System Agency to object to or to take affirmative action with respect to any conduct of the Performing Agency which is in violation or breach of the terms of the Contract shall not be construed as a waiver of the violation or breach, or of any future violation or breach.

### **9.16 MEDIA RELEASES**

- A. Performing Agency shall not use System Agency's name, logo, or other likeness in any press release, marketing material, or other announcement without System Agency's prior written approval. System Agency does not endorse any vendor, commodity, or service. Performing Agency is not authorized to make or participate in any media releases or public announcements pertaining to this Contract or the services to which they relate without System Agency's prior written consent, and then only in accordance with explicit written instruction from System Agency.
- B. Performing Agency may publish, at its sole expense, results of Performing Agency performance under the Contract with the System Agency's prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.

### **9.17 NO MARKETING ACTIVITIES**

Performing Agency is prohibited from using the Work for any Performing Agency or third-party marketing, advertising, or promotional activities, without the prior written consent of System Agency. The foregoing prohibition includes, without limitation, the placement of banners, pop-up ads, or other advertisements promoting Performing Agency's or a third party's products, services, workshops, trainings, or other commercial offerings on any website portal or internet-based service or software application hosted or managed by Performing Agency as part of the Work.

### **9.18 PROHIBITION ON NON-COMPETE RESTRICTIONS**

Performing Agency shall not require any employees or subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements that would limit or restrict such persons or entities from employment or contracting with the State of Texas.

## 9.19 SOVEREIGN IMMUNITY

Nothing in the Contract shall be construed as a waiver of the System Agency's or the State's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas under the Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. System Agency does not waive any privileges, rights, defenses, or immunities available to System Agency by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.

## 9.20 ENTIRE CONTRACT AND MODIFICATION

This Contract constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the Contract will be harmonized with this Contract to the extent possible.

## 9.21 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Contract.

## 9.22 CIVIL RIGHTS

- A. Performing Agency shall comply with all applicable state and federal anti-discrimination laws, including:
  - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, *et seq.*);
  - ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
  - iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101, *et seq.*);
  - iv. Age Discrimination Act of 1975 (42 U.S.C. §6101, *et seq.*);
  - v. Title IX of the Education Amendments of 1972 (20 U.S.C. §1681, *et seq.*);
  - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011, *et seq.*); and
  - vii. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.
- B. Performing Agency shall comply with all amendments to these laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any service or other benefit provided by Federal or State funding, or otherwise be subjected to discrimination.
- C. Performing Agency shall comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a Performing Agency from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Civil rights laws require Performing Agency to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Performing Agency shall take

reasonable steps to provide services and information, both orally and in writing and electronically, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

- D. Performing Agency shall post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at: <http://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>
- E. Performing Agency shall comply with Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 28 CFR Subpart G § 42.503, and Americans with Disabilities Act of 1990 and its implementing regulations at 28 CFR Subpart B §35.130 which includes requiring Performing Agency to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the Performing Agency can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.
- F. Performing Agency shall comply with federal regulations regarding equal treatment for faith-based organizations under 45 C.F.R. Part 87 or 7 C.F.R. Part 16, as applicable. Performing Agency shall not discriminate against clients or prospective clients on the basis of religion or religious belief, and shall provide written notice to beneficiaries of their rights.
- G. Upon request, Performing Agency shall provide the HHSC Civil Rights Office with copies of the Performing Agency's civil rights policies and procedures.
- H. Performing Agency must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. This notice must be directed to:

HHSC Civil Rights Office  
701 W. 51<sup>st</sup> Street, Mail Code W206  
Austin, Texas 78751  
Phone Toll Free: (888) 388-6332  
Phone: (512) 438-4313  
Fax: (512) 438-5885.

### **9.23 ENTERPRISE INFORMATION MANAGEMENT STANDARDS**

Performing Agency shall conform to HHS standards for data management as described by the policies of the HHS Chief Data and Analytics Officer. These include, but are not limited to, standards for documentation and communication of data models, metadata, and other data definition methods that are required by HHS for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of HHS System data assets.

### **9.24 DISCLOSURE OF LITIGATION**

- A. The Performing Agency must disclose in writing to the contract manager assigned to this Contract any material civil or criminal litigation or indictment either threatened or pending involving the Performing Agency. "Threatened litigation" as used herein shall include governmental investigations and civil investigative demands. "Litigation" as used herein shall include administrative enforcement actions brought by governmental agencies. The Performing Agency must also disclose any material litigation threatened or pending

involving subcontractors, consultants, and/or lobbyists. For purposes of this section, “material” refers, but is not limited, to any action or pending action that a reasonable person knowledgeable in the applicable industry would consider relevant to the Work under the Contract or any development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the Work, together with any litigation threatened or pending that may result in a substantial change in the Performing Agency’s financial condition.

- B. This is a continuing disclosure requirement; any litigation commencing after Contract Award must be disclosed in a written statement to the assigned contract manager within seven calendar days of its occurrence.

#### **9.25 NO THIRD-PARTY BENEFICIARIES**

The Contract is made solely and specifically among and for the benefit of the Parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the Contract as a third-party beneficiary or otherwise.

#### **9.26 BINDING EFFECT**

The Contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees, and delegates.

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Attachment D

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

**The HHS Uniform Terms and Conditions - Governmental Entity are revised, modified, or supplemented as follows:**

1. **Section 2.4, Taxes**, is deleted in its entirety and replaced with the following:

**2.4 Taxes**

Purchases made for the State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Performing Agency represents and warrants that it shall pay all applicable taxes or similar amounts resulting from the Contract.

2. **Section 3.1, Excess Obligations Prohibited**, is deleted in its entirety and replaced with the following:

**3.1 Excess Obligations Prohibited**

The Contract is subject to termination or cancellation, without penalty to the System Agency, either in whole or in part, subject to the availability of state funds. System Agency is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If System Agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either System Agency's or Performing Agency's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. To the extent authorized under the constitution and laws of the state of Texas, Performing Agency agrees that in the event of a termination or cancellation under this Section, System Agency will not be liable to Performing Agency for any damages that are caused or associated with such termination, or cancellation, and System Agency will not be required to give prior notice. Nothing in this Contract may be deemed (i) an admission or assumption of liability by Performing Agency or (ii) a waiver of any claim or defense available to Performing Agency under applicable laws.

3. **Section 3.3, Debt and Delinquencies**, is deleted in its entirety.
4. **Section 3.4 (A), Refunds and Overpayments**, is deleted in its entirety and replaced with the following:
  - A. Subject to prior discussion and agreement with Performing Agency and exchange of supporting documentation, System Agency may:

- i. withhold all or part of any payments to Performing Agency to offset overpayments, unallowable or ineligible costs made to the Performing Agency, or if any required financial status report(s) is not submitted by the due date(s); or
- ii. withhold payments to Performing Agency of any expenditures that System Agency disputes in good faith, or deduct from funding advancements to Performing Agency, until such time as System Agency has determined that Performing Agency has provided additional information, documentation, or justification that supports or justifies the expenditure(s).

5. **Section 4.1, Warranty**, is deleted in its entirety and replaced with the following:

**4.1 Representations**

Performing Agency represents that all Work under this Contract shall be completed in a manner consistent with standards under the terms of this Contract and shall conform to the specifications set forth in the Contract. The Performing Agency, at its sole expense, agrees to promptly repair or replace all Work that was defective or damaged Work upon delivery. Notwithstanding anything to the contrary in the Contract, Work modifications only may be made through formal written amendment signed by both Parties.

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

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

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

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

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

- A. To the extent the Performing Agency incorporates into the Work Product any works of Performing Agency that were created by Performing Agency or to which Performing Agency acquired rights prior to the Effective Date of this Contract (“**Incorporated Pre-Existing Works**”), Performing Agency retains ownership to such Incorporated Pre-Existing Works. For avoidance of doubt, Performing Agency also retains ownership of any works developed by Performing Agency that are unrelated to the Work under this Contract.
- B. To the extent legally permitted, Performing Agency hereby grants System Agency an irrevocable, perpetual, non-exclusive, royalty-free, worldwide right and license to use, reproduce, modify, copy, create derivative works of, publish, publicly perform and display the Incorporated Pre-Existing Works for the exclusive purpose of utilizing the Work Product for System Agency’s non-commercial, governmental purposes.

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

**5.4 Applicability to Employees and Subcontractors**

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

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

**5.5 Delivery Upon Termination or Expiration**

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

10. **Section 5.7, System Agency Data**, is deleted in its entirety and replaced with the following:

**5.7 System Agency Data**

Performing Agency will comply with all applicable federal and state privacy, security and breach notification laws and regulations. The Parties do not anticipate this Contract will require disclosure of confidential data. However, should the scope of this Contract change and require the Performing Agency to receive confidential data from System Agency, Performing Agency will comply with the terms of the then-current applicable HHS Data Use Agreement, Texas Statewide Data Exchange Compact, or the HHS Covered Entity Privacy,

Security, and Breach Notifications Terms set forth in the Contract, which agreement will be incorporated herein by reference.

11. **Section 6.1(A), Use of State Property**, is deleted in its entirety and replaced with the following:
  - A. Performing Agency is prohibited from using state property belonging to System Agency (“**State Property**”) for any purpose other than performing services authorized under the Contract.
12. **Section 6.1(E), Use of State Property**, is deleted in its entirety and replaced with the following:
  - E. Each party shall take responsibility for the actions of its employees, including but not limited to, the possibility of any damages (repairs and replacements) caused by its employees during the course and scope of their employment to the other Party’s property. Nothing in this Contract may be deemed (i) an admission or assumption of liability by either Party or (ii) a waiver of any claim or defense available to either Party under applicable laws. Performing Agency shall notify System Agency of the loss, destruction, or damage of equipment or property within 5 business day of discovery.
13. **Section 6.2, Damage to Government Property**, is deleted in its entirety.
14. **Section 7.1(B), Record Maintenance and Retention**, is deleted in its entirety and replaced with the following:
  - B. Performing Agency shall maintain and retain legible copies of this Contract and all records relating to the performance of the Contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records shall be maintained and retained by Performing Agency for a minimum of: (i) 7 years after the Contract expiration date; (ii) 3 years after the completion of all audit, claim, litigation, or dispute matters involving the Contract are resolved; or (iii) as otherwise required under Texas law, whichever term is longer.
15. **Section 7.3(A), Response/Compliance with Audit of Inspection Findings**, is amended by deleting the last sentence in its entirety.

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

**7.5 Confidentiality**

Parties shall maintain as confidential and shall not disclose to third parties without the disclosing Party’s prior written consent, except to the extent required by the Texas Public Information Act, Chapter 552 of the Texas Government Code, or as otherwise required by law, any information identified in writing as confidential or that is included in the following definition of “**confidential information**”: “Confidential Information” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to a Party or that a Party may create, receive, maintain, use, disclose or have access to on behalf of the other Party (the “**disclosing party**”) that consists of any or all of the following:

- (1) Education records as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. Part 99;

- (2) Federal Tax Information as defined in Internal Revenue Code §6103 and Internal Revenue Service Publication 1075;
- (3) Personal Identifying Information (**PII**) as defined in Texas Business and Commerce Code, Chapter 521;
- (4) Protected Health Information (**PHI**) in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information as defined in 45 C.F.R. §160.103;
- (5) Sensitive Personal Information (**SPI**) as defined in Texas Business and Commerce Code, Chapter 521;
- (6) Social Security Administration Data, including, without limitation, Medicaid information means disclosures of information made by the Social Security Administration or the Centers for Medicare and Medicaid Services from a federal system of records for administration of federally funded benefit programs under the Social Security Act, 42 U.S.C., Chapter 7;
- (7) Patient identifying information as defined in 42 C.F.R. Part 2;
- (8) All privileged work product;
- (9) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

This Section will survive termination or expiration of this Contract. The obligations of the Parties to safeguard confidential information in compliance with all applicable federal and state laws and regulations under this Section will survive termination or expiration of this Contract until the Confidential Information is returned to the disclosing party, destroyed, or is deemed no longer confidential. For the avoidance of any doubt, Confidential Information is deemed no longer confidential if it: (i) is or later becomes generally available to the public through no act or omission of the non-disclosing party, unless made available by an unauthorized disclosure; (ii) was possessed by the non-disclosing party prior to the latest execution date of the Contract without being subject to an obligation to keep such information confidential; (iii) is lawfully obtained without restriction from a third party who had the legal right to disclose the same; (iv) is independently developed by the non-disclosing party without the use or benefit of Confidential Information as evidenced by the non-disclosing party's written records; or (v) disclosing party has agreed in writing it is no longer subject to the restrictions applicable to Confidential Information under the term of this Contract. In the event the non-disclosing party becomes legally compelled or required by regulation to disclose any Confidential Information, it shall promptly provide to disclosing party notice thereof, shall use its reasonable efforts to minimize the disclosure of any Confidential Information, and shall cooperate with disclosing party should the disclosing party seek to obtain a protective order or other appropriate remedy. This requirement must be included in all subcontracts awarded by non-disclosing party.

17. **Section 8.1, Contract Remedies**, is amended by adding a new paragraph at the end of the section as follows:

The Parties will attempt to resolve all Contract issues through good faith negotiations. If negotiations are unsuccessful then the Parties agrees to use the dispute resolution process in Section 9.14.

18. **Section 8.2, Termination for Convenience**, is deleted in its entirety and replaced with the following:

**8.2 Termination for Convenience**

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

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

20. **Section 9.2, Insurance**, is amended by adding a new Subsection C:

C. Nothing in this Contract should be construed to limit Performing Agency's right to self-insure in accordance with Texas Government Code Chapter 2259.

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

B. Performing Agency shall not have any authority to act for or on behalf of the System Agency except as expressly provided for in the Contract; no other authority, power, or use is granted or implied. Performing Agency may not incur any debt, obligation, expense, or liability of any kind on behalf of System Agency.

22. **Section 9.5, Change in Laws and Compliance with Laws**, is deleted in its entirety and replaced with the following:

**9.5 Change in Laws and Compliance with Laws**

Performing Agency shall comply with all laws, regulations, requirements and guidelines applicable to a state agency performing work as required by the Contract, as these laws, regulations, requirements, and guidelines currently exist and as amended throughout the term of the Contract. The Parties will amend the Contract to incorporate any modifications necessary for the parties' compliance, as agencies of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

23. **Section 9.6(ii), E-Verify Program**, is deleted in its entirety and replaced with the following:

ii. seek the same assurances from all subcontractors regarding their employees to perform Work pursuant to the Contract within the United States of America.

24. **Section 9.7, Permitting and Licensure**, is deleted in its entirety and replaced with the following:

**9.7 Permitting and Licensure**

At Performing Agency's sole expense, Performing Agency will procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Performing Agency to provide the goods or Services required by this Contract. Performing Agency will be responsible for payment of all taxes, assessments, fees,

premiums, permits, and licenses required by law.

25. **Section 9.14, Dispute Resolution**, is deleted in its entirety and replaced with the following:

**9.14 Dispute Resolution**

The Parties agree to use good-faith efforts to resolve all questions, difficulties, or disputes of any nature that may arise under or by this Contract; provided however, nothing in this Section shall preclude either Party from pursuing any remedies as may be available under Texas Law.

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

**9.16 Media Releases**

Except as provided in this Contract or required under applicable law, neither party shall use the other party's name, logo, or other likeness in any press release, marketing material, or other announcement without prior written approval. System Agency does not endorse any vendor, commodity, or service. Performing Agency is not authorized to make or participate in any media releases or public announcements pertaining to this Contract or the Services to which they relate without System Agency's prior written consent, and then only in accordance with explicit written instruction from System Agency. However, Performing Agency will, if appropriate, acknowledge support received from the System Agency and/or other agency in any publication under 5.1(C) as revised by the UT System Supplemental Conditions to HHS Uniform Terms and Conditions – Governmental Entity.

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

28. **Section 9.19, Sovereign Immunity**, is deleted in its entirety and replaced with the following:

**9.19 Sovereign Immunity**

Nothing in this Contract shall be construed as a waiver of the State of Texas' sovereign immunity with respect to either the System Agency or the Performing Agency. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to either party or the State of Texas. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to the System Agency, Performing Agency, or the State of Texas under the Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Neither party waives any privileges, rights, defenses, or immunities available to it by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.

29. **Section 9.23, Enterprise Information Management Standards**, is deleted in its entirety.

30. **Section 9.24, Disclosure of Litigation**, is deleted in its entirety.

31. **Article IX, General Provisions**, is amended by adding after Section 9.26, the following new Sections 9.27, 9.28, and 9.29:

**9.27 Texas Public Information Act**

It shall be the independent responsibility of the System Agency and Performing Agency to comply with the provisions of Chapter 552, Texas Government Code (the “**Public Information Act**”), as those provisions apply to the Parties’ respective information. Neither Party is authorized to receive public information requests or take any action under the Public Information Act on behalf of any other Party.

**9.28 Limitations**

THE PARTIES ARE AWARE THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF A STATE AGENCY TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THIS CONTRACT, INCLUDING TERMS AND CONDITIONS RELATING TO LIENS ON A PARTY’S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS’ FEES; DISPUTE RESOLUTION AND BINDING ARBITRATION; INDEMNITIES; AND CONFIDENTIALITY, AND TERMS AND CONDITIONS RELATED TO SUCH LIMITATIONS WILL NOT BE BINDING ON A PARTY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

**9.29 UT Institution Approval Process**

Notwithstanding any other provision in this Contract to the contrary, this Contract may be subject to review and approval by the Board of Regents of The University of Texas System (“**Board of Regents**”) under the Rules and Regulations of the Board. If such Board of Regents review and approval is required, then the validity and effectiveness of this Contract is contingent upon such approval through the agenda requirements and approval process under the Rules and Regulations of the Board of Regents. If the Board of Regents does not approve this Contract, then the Contract will terminate effective as of the date of non-approval by the Board of Regents and the Performing Agency may submit a final invoice to System Agency within 30 days of such non-approval requesting System Agency’s payment to Performing Agency for the goods or services provided by Performing Agency in compliance with the terms and conditions of this Contract prior to the Board’s non-approval. In the event that the Board of Regents does not approve this Contract, the total amount that System Agency pays to Performing Agency under this Contract will not in any event exceed \$1,718,843.25.



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**ASSURANCES - NON-CONSTRUCTION PROGRAMS**

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


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

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

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

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

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

<p><b>SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL</b></p> <p>DocuSigned by:                    AB89D1B941594B5...</p>	<p><b>TITLE</b></p> <p>Senior Vice President, Business Affairs &amp; COO</p>
<p><b>APPLICANT ORGANIZATION</b></p> <p>The University of Texas Health Science Center at Tyler</p>	<p><b>DATE SUBMITTED</b></p> <p>October 29, 2023</p>