

**SIGNATURE DOCUMENT FOR
HEALTH AND HUMAN SERVICES COMMISSION
CONTRACT NO. HHS001392800001**

The **HEALTH AND HUMAN SERVICES COMMISSION** (“System Agency”), an administrative agency within the executive branch of the state of Texas, and **PUBLIC CONSULTING GROUP, LLC** (“Contractor”), having its principal office at 148 State Street, Boston, MA 02109 (each a “Party” and collectively the “Parties”), enter into the following agreement (“Contract”) to provide an assessment of the rules and regulations governing residential child care including foster and adoptive homes and provide recommendations for how the State of Texas may streamline regulations while both prioritizing child safety and reducing barriers to entry for potential child-placing agencies, residential child-care facilities, foster families, kinship families, and adoptive families.

I. LEGAL AUTHORITY

This Contract is entered into pursuant to Subchapter B, Chapter 2254, of the Texas Government Code and Section 42.027 of the Texas Human Resources Code.

II. DURATION

The Contract is effective on December 1, 2023 or the signature date of the latter of the Parties to sign this agreement, whichever is later, and expires on November 30, 2025, unless sooner terminated or renewed or extended. System Agency, at its sole discretion, may extend this Contract up to 3 additional years.

III. STATEMENT OF WORK

The description of Services to which Contractor is bound is incorporated into and made part of this Contract for all purposes and included as:

- A. HHSC Request for Proposal No. HHS0013928, which is included as **ATTACHMENT G (HHSC SOLICITATION NO. HHS0013928, INCLUDING ADDENDA)**;
- B. **ATTACHMENT H (CONTRACTOR'S SOLICITATION RESPONSE)**; and
- C. **ATTACHMENT E (DELIVERABLE TIMELINE, COST AND INVOICING REQUIREMENTS)**.

IV. BUDGET

The total amount of this Contract, including all renewals or extensions, will not exceed **\$806,477.00**.

By executing this Contract, Contractor agrees to the contracted rates and budget for the Contract term, including the initial term and all renewals and extensions exercised.

However, at System Agency's sole discretion or by mutual agreement of the Parties as authorized under the Contract, the budget or contract amounts may be amended. All expenditures under the Contract will be in accordance with **ATTACHMENT E, (DELIVERABLE TIMELINE, COST AND INVOICING REQUIREMENTS)**.

V. CONTRACT REPRESENTATIVES

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

System Agency Contract Representative

Ariana Williams
701 W. 51st Street, Mail Code 1075
Austin, TX 78751
Ariana.Williams@hhs.texas.gov

With copy to:
Jackie Cardenas
Health and Human Services Commission
701 W 51st Street, Mail Code E-550
Austin, TX 78751
Jacqueline.Cardenas@hhs.texas.gov

Contractor Contract Representative

Jennifer MacBlane
Public Consulting Group, LLC
148 State Street
Boston, MA 02109
jmacblane@pcgus.com

VI. NOTICE REQUIREMENTS

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

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

- C. Notices given by System Agency to Contractor may be emailed, mailed or sent by common carrier. Email notices shall be deemed delivered when sent by System

Agency. Notices sent by mail shall be deemed delivered when deposited by the System Agency in the United States mail, postage paid, certified, return receipt requested. Notices sent by common carrier shall be deemed delivered when deposited by the System Agency with a common carrier, overnight, signature required. Legal Notices to System Agency must not be sent by email.

- D. Notices given by Contractor to System Agency shall be deemed delivered when received by System Agency.
- E. Either Party may change its Contract Representative or Legal Notice contact by providing written notice to the other Party.

VII. CONTRACT DOCUMENTS

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

- ATTACHMENT A – CONTRACT AFFIRMATIONS VERSION 2.3**
- ATTACHMENT B – UNIFORM TERMS AND CONDITIONS VENDOR VERSION 3.4**
- ATTACHMENT C – DATA USE AGREEMENT**
- ATTACHMENT D – ADDITIONAL PROVISIONS**
- ATTACHMENT E – DELIVERABLE TIMELINE, COST AND INVOICING REQUIREMENTS**
- ATTACHMENT F – INSURANCE REQUIREMENTS**
- ATTACHMENT G – HHSC SOLICITATION NO. HHS0013928, INCLUDING ALL ADDENDA**
- ATTACHMENT H – CONTRACTOR'S SOLICITATION RESPONSE**

VIII. ORDER OF PRECEDENCE

In the event of conflict, ambiguity or inconsistency between the terms and conditions set forth in the documents that comprise this Contract, including amendments hereto, the controlling document shall be this Signature Document, then the remaining documents in the following list in the order stated:

- 1. ATTACHMENT C – DATA USE AGREEMENT;**
- 2. ATTACHMENT A – CONTRACT AFFIRMATIONS VERSION 2.3;**
- 3. ATTACHMENT B – UNIFORM TERMS AND CONDITIONS VENDOR VERSION 3.4;**
- 4. ATTACHMENT D – ADDITIONAL PROVISIONS;**
- 5. ATTACHMENT E – DELIVERABLE TIMELINE, COST AND INVOICING REQUIREMENTS;**
- 6. ATTACHMENT G – HHSC SOLICITATION NO. HHS0013928, INCLUDING ADDENDA;**
- 7. ATTACHMENT F – INSURANCE REQUIREMENTS; and**
- 8. ATTACHMENT H – CONTRACTOR'S SOLICITATION RESPONSE.**

IX. SIGNATURE AUTHORITY

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

SIGNATURE PAGE FOLLOWS

**SIGNATURE PAGE FOR
HHSC CONTRACT NO. HHS001392800001**

**HEALTH AND HUMAN SERVICES
COMMISSION**

DocuSigned by:
Stephen Pahl
By: 22310AB9AD9B4FA...

PUBLIC CONSULTING GROUP, LLC

DocuSigned by:
Kathleen Fallon
By: 90318A14B54842C...

Name: Stephen Pahl

Name: Kathleen Fallon

Title: Deputy Executive Commissioner for
Regulatory Services Division

Title: Practice Area Director of
Human Services

Date of Signature: February 28, 2024

Date of Signature: February 28, 2024

HEALTH AND HUMAN SERVICES
Contract Number HHS001392800001
Attachment A **CONTRACT AFFIRMATIONS**

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

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

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

2. Complete and Accurate Information

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

3. Public Information Act

Contractor understands that HHS will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

4. Contracting Information Requirements

Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

5. Assignment

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

6. Terms and Conditions

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

7. HHS Right to Use

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

8. Release from Liability

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

9. Dealings with Public Servants

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

10. Financial Participation Prohibited

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

11. Prior Disaster Relief Contract Violation

Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract

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

12. Child Support Obligation

Under Section 231.006(d) of the Texas Family Code regarding child support, Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate. If the certification is shown to be false, Contractor may be liable for additional costs and damages set out in 231.006(f).

13. Suspension and Debarment

Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

14. Excluded Parties

Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*," published by the United States Department of the Treasury, Office of Foreign Assets Control.'

15. Foreign Terrorist Organizations

Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

16. Executive Head of a State Agency

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

17. Human Trafficking Prohibition

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

18. Franchise Tax Status

Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.

19. Debts and Delinquencies

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

20. Lobbying Prohibition

Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract or any related Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).

21. Buy Texas

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

22. Disaster Recovery Plan

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

23. Computer Equipment Recycling Program

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

24. Television Equipment Recycling Program

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

25. Cybersecurity Training

- A. Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
- B. Contractor represents and warrants that if Contractor or Subcontractors, officers, or employees of Contractor have access to any state computer system or database, the Contractor, Subcontractors, officers, and employees of Contractor shall complete cybersecurity training pursuant to and in accordance with Government Code, Section 2054.5192.

26. Restricted Employment for Certain State Personnel

Contractor acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Contractor may not accept employment from Contractor before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.

27. No Conflicts of Interest

- A. Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to System Agency under this Contract or any related Solicitation and that Contractor's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- B. Contractor agrees that, if after execution of the Contract, Contractor discovers or is made aware of a Conflict of Interest, Contractor will immediately and fully disclose such interest in writing to System Agency. In addition, Contractor will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Contractor or by System Agency as a potential conflict. System Agency reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Contractor agrees to abide by System Agency's decision.

28. Fraud, Waste, and Abuse

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

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

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

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

- OIG Toll Free Hotline 1-800-436-6184
- OIG Website: ReportTexasFraud.com
- Internal Affairs Email: InternalAffairsReferral@hhsc.state.tx.us
- OIG Hotline Email: OIGFraudHotline@hhsc.state.tx.us.
- OIG Mailing Address: Office of Inspector General
Attn: Fraud Hotline
MC 1300
P.O. Box 85200
Austin, Texas 78708-5200

29. Antitrust

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

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

30. Legal and Regulatory Actions

Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included in numbered paragraph 1 of these Contract Affirmations within the five (5) calendar years immediately preceding execution of this Contract or the submission of any related Solicitation Response that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to System Agency a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. In addition, Contractor acknowledges this is a continuing disclosure requirement. Contractor represents and warrants that Contractor shall notify System Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update System Agency shall constitute breach of contract and may result in immediate contract termination.

31. No Felony Criminal Convictions

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

32. Unfair Business Practices

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

33. Entities that Boycott Israel

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

34. E-Verify

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

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

35. Former Agency Employees – Certain Contracts

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

36. Disclosure of Prior State Employment – Consulting Services

If this Contract is for consulting services,

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

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

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

37. Abortion Funding Limitation

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

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

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

38. Funding Eligibility

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

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

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

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

Contractor certifies that the individual or business entity named in this Response or Contract is not ineligible to receive the specified Contract or funding pursuant to 2 CFR 200.216.

41. COVID-19 Vaccine Passports

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

42. COVID-19 Vaccinations

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

43. Entities that Boycott Energy Companies

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

44. Entities that Discriminate Against Firearm and Ammunition Industries

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

45. Security Controls for State Agency Data

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

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

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

47. Office of Inspector General Investigative Findings Expert Review

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

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

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

49. Foreign-Owned Companies in Connection with Critical Infrastructure

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

50. Critical Infrastructure Subcontracts

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

51. Enforcement of Certain Federal Firearms Laws Prohibited

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

52. Prohibition on Abortions

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

53. False Representation

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

54. False Statements

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

55. Permits and License

Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.

56. Equal Employment Opportunity

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

57. Federal Occupational Safety and Health Law

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

58. Signature Authority

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

Signature Page Follows

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

kathleen fallon

Legal Name of Contractor

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

Texas County(s) for Assumed Business Name (d/b/a or ‘doing business as’)
Attach Assumed Name Certificate(s) filed with the Texas Secretary of State and Assumed Name Certificate(s), if any, for each Texas County Where Assumed Name Certificate(s) has been filed.

DocuSigned by:

00318A14B54842C...

Signature of Authorized Representative

kathleen fallon

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

148 state st 10th floor

Physical Street Address

Mailing Address, if different

same

Phone Number

kfallon@pcgus.com

Email Address

04-2942913

Federal Employer Identification Number

10429429136

Texas Franchise Tax Number

TPJKF9K5HNL5

SAM.gov Unique Entity Identifier (UEI)

February 28, 2024

Date Signed

february 28, 2024

Title of Authorized Representative

Boston, ma, 02109

City, State, Zip Code

City, State, Zip Code

(617) 426-4632

Fax Number

118127493

DUNS Number

10429429136

Texas Identification Number (TIN)

0010600506

Texas Secretary of State Filing Number



TEXAS

Health and Human Services

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

Effective: November 2023

Responsible Office: Chief Counsel

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ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 DEFINITIONS

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

“Amendment” means a written agreement, signed by the Parties, which documents changes to the Contract other than those permitted by Work Orders.

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

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

“Contractor” means the Party selected to provide the goods or Services to the State under this Contract.

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

“DSHS” means the Department of State Health Services.

“Effective Date” means the date agreed to by the Parties as the date on which the Contract takes effect.

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

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board. “Goods” means supplies, materials, or equipment.

“HHSC” means the Texas Health and Human Services Commission.

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

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

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

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

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

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

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

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

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

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

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

“[Solicitation Response](#)” means Contractor’s full and complete response (including any Attachments and addenda) to the Solicitation, which is incorporated by reference for all purposes in its entirety.

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

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

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

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

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

“[Third Party IP](#)” means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not a Subcontractor.

“[Work](#)” means all Services to be performed, goods to be delivered, and any appurtenant actions performed, and items produced, conceived, or developed, including Deliverables.

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

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

1.2 INTERPRETIVE PROVISIONS

- A. The meanings of defined terms include the singular and plural forms.
- B. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
- C. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.
- D. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
- E. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to these documents as amended, modified, or supplemented from time to time during the term of the Contract.
- F. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
- G. All Attachments, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- H. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative, and each will be performed in accordance with its terms.
- I. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver will be deemed modified by the phrase “in its sole discretion.”
- J. Time is of the essence in this Contract.

ARTICLE II. PAYMENT PROVISIONS

2.1 PROMPT PAYMENT

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

2.2 ANCILLARY AND TRAVEL EXPENSES

- A. Except as otherwise provided in the Contract, no ancillary expenses incurred by the Contractor in connection with its provision of the Services or Deliverables will be reimbursed by the System Agency. Ancillary expenses include, but are not limited to costs associated with transportation, delivery, and insurance for each Deliverable.
- B. When the reimbursement of travel expenses is authorized by the Contract, all such expenses will be reimbursed in accordance with the rates set by the Texas Comptroller of Public Accounts’ *Textravel* guidelines which can currently be accessed at:
<https://fmx.cpa.texas.gov/fmx/travel/texttravel/>

2.3 NO QUANTITY GUARANTEES

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

2.4 TAXES

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

ARTICLE III. STATE AND FEDERAL FUNDING

3.1 EXCESS OBLIGATIONS PROHIBITED

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

3.2 NO DEBT AGAINST THE STATE

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

3.3 DEBT AND DELINQUENCIES

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

3.4 REFUNDS AND OVERPAYMENTS

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

ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES, AND CERTIFICATIONS

4.1 WARRANTY

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

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

4.2 GENERAL AFFIRMATIONS

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

4.3 FEDERAL ASSURANCES

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

4.4 FEDERAL CERTIFICATIONS

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

ARTICLE V. INTELLECTUAL PROPERTY

5.1 OWNERSHIP OF WORK PRODUCT

- A. All right, title, and interest in the Work Product, including all Intellectual Property Rights therein, is exclusively owned by System Agency. Contractor and Contractor's employees will have no rights in or ownership of the Work Product or any other property of System Agency.
- B. Any and all Work Product that is copyrightable under United States copyright law is deemed to be "work made for hire" owned by System Agency, as provided by Title 17 of the United States Code. To the extent that Work Product does not qualify as a "work made for hire" under applicable federal law, Contractor hereby irrevocably assigns and transfers to System Agency, its successors and assigns, the entire right, title, and interest in and to the Work Product, including any and all Intellectual Property Rights embodied therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law

or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing.

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

5.2 CONTRACTOR'S PRE-EXISTING WORKS

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

5.3 THIRD PARTY IP

- A. To the extent that any Third Party IP is included or incorporated in the Work Product by Contractor, Contractor hereby grants to System Agency, or shall obtain from the applicable third party for System Agency's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for System Agency's internal business purposes only,
 - i. to use, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Third-Party IP and any derivative works thereof embodied in or delivered to System Agency in conjunction with the Work Product, and
 - ii. to authorize others to do any or all of the foregoing.
- B. Contractor shall obtain System Agency's advance written approval prior to incorporating any Third-Party IP into the Work Product, and Contractor shall notify System Agency on delivery of the Work Product if such materials include any Third Party IP.
- C. Contractor shall provide System Agency all supporting documentation demonstrating Contractor's compliance with this **Section 5.3**, including without limitation documentation indicating a third party's written approval for Contractor to use any Third Party IP that may be incorporated in the Work Product.

5.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS

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

5.5 DELIVERY UPON TERMINATION OR EXPIRATION

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

5.6 SURVIVAL

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

5.7 SYSTEM AGENCY DATA

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

ARTICLE VI. PROPERTY

6.1 USE OF STATE PROPERTY

- A. Contractor is prohibited from using State Property for any purpose other than performing Services authorized under the Contract.
- B. State Property includes, but is not limited to, System Agency's office space, identification badges, System Agency information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads or tablets, external hard drives, data storage devices, any System Agency-issued software, and the System Agency Virtual Private Network (VPN client)), and any other resources of System Agency.
- C. Contractor shall not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access System Agency's network or e-mail while outside of the continental United States.
- D. Contractor shall not perform any maintenance services on State Property unless the Contract

expressly authorizes such Services.

- E. During the time that State Property is in the possession of Contractor, Contractor shall be responsible for:
 - i. all repair and replacement charges incurred by State Agency that are associated with loss of State Property or damage beyond normal wear and tear, and
 - ii. all charges attributable to Contractor's use of State Property that exceeds the Contract scope. Contractor shall fully reimburse such charges to System Agency within ten (10) calendar days of Contractor's receipt of System Agency's notice of amount due. Use of State Property for a purpose not authorized by the Contract shall constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to System Agency under contract, at law, or in equity.

6.2 DAMAGE TO GOVERNMENT PROPERTY

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

6.3 PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT

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

ARTICLE VII. WORK ORDERS

7.1 WORK ORDERS

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

7.2 PROPOSALS

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

7.3 RESPONSIBILITY

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

7.4 TERMINATION

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

ARTICLE VIII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY

8.1 RECORD MAINTENANCE AND RETENTION

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

8.2 AGENCY'S RIGHT TO AUDIT

- A. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents kept current by Contractor pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by System Agency and the State of Texas. Contractor shall ensure these same requirements are included in all subcontracts.
- B. In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations, or Subcontractors shall permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. Contractor shall permit the System Agency or any of its duly authorized federal, state, or local authorities unrestricted access to and the right to examine all external contracts and or pricing models or methodologies related to the Contract. Contractor shall ensure these same requirements are included in all subcontracts. If the Contract includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority.
- C. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of oversight, including, but not limited to, reviews, inspections, audits and investigations, Contractor shall produce original documents related to this Contract.
- D. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings and payments related to the Contract, including those related to a Subcontractor.
- E. Contractor shall include the System Agency's and any of its duly authorized representatives', as well as duly authorized federal, state, or local authorities, unrestricted

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

8.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS

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

8.4 STATE AUDITOR'S RIGHT TO AUDIT

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

8.5 CONFIDENTIALITY

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

ARTICLE IX. CONTRACT REMEDIES AND EARLY TERMINATION

9.1 CONTRACT REMEDIES

To ensure Contractor's full performance of the Contract and compliance with applicable law, the System Agency reserves the right to hold Contractor accountable for breach of contract or

substandard performance and may take remedial or corrective actions, including, but not limited to:

- i. suspending all or part of the Contract;
- ii. requiring the Contractor to take specific actions in order to remain in compliance with the Contract;
- iii. recouping payments made by the System Agency to the Contractor found to be in error;
- iv. suspending, limiting, or placing conditions on the Contractor's continued performance of Work; or
- v. imposing any other remedies, sanctions, or penalties authorized under this Contract or permitted by federal or state law.

9.2 TERMINATION FOR CONVENIENCE

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

9.3 TERMINATION FOR CAUSE

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

i. Material Breach

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

ii. Failure to Maintain Financial Viability

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

9.4 CONTRACTOR RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS

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

ARTICLE X. INDEMNITY

10.1 GENERAL INDEMNITY

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

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

10.2 INTELLECTUAL PROPERTY

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

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

10.3 ADDITIONAL INDEMNITY PROVISIONS

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

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

ARTICLE XI. GENERAL PROVISIONS

11.1 AMENDMENT

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

11.2 INSURANCE

- A. Unless otherwise specified in this Contract, Contractor shall acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper fulfillment of this Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the System Agency. Contractor shall provide evidence of insurance as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the System Agency the nature and extent of coverage granted by each such policy, upon request by the System Agency. In the event that any policy is determined by the System Agency to be deficient to comply with the terms of this Contract, Contractor shall secure such additional policies or coverage as the System Agency may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Contractor must produce renewal certificates for each type of coverage.
- B. These and all other insurance requirements under the Contract apply to both Contractor and its Subcontractors, if any. Contractor is responsible for ensuring its Subcontractors' compliance with all requirements.

11.3 LIMITATION ON AUTHORITY

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

11.4 LEGAL OBLIGATIONS

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

11.5 CHANGE IN LAWS AND COMPLIANCE WITH LAWS

Contractor shall comply with all laws, regulations, requirements, and guidelines applicable to a vendor providing services and products required by the Contract to the State of Texas, as these laws, regulations, requirements, and guidelines currently exist and as amended throughout the term of the Contract. System Agency reserves the right, in its sole discretion, to unilaterally amend the Contract to incorporate any modifications necessary for System Agency's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

11.6 E-VERIFY PROGRAM

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

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

11.7 PERMITTING AND LICENSURE

At Contractor's sole expense, Contractor shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification, or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or Services required by this Contract.

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

11.8 SUBCONTRACTORS

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

11.9 INDEPENDENT CONTRACTOR

Contractor and Contractor's employees, representatives, agents, Subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the Contract. Neither Contractor nor System Agency is an agent of the other and neither may make any commitments on the other party's behalf. Contractor shall have no claim against System Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee

benefits of any kind. The Contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and System Agency.

11.10 GOVERNING LAW AND VENUE

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

11.11 SEVERABILITY

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

11.12 SURVIVABILITY

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

11.13 FORCE MAJEURE

Neither Contractor nor System Agency shall be liable to the other for any delay in, or failure of performance of, any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

11.14 DISPUTE RESOLUTION

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

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

11.15 NO IMPLIED WAIVER OF PROVISIONS

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

11.16 MEDIA RELEASES

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

11.17 NO MARKETING ACTIVITIES

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

11.18 PROHIBITION ON NON-COMPETE RESTRICTIONS

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

11.19 SOVEREIGN IMMUNITY

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

does not waive any privileges, rights, defenses, or immunities available to System Agency by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.

11.20 ENTIRE CONTRACT AND MODIFICATION

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

11.21 COUNTERPARTS

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

11.22 CIVIL RIGHTS

- A. Contractor agrees to comply with state and federal anti-discrimination laws, including:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.);
 - ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
 - iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);
 - iv. Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
 - v. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
 - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011 et seq.); and
 - vii. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Contract.
- B. Contractor agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service, or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.
- C. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. State and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Contractor agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- D. Contractor agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at:
<https://www.hhs.texas.gov/services/your-rights/civil-rights-office/civil-rights-posters>
- E. Contractor agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

- F. Upon request, Contractor shall provide HHSC's Civil Rights Office with copies of the Contractor's civil rights policies and procedures.
- G. Contractor must notify HHSC's Civil Rights Office of any complaints of discrimination received relating to its performance under this Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:
HHSC Civil Rights Office
701 W. 51st Street, Mail Code W206
Austin, Texas 78751
Phone Toll Free: (888) 388-6332
Phone: (512) 438-4313
Fax: (512) 438-5885
Email: HHSCivilRightsOffice@hhsc.state.tx.us

11.23 ENTERPRISE INFORMATION MANAGEMENT STANDARDS

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

11.24 DISCLOSURE OF LITIGATION

- A. The Contractor must disclose in writing to the contract manager assigned to this Contract any material civil or criminal litigation or indictment either threatened or pending involving the Contractor. "Threatened litigation" as used herein shall include governmental investigations and civil investigative demands. "Litigation" as used herein shall include administrative enforcement actions brought by governmental agencies. The Contractor must also disclose any material litigation threatened or pending involving Subcontractors, consultants, and/or lobbyists. For purposes of this section, "material" refers, but is not limited, to any action or pending action that a reasonable person knowledgeable in the applicable industry would consider relevant to the Work under the Contract or any development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the Work, together with any litigation threatened or pending that may result in a substantial change in the Contractor's financial condition.
- B. This is a continuing disclosure requirement; any litigation commencing after Contract Award must be disclosed in a written statement to the assigned contract manager within seven calendar days of its occurrence.

11.25 NO THIRD-PARTY BENEFICIARIES

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

11.26 BINDING EFFECT

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

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**Attachment 2-
Security and Privacy Initial Inquiry
[Attach Completed SPI Here]**



TEXAS

Health and Human Services

**Exhibit C, Health and Human Services (HHS)
Additional Provisions
Version 1.0
Effective: November 7, 2019**

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EXHIBIT C, ADDITIONAL PROVISIONS

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

1. HHSC VENDOR ACCESS

At HHSC's request, Contractor will allow parties interested in responding to other HHSC solicitations to have reasonable access during normal business hours to the Work, software, systems documentation, and site visits to the Contractor's facilities. Contractor may elect to have such parties inspecting the Work, facilities, software or systems documentation to agree to use the information so obtained only in the State of Texas and only for the purpose of responding to the relevant HHSC solicitation.

2. HHSC APPROVAL OF STAFFING

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

3. TURNOVER PLAN

HHSC, in its sole discretion, may require Contractor to develop and submit a Turnover Plan at any time during the term of the Contract. Contractor must submit the Turnover Plan to HHSC for review and approval. The Turnover Plan must describe Contractor's policies and procedures that will ensure:

- i. The least disruption in the delivery of the Work during Turnover to HHSC or its designee; and
- ii. Full cooperation with HHSC or its designee in transferring the Work and the obligations of the Contract.

4. TURNOVER ASSISTANCE

Contractor will provide any assistance and actions reasonably necessary to enable HHSC or its designee to effectively close out the Contract and transfer the Work and the obligations of the Contract to another vendor or to perform the Work by itself. Contractor agrees that this obligation survives the termination, regardless of whether for cause or convenience, or the expiration of the Contract and remains in effect until completed to the satisfaction of HHSC.

5. NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS

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

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ATTACHMENT E
DELIVERABLE TIMELINE, COST AND INVOICING REQUIREMENTS

I. Table 1: Deliverables and Cost Per Deliverable

Deliverable No.	Deliverable	Due Date for Completion	Deliverable Net Cost*	Retainage Amount (15% of the total Deliverable cost)
1	Kickoff Meeting	10 Business Days after Contract Effective Date	\$15,300.00	\$2,700.00
2	Project Plan	5 Business Days after Completion of Deliverable No.1, Kickoff Meeting	\$7,650.00	\$1,350.00
3	Project Plan Review Meeting	5 Business Days after Completion of Deliverable No.2, Project Plan	\$6,800.00	\$1,200.00
4	Status Reports	Weekly on Fridays, Beginning after Completion of Deliverable No.3, Project Plan Review Meeting	\$6,137.00 total (\$161.50 per Status Report)	\$1,083.00 total (\$28.50 per Status Report)
5	Preliminary Assessment Report	5 Business Days after the Completion of the Assessment, Required by Section 2.3 (Conducting the Assessment)	\$515,784.25	\$91,020.75
6	Preliminary Assessment Review Meeting	5 Business Days after Completion of Deliverable No.5, Preliminary Assessment Report	\$19,448.00	\$3,432.00
7	Draft Final Report Review Meeting	10 Business Days after Completion of Deliverable No.6, Preliminary Assessment Review Meeting	\$19,448.00	\$3,432.00
8	Final Report	No later than August 30, 2024, or within 15 Business Days after Completion of Deliverable No.7,	\$94,938.20	\$16,753.80

		Draft Final Report Review Meeting, whichever is sooner		
Total Deliverable Net Cost (less 15% retainage)			\$685,505.45	
Total Retainage Amount				\$120,971.55
Total Deliverable Cost (Net Cost plus retainage)				\$806,447.00

* Net amount (less 15% retainage) per Deliverable

II. Invoicing

- A. Contractor shall submit invoices in a secure, non-alterable electronic format (.pdf is acceptable) emailed directly to: RSD_Invoices@hhs.texas.gov and hhsc_ap@hhsc.state.tx.us.
- B. It is recommended that Contractor use the following naming convention for the subject line of invoice submission emails: "Invoice Submission. [Legal Entity Name of Vendor]. Invoice [Number]. [Invoice Amount]. Purchase Order (PO) [Number] (if applicable). [Service Date or Month of Services]."
- C. Invoices may not be submitted prior to completion of the Deliverable for which Contractor is requesting payment. A Deliverable is not considered 'Complete' until all the Acceptance Criteria for the Deliverable have been met, the Deliverable has been provided to HHSC in the format prescribed by HHSC, and written confirmation that the Deliverable meets the Acceptance Criteria has been received by Contractor in writing from the HHSC Project Manager.
- D. The invoice must be submitted within five (5) Business Days of the completion of the Deliverable, except for Deliverable No. 4 (Status Reports), which must be submitted on a monthly basis for the total number of status reports Completed in the previous month.
- E. A retainage of 15% of the total amount of each Deliverable will be withheld from payment of each completed Deliverable. Contractor shall not withhold retainage from their Subcontractors in amounts that are any percentage greater than that withheld in its Contract with HHSC.
- F. In addition to standards set forth in 34 Texas Administrative Code § 20.487, the invoice must include:
 1. The invoice number, starting with the number one (1) and increasing with each subsequent invoice;
 2. The Contract number;
 3. The date Contractor received written confirmation from the HHSC Project Manager that the Deliverable meets the Acceptance Criteria;
 4. The invoice due date, which is the date by which Contractor must submit the invoice to the HHSC Contract Manager and must be not later than five (5) Business Days after the Completion of the Deliverable;

5. The anticipated payment due date, which must be 30 Calendar Days after the date the invoice is received by the HHSC Contract Manager;
 6. Name and contact information for Contractor's point of contact related to the invoice;
 7. Contractor's Texas Identification Number (TIN);
 8. Contractor's name and address;
 9. The specific Deliverable(s) for which Contractor is requesting payment in the invoice;
 10. The Net Payment (less retainage) amount being requested for each Deliverable, as specified in **Table 1** herein;
 11. Total amount being requested for payment; and
 12. A copy of the written confirmation from the HHSC Project Manager that the Deliverable meets the Acceptance Criteria, attached to the invoice.
- H. The invoice for final payment must be submitted by Contractor no sooner than July 20, 2025 and not later than August 10, 2025. The invoice for final payment must include:
1. The invoice number;
 2. The Contract number;
 3. The date Contractor received written confirmation from the HHSC Project Manager that all Deliverables provided by Contractor under the Contract met the Acceptance Criteria and Contractor satisfactorily fulfilled its obligations under Section 2.6 (Contractor Support and Restrictions) of **ATTACHMENT G (HHSC SOLICITATION NO. HHS0013928, INCLUDING ADDENDA)** of the Contract.
 4. The invoice due date, which is the date by which Contractor must submit the invoice to the HHSC Contract Manager and must be no sooner than July 20, 2025 and not later than August 10, 2025;
 5. The anticipated payment due date, which must be 30 Calendar Days after the date the invoice is received by the HHSC Contract Manager, or August 31, 2025, whichever is sooner;
 6. Name and contact information for Contractor's point of contact related to the invoice;
 7. Contractor's Texas Identification Number (TIN);
 8. Contractor's name and address;
 9. The final payment amount being requested for each Deliverable's retainage;
 10. Total amount being requested for final payment; and
 11. Attached to the invoice, a copy of the written confirmation from the HHSC Project Manager that all Deliverables provided by Contractor under the Contract met the Acceptance Criteria and Contractor satisfactorily fulfilled its obligations under Section 2.6 (Contractor Support and Restrictions) of **ATTACHMENT G (HHSC SOLICITATION NO. HHS0013928, INCLUDING ADDENDA)** of the Contract.

Exhibit I, Insurance Requirements

RFP No. HHS0013928

Article 1. General Requirements

- 1.1 Contractor shall carry insurance in the types and amounts indicated in this exhibit for the duration of the Contract. The insurance shall be evidenced by delivery to the Texas Health and Human Services Commission of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, the Texas Health and Human Services Commission (HHSC) and/or the Texas Department of Family and Protective Services shall be entitled to receive without expense, copies of the policies and all endorsements.
- 1.2 Contractor shall update all expired policies prior to submission for payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to HHSC.
- 1.3 Contractor shall provide and maintain all insurance coverage with the minimum amounts described throughout the life of the contract.
- 1.4 Failure to maintain insurance coverage, as required, is grounds for suspension of Work for cause.
- 1.5 Contractor shall deliver to HHSC true and complete copies of certificates and corresponding policy endorsements upon award.
- 1.6 Failure of HHSC to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of HHSC to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- 1.7 The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to HHSC in the Contract.
- 1.8 The insurance coverage and limits established below shall not be interpreted as any representation or warranty that the insurance coverage and limits necessarily will be adequate to protect Contractor.
- 1.9 Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company or similar rating company or otherwise acceptable to HHSC.
- 1.10 Policies must include the following clauses, as applicable:

This insurance shall not be canceled, materially changed, or non-renewed except after thirty (30) days written notice has been given to HHSC.
- 1.11 It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self-insurance carried by HHSC for liability arising out of operations under the Contract. HHSC, its officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under the Contract. The additional insured status must cover completed operations as well. This is not applicable to workers' compensation policies.
- 1.12 A waiver of subrogation in favor of the Texas Health and Human Services Commission shall be provided in all policies.

2 of 3
1.13

Without limiting any of the other obligations or liabilities of Contractor, Contractor shall require each Subcontractor performing work under the Contract, at Subcontractor's own expense, to maintain during the term of the Contract, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above.

- 1.14 As an alternative, Contractor may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. Contractor's certificate of insurance shall note in such event that Subcontractors are included as additional insureds and that Contractor agrees to provide workers' compensation for Subcontractors and their employees. Contractor shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. Contractor must retain the certificates of insurance for the duration of the Contract plus five (5) years and shall have the responsibility of enforcing these insurance requirements among its Subcontractors. Owner shall be entitled, upon request and without expense, to receive copies of these certificates.

Article 2. Required Coverage

- 2.1 **Workers' Compensation.** Insurance with limits as required by the Texas Workers' Compensation Act, with the policy endorsed to provide a waiver of subrogation in favor of the Texas Health and Human Services Commission, employer's liability insurance of not less than:

- a. \$1,000,000 each accident;
- b. \$1,000,000 disease each employee; and
- c. \$1,000,000 disease policy limit.

Workers' compensation insurance coverage must be provided for all workers at all tier levels and meet the statutory requirements of the Texas Labor Code.

- 2.2 **Commercial General Liability Insurance.** Including premises, operations, independent contractor's liability, products and completed operations and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's liability for bodily injury (including death) and property damage with a minimum limit of:

- a. \$1,000,000 per occurrence;
- b. \$2,000,000 general aggregate;
- c. \$5,000 Medical Expense each person;
- d. \$1,000,000 Personal Injury and Advertising Liability;
- e. \$2,000,000 products and completed operations aggregate;
- f. \$50,000 Damage to Premises Rented to You; and
- g. Coverage shall be on an "occurrence" basis.

The term "You" as referenced in Subsection (f), means the Contractor.

- 2.3 **Comprehensive Automobile Liability Insurance,** covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage of \$1,000,000 per accident. No aggregate shall be permitted for this type

of coverage.

- 2.4 Umbrella Liability Insurance.** Contractor shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Contractor for an amount of not less than amount \$1,000,000 that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required hereinabove.

The policy shall provide “drop down” coverage where underlying primary insurance coverage limits are insufficient or exhausted.

- 2.5 Professional Liability Insurance.** Contractor shall obtain, pay for and maintain professional liability errors and omissions insurance during the Contract term, insuring Contractor for an amount of not less than \$1,000,000.

- 2.6 Cyber/Privacy Liability Insurance Policy.** Contractor shall provide Cyber/Privacy Liability Insurance. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include loss to electronic vandalism to electronic data, electronic data, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

The policy must include coverage for including coverage for a third party’s willful electronic alteration of data, introduction of viruses which impact electronic data, unauthorized use of electronic data, or denial of service to web site or email destinations.

If the Vendor maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Cyber Liability Insurance **\$1,000,000** Claim/**\$1,000,000** Aggregate.



TEXAS

Health and Human Services

Cecile E. Young, Executive Commissioner

Request for Proposals (RFP)

for

**Independent Assessment of Residential Childcare Rules, Standards, and Requirements at
Texas Health and Human Services Commission and Texas Department of Family and
Protective Services (Senate Bill 593 Assessment)**

RFP No. HHS0013928

Date of Release: September 1, 2023

Responses Due: October 2, 2023 by 10:30 a.m. Central Time

NIGP Class/Item Codes

918-06 Administrative Consulting

918-32 Consulting Services

918-58 Governmental Consulting

958-77 *Project Management Services

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ARTICLE I. INTRODUCTION, DEFINITIONS, AND AUTHORITY

1.1 INTRODUCTION

In accordance with Senate Bill 593 of the 88th Texas Legislature, Regular Session, the Texas Health and Human Services Commission (HHSC) seeks to contract with a vendor to provide an assessment of the rules and regulations governing residential child care including foster and adoptive homes and provide recommendations for how the State may simplify and streamline regulations to prioritize the health, safety, and wellbeing of children while reducing barriers to hiring and retaining staff at residential childcare operations, including barriers to attracting and retaining potential Child Placing Agencies, Residential Child-Care Facilities, foster families, kinship families, and adoptive families.

The Contractor's recommendations will be published online and reported to the Governor of the State of Texas, the lieutenant governor, the speaker of the house of representatives, and the standing committee of each house of the Texas State Legislature with primary jurisdiction over HHSC. HHSC and the Texas Department of Family and Protective Services (DFPS) will jointly work to implement the recommendations. The Contractor is expected to work closely with HHSC and DFPS in developing the recommendations to ensure that the recommendations can be implemented effectively.

HHSC Procurement and Contracting Services (PCS) will administer the procurement process for this Solicitation, which includes RFP publication, handling of communications from vendors, as well as managing the receipt of Solicitation Responses for review and evaluation.

Information regarding HHSC and its programs related to this procurement is available online and can currently be accessed at <https://www.hhs.texas.gov/providers/protective-services-providers/child-care-regulation/24-hour-residential-child-care-provider>.

Information regarding DFPS and its programs related to this procurement is available online and can currently be accessed at <https://www.dfps.texas.gov/>.

1.2 DEFINITIONS

Refer to **Exhibit B, HHS Uniform Terms and Conditions – Vendor v3.3**, for additional definitions.

As used in this Solicitation, unless a different definition is specified or the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

“**Acceptance Criteria**” means the criteria that must be met by Contractor for a Deliverable to be considered completed under the terms of the Contract and for Contractor to receive payment.

“**Adoptive Home**” means a home regulated by a Child Placing Agency where child placements are for the purpose of adoption rather than fostering. These homes may or may not be verified.

“**Adoptive Parent**” means a parent who is regulated by a Child Placing Agency who has the intention of adopting a child placed in their home, rather than fostering.

“**Addendum**” means a written clarification or revision to this Solicitation issued by HHSC PCS and posted to the ESBD.

“**Agency Home**” means a home regulated and verified by a Child Placing Agency in accordance with Texas Administrative Code (TAC) Title 26, Part 1, Chapter 749, Subchapter M, Division 3, Rule §749.2470 to provide care for up to 6 children (or up to 8 in certain instances), 17 years or younger. Agency Homes are Verified to provide care for relative or non-relative children.

“**Award Consideration (AC) Documents**” means documents Respondent must submit as part of the Solicitation Response to be considered for negotiations or award.

“**Business Day**” means Monday through Friday, from 8:00 a.m. to 5:00 p.m. local time. Business Day excludes Saturday, Sunday, and State-approved holidays (i.e., federal, state, or agency-designated holidays).

“**Calendar Day**” is each day shown on the calendar beginning at 12:00 Midnight, including Saturdays, Sundays, and holidays.

“**Child Placing Agency**” means a person, including a sole proprietor, partnership, or business or governmental entity, other than the parents of a child, who plans for the placement of or places a child in a childcare operation or adoptive home.

“**Completion**” means all Acceptance Criteria for a Deliverable have been met and approved in writing by the HHSC Project Manager.

“**Complete**” has the same meaning as Completion.

“**Contract Term**” means the duration of the Contract, including any exercised extensions or renewals, commencing on the Effective Date and ending when the Contract expires in accordance with its terms, or when it has been terminated.

“**DFPS**” means the Department of Family and Protective Services.

“**Effective Date**” has the same meaning as the definition in **Exhibit B, HHS Uniform Terms and Conditions – Vendor v3.3**.

“**ESBD**” means the Electronic State Business Daily, the electronic marketplace where State of Texas bid opportunities over \$25,000 are posted. The ESBD may currently be accessed at <http://www.txsmartbuy.com/esbd>.

“**Fictive Kin**” has the same meaning as Relative Caregiver.

“**Foster Parent**” means a person verified to provide child-care services in the Agency Home.

“**Final Written Response Score**” refers to the final scoring of the written response as documented in the Solicitation.

“**HHSC**” means the Health and Human Services Commission.

“**HHSC PCS**” means Procurement and Contracting Services (PCS), a division of HHSC.

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

“**HUB Subcontracting Plan**” or “**HSP**” means written documentation regarding the use of subcontractors, which is required to be submitted with all responses to state agency contracts with an expected value of \$100,000 or more where the state agency has determined subcontracting opportunities are probable. The HSP subsequently becomes a provision of the awarded Contract and shall be monitored for compliance by the state agency throughout the Contract Term.

“**Independent Entity**” means an entity that is not a Residential Child-Care Facility as defined in Section 42.002(19) of the Texas Human Resources Code, including a single-source continuum contractor as defined by Title 26 of the TAC Part 1, Chapter 749, Subchapter B, Division 1, Rule §749.43(72).

“**Minimum Standards**” means the standards from Title 26, Part 1, Chapters 748 and 749 of the TAC.

“**Project Manager**” means the person designated by HHSC after the Contract Effective Date who is the point of contact between HHSC and the Contractor.

“**Relative Caregiver**” means children who are the children, grandchildren, siblings, great-grandchildren, first cousins, nieces, or nephews of the caregiver, whether by affinity or consanguinity or as the result of a relationship created by court decree. Relative Caregivers may be verified by a Child Placing Agency to be compensated to provide care for relative children. If a Relative Caregiver is verified, they must comply with all Minimum Standards related to foster or adoptive care.

“**Residential Child-Care Facility**” means a facility licensed, certified, or registered by the department to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.

“**Respondent**” means the individual or entity responding to this Solicitation.

“**Solicitation**” means this RFP including all exhibits, attachments, forms, and Addenda, if any.

“**Solicitation Consideration (SC) Documents**” means documents that must be submitted by Respondent with the Solicitation Response in order to be considered for evaluation and cannot be resubmitted or have errors remedied after the submission due date and time in the Schedule of Events has passed.

“**State**” means the State of Texas and its instrumentalities, including HHSC or DFPS, and any other state agency, its officers, employees, or authorized agents.

“**Verified or Verification**” means the process in which a Child Placing Agency screens and approves a home for foster or adoptive placements.

“VPTS” means Vendor Performance Tracking System, as defined under Section [2262.055](#) of the Texas Government Code and Title 34 of the TAC Part 1, Chapter 20, Subchapter B, Division 2, Rule [§20.115](#) and Subchapter F, Division 2, Rule [§20.509](#).

“Weighted Standards Document” means the document provided to Contractor by HHSC containing the weighted and citable standards from Title 26 of the TAC Part 1, Chapters 745, 748, and 749, including the standard number, description, and weight from the Weighted Enforcement System (see [Exhibit M, Weighted Enforcement System](#)).

1.3 AUTHORITY

HHSC is soliciting the services stated in this Solicitation under the authority of Texas Government Code Chapter 2254, Subchapter B and Senate Bill 593, Act of May 4, 2023, 88th Leg., R.S., § 1 (to be codified at Tex. Hum. Res. Code § 42.027).

ARTICLE II. SCOPE OF WORK

2.1 CONTRACTOR REQUIREMENTS AND DEADLINES

Contractor shall provide the Deliverables in accordance with the requirements and Acceptance Criteria provided by this article.

Contractor must be an Independent Entity. Contractor may not subcontract for the provision of the Deliverables and Services with any entity that is not an Independent Entity, or persons with controlling interest in any entity that is not an Independent Entity. Contractor must have demonstrated expertise in evaluating state child welfare systems and have knowledge of child-care regulatory practices. Contractor must have demonstrated knowledge and experience in conducting qualitative and quantitative analysis. Contractor must demonstrate a general understanding of the HHSC and DFPS roles, responsibilities, and processes and procedures related to residential childcare providers and foster and adoptive homes. Contractor must Complete all Deliverables by the due dates provided in **Table 1 (Deliverable Due Dates)**.

Table 1: Deliverable Due Dates			
Deliverable No.	Name	Anticipated Completion Date	Due Date
Milestone #1 – Project Planning			
1	Kickoff Meeting	1/4/24	Ten (10) Business Days after Contract Effective Date.
2	Project Plan	1/11/24	Five (5) Business Days after Completion of Deliverable No. 1, Kickoff Meeting .

3	Project Plan Review Meeting	1/19/24	Five (5) Business Days after Completion of Deliverable No. 2, Project Plan .
4	Status Reports	Continuous until Completion of Deliverable No. 8, Final Report	Weekly on Fridays, beginning after Completion of Deliverable No. 3, Project Plan Review Meeting .
Milestone #2 – Assessment			
5	Preliminary Assessment Report	7/19/24	Five (5) Business Days after the Completion of the assessment required by Section 2.3 (Conducting the Assessment) .
6	Preliminary Assessment Review Meeting	7/26/24	Five (5) Business Days after Completion of Deliverable No. 5, Preliminary Assessment Report .
Milestone #3 – Final Report			
7	Draft Final Report Review Meeting	8/9/24	Ten (10) Business Days after Completion of Deliverable No. 6, Preliminary Assessment Review Meeting .
8	Final Report	8/30/24	No later than September 30, 2024, or within 15 Business Days after Completion of Deliverable No. 7, Draft Final Report Review Meeting , whichever is sooner.

2.2 PROJECT MANAGEMENT AND STAFFING

Contractor shall provide project management services and maintain staffing necessary to successfully meet the Contract requirements, including a project manager and key staff. Contractor may not alter the project manager or key staff designated by Contractor and required under **Section 2.2.2 (Deliverable No. 2, Project Plan)** without the written approval of the HHSC Project Manager.

2.2.1 Deliverable No. 1, Kickoff Meeting

Contractor shall schedule and conduct a kickoff meeting with HHSC and DFPS to discuss the project approach and gather the information needed to develop **Deliverable No. 2, Project Plan (Section 2.2.2)**. During the kickoff meeting, HHSC Project Manager will provide the list of relevant external stakeholders to be used by Contractor to meet the requirements in **Subsections (c) and (d) of Section 2.3.1 (Assessment Requirements)**. The Acceptance Criteria for this Deliverable are as follows:

- a. Contractor must coordinate with the HHSC Project Manager to conduct an in-person kickoff meeting within ten (10) Business Days following the Contract Effective Date.
- b. The kickoff meeting must be held in Austin, Texas.
- c. The Contractor must provide the following documents for the Kickoff Meeting: an agenda; a list of names and resumes for the key staff and project manager to be provided by Contractor; the methodology and approach Contractor will use for the Project; and prospective timelines for Project Deliverables.

2.2.2 Deliverable No. 2, Project Plan

Contractor shall submit to the HHSC Project Manager a project plan for completing the requirements under this Solicitation. The Acceptance Criteria for this Deliverable are as follows:

- a. Contractor shall submit the project plan to the HHSC Project Manager no later than five (5) Business Days after the Completion of **Deliverable No. 1, Kickoff Meeting (Section 2.2.1)**.
- b. The project plan must include a list of the names of all key staff to be allocated to providing the Services under the Contract, including the project manager, and their period of allocation throughout the Contract Term.
- c. The project plan must include the list of the relevant external stakeholders provided by the HHSC Project Manager during the kickoff meeting.
- d. The project plan must include a list of methods Contractor will use to engage with the stakeholders, such as face-to-face meetings, phone calls, emails, surveys, or other methods.
- e. The project plan must include a description of proposed roles and responsibilities for Contractor staff, HHSC, and DFPS.
- f. The project plan must include contact information for Contractor's project manager assigned to the Contract.
- g. The project plan must include a detailed description of the activities to be conducted by Contractor to meet the requirements of the Scope of Work.
- h. The project plan must include a detailed timeline of the activities to be completed to provide each Deliverable by the due dates specified in **Table 1 (Deliverable Due Dates)**.
- i. The project plan must include documentation of any potential project risks, including the ability to Complete Deliverables by the due dates specified in the Contract, and actions Contractor will take to mediate those risks.

2.2.3 Deliverable No. 3, Project Plan Review Meeting

Contractor shall schedule and conduct a Project Plan Review Meeting with HHSC and DFPS by coordinating with the HHSC Project Manager. The Acceptance Criteria for this Deliverable are as follows:

- a. Contractor shall schedule the meeting and provide an agenda within one (1) Business Day of receiving HHSC's written acceptance of **Deliverable No. 2, Project Plan (Section 2.2.2)**.

- b. Contractor shall conduct the meeting within Five (5) Business Days of receiving HHSC's written acceptance of **Deliverable No. 2, Project Plan (Section 2.2.2)**.
- c. During the Project Plan Review Meeting, Contractor must review all required elements of **Deliverable No. 2, Project Plan (Section 2.2.2)** and the methodology used for the overall project approach.

2.3 CONDUCTING THE ASSESSMENT

Following the Completion of **Deliverable No. 2, Project Plan (Section 2.2.2)**, Contractor shall begin conducting the assessment as required by this section. HHSC will provide Contractor with Weighted Standards Document for Contractor to review when completing the requirements outlined under **Subsections (a) and (b) of Section 2.3.1 (Assessment Requirements)**.

2.3.1 Assessment Requirements

Contractor's assessment must meet all the requirements as follows:

- a. Contractor shall conduct an assessment of HHSC rules, statutes, and Minimum Standards that apply to Child Placing Agencies, Adoptive Homes and Residential Child-Care Facilities, including Agency Homes. Contractor shall refer to **Exhibit L, Rules, Statutes, and Minimum Standards** when conducting this assessment.
- b. Contractor shall conduct an assessment of DFPS rules, statutes, and contract requirements and Single Source Continuum Contractors (SSCCs) that apply to Child Placing Agencies and Residential Child-Care Facilities, including Agency Homes. Contractor shall refer to **Exhibit L, Rules, Statutes, and Minimum Standards** when conducting this assessment.
- c. When providing Subsections (a) and (b) of this section, Contractor shall assess the Minimum Standards, DFPS contracting requirements as identified in **Exhibit L, Rules, Statutes, and Minimum Standards**, and oversight requirements in rule and statute to determine the relevance of each standard or requirement, whether it complies with federal laws, rules, or guidelines, and whether it is best practice.
- d. Contractor shall solicit and consider the input of relevant external stakeholders including Residential Child-Care Facilities, Foster Parents, Adoptive Parents, SSCCs, and any other external stakeholder affected by HHSC's or DFPS's rules, Minimum Standards, and contracting requirements that apply to Child Placing Agencies, Residential Child-Care Facilities including Agency Homes, or Adoptive Parents.
- e. Contractor shall include input of relevant external stakeholders, licensed by HHSC Childcare Regulation, who provide childcare services outside of DFPS or SSCC contracts and are related to the scope of this Solicitation.
- f. Contractor's methodology used for this assessment and report must take into consideration that children placed in Residential Child-Care Facilities, including Agency Homes, may not be in DFPS conservatorship. These operations may accept children from referral sources such as parents, the Texas Juvenile Justice Department, and the Office of Refugee and Resettlement.

2.3.2 Deliverable No. 4, Status Reports

Following the Completion of **Deliverable No. 3, Project Plan Review Meeting (Section 2.2.3)**, Contractor must submit Status Reports to the HHSC Project Manager in accordance with **Table 1, (Deliverable Due Dates)**. The Acceptance Criteria for this Deliverable are as follows:

- a. Status reports must be submitted each Friday. If the status report due date for that week falls on a State or federal holiday in accordance with the [Texas State Auditor's Office - Holiday Schedule](#), then the report is due the following Business Day.
- b. Status reports must include confirmation that Contractor is on target for each Deliverable due date outlined in the Project Plan and any changes to expected Completion dates for each Deliverable.
- c. Status reports must include any issues encountered that may result in a delay of a Deliverable.

2.3.3 Procedure for Requesting Meetings

Meetings with HHSC and DFPS are available to Contractor as needed. HHSC Project Manager will create an invite and distribute to Contractor staff and the appropriate parties in HHSC and DFPS following a meeting request from Contractor. In order to request a meeting, Contractor shall:

- a. In writing to the HHSC Project Manager, request the meeting a minimum of two (2) Business Days in advance of the meeting date requested by Contractor; and
- b. Include in the request for a meeting the subject and purpose of the meeting, as well as the Contractor staff e-mail addresses to be included in the meeting invite.

Additionally, Contractor must meet with HHSC and DFPS staff upon any request by the HHSC Project Manager within 2 (two) Business Days of a request made by the HHSC Project Manager, unless otherwise agreed upon in writing by the HHSC Project Manager. Under no circumstances shall Contractor meet with HHSC or DFPS staff without making or receiving a formal request to meet in writing from the HHSC Project Manager.

2.4 PRELIMINARY ASSESSMENT FINDINGS AND RECOMMENDATIONS

Contractor shall notify the HHSC Project Manager in writing within one (1) Calendar Day of when the assessment is complete. After completion of the assessment in accordance with **Section 2.3 (Conducting the Assessment)**, Contractor shall review and discuss the preliminary findings and recommendations in **Deliverable No. 5, Preliminary Assessment Report (Section 2.4.1)** with HHSC and DFPS prior to issuance of the **Final Report (Section 2.5)**.

2.4.1 Deliverable No. 5, Preliminary Assessment Report

Contractor shall submit a preliminary assessment report to the HHSC Project Manager. The Acceptance Criteria for this Deliverable are as follows:

- a. Contractor shall submit the preliminary assessment report to the HHSC Project Manager within five (5) Business Days of Contractor's written notification to HHSC that the assessment is complete.

- b. The preliminary assessment report must include all findings and recommendations Contractor is considering for inclusion in the **Deliverable No. 8, Final Report (Section 2.5.2)**.

2.4.2 Deliverable No. 6, Preliminary Assessment Review Meeting

Contractor shall coordinate with the HHSC Project Manager in accordance with **Section 2.3.3 (Procedure for Requesting Meetings)** to schedule and conduct a preliminary assessment review meeting with HHSC and DFPS. Acceptance Criteria for this Deliverable are as follows:

- a. Contractor shall schedule the meeting within one (1) Business Day and conduct the meeting within five (5) Business Days of receiving HHSC's written acceptance of **Deliverable No. 5, Preliminary Assessment Report (Section 2.4.1)**.
- b. Contractor shall provide a presentation during the meeting to review all the findings and recommendations Contractor is considering for inclusion in **Deliverable No. 8, Final Report (Section 2.5.2)**.
- c. Contractor shall allot adequate time during this meeting for questions and discussion. If DFPS and HHSC have additional questions or need further discussion following the meeting, additional time must be scheduled until the HHSC Project Manager informs Contractor in writing that Contractor has met the Acceptance Criteria for this Deliverable.

2.5 FINAL REPORT

After receiving written confirmation from the HHSC Project Manager that the Acceptance Criteria for **Section 2.4.1 (Deliverable No. 5, Preliminary Assessment Report)** and **Section 2.4.2 (Deliverable No. 6, Preliminary Assessment Review Meeting)** have been met, Contractor shall conduct a draft final report review meeting and provide a final report to HHSC and DFPS. The recommendations provided by Contractor in **Deliverable No. 8, Final Report (Section 2.5.2)** will be published online by HHSC and submitted by HHSC to the State of Texas Legislature and the Governor of the State of Texas.

2.5.1 Deliverable No. 7, Draft Final Report Review Meeting

Contractor shall provide a draft of the final report and discuss the draft with HHSC and DFPS prior to submitting **Deliverable No. 8, Final Report (Section 2.5.2)**. The Acceptance Criteria for this Deliverable are as follows:

- a. Contractor shall schedule the draft final report review meeting within one (1) Business Day and conduct the meeting within Ten (10) Business Days of receiving HHSC's written acceptance of **Deliverable No. 6, Preliminary Assessment Review Meeting (Section 2.4.2)**.
- b. Contractor shall submit a draft of the final report to the HHSC Project Manager no later than 3 Business Days prior to date of draft final report review meeting.
- c. The meeting must include a presentation by Contractor covering the entire draft of the final report, including detailing the methodology used for the report.

- d. Contractor shall allot adequate time during this meeting for questions and discussion. If DFPS and HHSC have additional questions or need further discussion following the meeting, additional time must be scheduled until the HHSC Project Manager informs Contractor in writing that Contractor has met the Acceptance Criteria for this Deliverable.

2.5.2 Deliverable No. 8, Final Report

Contractor shall provide the final report on the assessment as required by Senate Bill 593, Act of May 4, 2023, 88th Leg., R.S., § 1 (to be codified at Tex. Hum. Res. Code § 42.027) and conducted in accordance with **Section 2.3 (Conducting the Assessment)**. Contractor shall submit a revised draft of the final report to the HHSC Project Manager following written confirmation from the HHSC Project Manager that the Acceptance Criteria for **Section 2.5.1 (Deliverable No. 7, Draft Final Report Review Meeting)** have been met. Contractor shall continue to revise the draft of the final report and meet with HHSC and DFPS upon any request made by the HHSC Project Manager, until it is confirmed in writing by the HHSC Project Manager that the final report has met the Acceptance Criteria in this section. **The final report is not considered Complete until all the Acceptance Criteria in this section have been confirmed in writing by the HHSC Project Manager to be met.** The Acceptance Criteria for this Deliverable are as follows:

- a. The final report must be submitted to the HHSC Project Manager no later than September 30, 2024, or within 15 Business Days of receiving written confirmation from the HHSC Project Manager that the Acceptance Criteria for **Deliverable No. 7, Draft Final Report Review Meeting (Section 2.5.1)** have been met, whichever is earlier.
- b. The final report must contain a complete account of all the information and findings from the assessment, as required by Senate Bill 593, Act of May 4, 2023, 88th Leg., R.S., § 1 (to be codified at Tex. Hum. Res. Code § 42.027) and in accordance with **Section 2.3 (Conducting the Assessment)**.
- c. The final report must contain a description of the methodology used. The methodology must be in accordance with all requirements in the Solicitation and must clearly indicate how **Subsection (h) of Section 2.5.2 (Deliverable No. 8, Final Report)** was incorporated.
- d. The final report must contain rationale for each recommendation made. If recommendations are based on other bodies of work, references for those works must be included in the report.
- e. The final report must contain recommendations for simplifying HHSC's Minimum Standards for the purposes of: (1) prioritizing the health, safety, and well-being of children residing in a Residential Child-Care Facility including an Agency Home or an Adoptive Parent; and (2) reducing any barriers to opening a Child Placing Agency, opening a Residential Child-Care Facility, a Foster Parent becoming a verified Agency Home, or a prospective Adoptive Parent being approved to adopt by a Child Placing Agency.
- f. The final report must contain recommendations for eliminating any Minimum Standards and rules in Title 26 of the TAC Part 1, Chapter 745 (Licensing), that are weighted as low, medium-low, or medium in the Weighted Standards Document and are not directly related to child safety.

- g. The final report must contain recommendations for adjusting HHSC's system for assigning weights to Minimum Standards and rules in Title 26 of the TAC Part 1, Chapter 745 (Licensing) to ensure the system is methodical, consistent, and reflective of a strategic model for increasing the focus on the health, safety, and well-being of children residing in a Residential Child-Care Facility including an Agency Home or the home of a Relative Caregiver or an Adoptive Parent. The report must include an explanation of the recommended adjustments to HHSC's system for assigning weights to Minimum Standards and rules in Title 26 of the TAC Part 1, Chapter 745 (Licensing).
- h. The recommendations in the final report must consider the potential impacts to the HHSC Weighted Enforcement System (see **Exhibit M, Weighted Enforcement System**) and the overall regulatory functions of HHSC.
- i. In developing recommendations for the final report, Contractor shall consider that some, but not all, children placed in Residential Child-Care Facilities require trauma-based services.
- j. The final report must contain recommendations for taking into consideration the model licensing standards recommended by the Administration for Children and Families of the United States Department of Health and Human Services.
- k. The final report must contain recommendations for addressing any contracting requirements, licensing, training, or oversight requirements identified during the assessment, to be barriers to retaining high-quality Residential Child-Care Facilities including Agency Homes or Adoptive Parents.
- l. The final report must contain recommendations for updating licensing standards for the purposes of prioritizing the health, safety, and well-being of children residing in a Residential Child-Care Facility including Agency Homes or an Adoptive Parent and reducing any barriers to the hiring and retention of high-quality leadership, administrators, and staff at Child Placing Agencies and Residential Child-Care Facilities.
- m. The final report must contain recommendations for providing maximum flexibility in applying standards to ensure that services are provided in response to the needs of each individual child residing in a Residential Child-Care Facility, including an Agency Home or an Adoptive Parent.
- n. The final report must contain recommendations for eliminating duplicate functions and defining roles among HHSC and DFPS in the areas of licensing, investigating, contract oversight, and any other relevant regulatory activity identified in the assessment required by **Section 2.3 (Conducting the Assessment)**.
- o. The final report must contain recommendations for promoting transparency and clarity of HHSC and DFPS's expectations for Child Placing Agencies, Residential Child-Care Facilities including Agency Homes and Adoptive Parents.
- p. The final report must contain recommendations for legislative action necessary to implement Contractor's recommendations, including recommendations for retaining, repealing, or modifying existing state laws or rules or adopting new state laws or rules.

- q. The final report must include a recommendation implementation plan. The recommendation implementation plan must include the methodology utilized to identify recommendation implementation prioritization.
- r. The final report must include the following information in the format specified below:
 - 1. A Microsoft Excel file divided by each Minimum Standard's subchapter with a list of each Minimum Standard and Contractor's recommendation;
 - 2. A Microsoft Excel file with each applicable TAC Title 26, Part 1, Chapter 745 rule sections with a list of each TAC rule and Contractor's recommendation;
 - 3. A Microsoft Excel file with each applicable Texas Human Resources Code Chapters 42 and 43 statutes with a list of each statute and Contractor's recommendation; and
 - 4. A Microsoft Excel file with DFPS's contracting requirements, SSCC requirements and Minimum Standards and information regarding duplication and a recommendation for each duplicated requirement.

2.6 CONTRACTOR SUPPORT AND RESTRICTIONS

Following completion of **Deliverable No. 8, Final Report (Section 2.5.2)**, Contractor must be available to answer questions, attend virtual and in-person meetings, and testify in-person at Texas legislative hearings related to the assessment and report developed under the Contract for the duration of the Contract Term. It is anticipated that Contractor may be requested to attend approximately five (5) in-person meetings or legislative hearings in the Austin Metro area, however the actual number of in-person meetings may vary.

Contractor may not release, publish, or post any materials developed in connection with the Contract, including any drafts or supporting materials for the Deliverables provided in connection with the Contract, without written permission from HHSC. See also **Section 11.16, Media Releases of Exhibit B, HHS Uniform Terms and Conditions – Vendor v3.3.**

2.7 INVOICING, PAYMENT TERMS, AND LIQUIDATED DAMAGES

2.7.1 Payment

Payments will be made after HHSC receives an invoice in compliance with this section, following the completion of each Deliverable. Requests for payment must be submitted on an invoice by e-mail to the HHSC Contract Manager at RSD_Invoices@hhs.texas.gov.

Invoices may not be submitted prior to completion of the Deliverable for which Contractor is requesting payment. A Deliverable is not considered Complete until all the Acceptance Criteria for the Deliverable have been met, the Deliverable has been provided to HHSC in the format prescribed by HHSC, and written confirmation that the Deliverable meets the Acceptance Criteria has been received by Contractor in writing from the HHSC Project Manager. The invoice must be submitted within five (5) Business Days of the completion of the Deliverable, with the exception of **Deliverable No. 4, Status Reports (Section 2.3.2)**, which should be submitted on a monthly

basis for the total number of status reports Completed in the previous month. The invoice must include:

- a. The invoice number, starting with the number one (1) and increasing with each subsequent invoice;
- b. The Contract number;
- c. The date Contractor received written confirmation from the HHSC Project Manager that the Deliverable meets the Acceptance Criteria;
- d. The invoice due date, which is the date by which Contractor must submit the invoice to the HHSC Contract Manager and must be not later than five (5) Business Days after the date provided in Subsection (c) of **Section 2.7.1 (Payment)**;
- e. The anticipated payment due date, which must be 30 Calendar Days after the date the invoice is received by the HHSC Contract Manager;
- f. Name and contact information for Contractor's point of contact related to the invoice;
- g. Contractor's Texas Identification Number (TIN);
- h. Contractor's name and address;
- i. The specific Deliverable(s) for which Contractor is requesting payment in the invoice;
- j. The Net Payment (less retainage) amount being requested for each Deliverable, as specified in **Exhibit G, Cost Proposal**;
- k. Total amount being requested for payment; and
- l. Attached to the invoice, a copy of the written confirmation from the HHSC Project Manager that the Deliverable meets the Acceptance Criteria.

2.7.2 Retainage

In order to ensure the provision of Services required by **Section 2.6 (Contractor Support and Restrictions)** HHSC will withhold from each Deliverable payment, as retainage, fifteen percent (15%) of the total earned amount for each Deliverable. Contractor shall not withhold retainage from their Subcontractors in amounts that are any percentage greater than that withheld in its Contract with HHSC under this section. The request for final payment of these amounts must be submitted on an invoice by Contractor in writing to the HHSC Contract Manager at RSD_Invoices@hhs.texas.gov. The request must be submitted no sooner than July 20, 2025 and not later than August 10, 2025. The invoice for the request for final payment must include:

- a. The invoice number;
- b. The Contract number;
- c. The date Contractor received written confirmation from the HHSC Project Manager that all Deliverables provided by Contractor under the Contract met the Acceptance Criteria and Contractor satisfactorily fulfilled its obligations under **Section 2.6 (Contractor Support and Restrictions)**;

- d. The invoice due date, which is the date by which Contractor must submit the invoice to the HHSC Contract Manager and must be no sooner than July 20, 2025 and not later than August 10, 2025;
- e. The anticipated payment due date, which must be 30 Calendar Days after the date the invoice is received by the HHSC Contract Manager, or August 31, 2025, whichever is sooner;
- f. Name and contact information for Contractor's point of contact related to the invoice;
- g. Contractor's Texas Identification Number (TIN);
- h. Contractor's name and address;
- i. The final payment amount being requested for each Deliverable's retainage, as specified in **Exhibit G, Cost Proposal**;
- j. Total amount being requested for final payment; and
- k. Attached to the invoice, a copy of the written confirmation from the HHSC Project Manager that all Deliverables provided by Contractor under the Contract met the Acceptance Criteria and Contractor satisfactorily fulfilled its obligations under **Section 2.6 (Contractor Support and Restrictions)** of the Contract.

2.7.3 Liquidated Damages

Deliverables must be Completed by the due dates listed in **Table 1 (Deliverable Due Dates)**. If a Deliverable is not Completed by the due date specified in **Table 1 (Deliverable Due Dates)** then the Deliverable is considered late.

HHSC may assess liquidated damages for any late Deliverable at the rate of 0.5% of the pricing of the Deliverable for each Calendar Day of delay. HHSC is not required to provide the Contractor with notice and opportunity to resolve issues prior to HHSC's assessment of liquidated damages. HHSC's acceptance of a Deliverable after the specified due date does not relieve Contractor from its obligation to timely submit a Complete Deliverable by the applicable due date.

Contractor agrees that (1) the liquidated damages and any amounts assessed in connection therewith are neither a penalty nor a forfeiture, and (2) the amount of liquidated damages are a reasonable estimate of just compensation.

No payment or reimbursement is available to Contractor beyond the amount agreed to be paid for the Deliverables provided in accordance with this article and **Article VII (Cost Proposal)**. Pricing agreed to in any resulting Contract shall be firm and remain constant throughout the Contract Term.

2.8 CONTRACT AWARD, TERM, AND COMPENSATION

2.8.1 Contract Award and Execution

HHSC intends to award one Contract as a result of this Solicitation. Any award is contingent upon approval of the HHSC executive commissioner or their designee.

If, for any reason, a final Contract cannot be executed with a Respondent selected for award within ten (10) days of HHSC's determination to seek to contract with that Respondent, HHSC may negotiate a Contract with the next highest-scoring Respondent or may withdraw, modify, or partially award this Solicitation.

2.8.2 Contract Term

The initial term of any Contract resulting from this Solicitation will be two (2) years. HHSC, at its sole option, may extend any Contract awarded pursuant to this Solicitation for up to three (3) additional years.

2.8.3 Total Compensation

Total compensation under any Contract awarded shall not exceed \$1,025,050. Notwithstanding the preceding, HHSC reserves the right to increase this amount if additional state or federal funding becomes available throughout Contract Term.

2.9 DATA USE AGREEMENT AND SECURITY PRIVACY INQUIRY

By entering into a Contract with HHSC as a result of this Solicitation, Respondent agrees to be bound by the terms of the **Data Use Agreement (DUA) v8.5**, attached as **Exhibit D**.

Respondents must complete and return with their Solicitation Response **Exhibit D-1, Attachment 2 to the DUA, Security and Privacy Inquiry (SPI), v2.1**.

2.10 NO GUARANTEE OF VOLUME, USAGE, OR COMPENSATION

HHSC makes no guarantee of volume, usage, or total compensation to be paid to any Respondent under any awarded Contract, if any, resulting from this Solicitation. Any awarded Contract is subject to appropriations and the continuing availability of funds.

HHSC reserves the right to cancel, make partial award, or decline to award a Contract under this Solicitation at any time at its sole discretion.

2.11 GOVERNMENTAL ENTITIES

If Respondent is responding to this Solicitation in its capacity as a governmental entity, certain terms and conditions found in this Solicitation, including all exhibits and attachments, may not be applicable. Furthermore, to the extent permitted by law, if a Solicitation Response is received from a governmental entity, HHSC reserves the right to enter into an interagency or interlocal agreement with the governmental entity.

ARTICLE III. ADMINISTRATIVE INFORMATION

3.1 SCHEDULE OF EVENTS

EVENT	DATE/TIME
Solicitation Posting Date to ESBD	SEPTEMBER 1, 2023
Pre-proposal Conference Attendance is Optional	SEPTEMBER 8, 2023 at 10:00AM Central Time
Deadline for Submitting Questions or Requests for Clarification	SEPTEMBER 12, 2023 at 10:30 AM Central Time
Tentative Date Responses to Questions or Requests for Clarification Posted on ESBD	SEPTEMBER 15, 2023
Deadline for courtesy HSP review	SEPTEMBER 18, 2023 at 2:00 PM Central Time
Deadline for Submission of Solicitation Responses [NOTE: Responses must be <u>RECEIVED</u> by HHSC by the deadline.]	OCTOBER 2, 2023 at 10:30 AM Central Time
Evaluation Period	OCTOBER 2023
Anticipated Notice of Award	DECEMBER 2023
Anticipated Contract Start Date	DECEMBER 2023

Respondents must submit their Solicitation Responses to HHSC in accordance with the due date and time indicated in this Schedule of Events or as changed via an Addendum posted to the ESBD.

NOTE: All dates are tentative and HHSC reserves the right to modify these dates at any time. At the sole discretion of HHSC, events listed in the Schedule of Events are subject to scheduling changes and cancellation. Scheduling changes or cancellation determinations made prior to the deadline for submission will be published by posting an Addendum to the ESBD. After the deadline for submission, if there are delays that significantly impact the anticipated award date, HHSC, at its sole discretion, may post updates regarding the anticipated award date to the [Procurement Forecast](#) on the HHS Procurement Opportunities web page. Each Respondent is responsible for checking the ESBD and [Procurement Forecast](#) for updates.

By submitting a Solicitation Response, Respondent represents and warrants that any individual submitting the Solicitation Response and any related documents on behalf of the Respondent is

authorized to do so and to bind the Respondent under any Contract that may result from this Solicitation.

3.2 AMBIGUITY, CONFLICT, OR DISCREPANCY

Respondent must notify the **Section 3.3.1 (Sole Point of Contact)** of any ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error in the Solicitation in the manner and by the deadline described in **Section 3.3.4 (Solicitation Questions)**.

Respondent submits a Solicitation Response at its own risk.

If Respondent fails to properly and timely notify the **Section 3.3.1 (Sole Point of Contact)** of any ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error in the Solicitation, Respondent, whether awarded a Contract or not:

- a. Waives any claim of error or ambiguity in the Solicitation and any resulting Contract;
- b. Must not contest the interpretation by HHSC of such provision(s); and
- c. Is not entitled to additional compensation, relief, or time by reason of ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error or its later correction.

3.3 INQUIRIES

3.3.1 Sole Point of Contact

All requests, questions, or other communication about this Solicitation shall be made in writing to HHSC PCS, addressed to the person listed below (Sole Point of Contact). Additionally, a phone number is provided for purposes such as instructing a potential Respondent through an IT system or website referenced in this Solicitation. Communications via telephone are not binding.

The Sole Point of Contact will authorize a secondary Sole Point of Contact in the event of their absence and, in such an event, will include the contact information for the secondary Sole Point of Contact in their automatic reply out-of-office e-mail message. Respondents seeking to contact the Sole Point of Contact should do so via e-mail in order to receive updated contact information.

Name	Lauren Contreras, CTCD
Title	PCS Contract Administrative Manager
Phone	512-406-2408
Email	Lauren.Contreras02@hhs.texas.gov

See also, **Section 3.3.3 (Exception to Sole Point of Contact)** below.

3.3.2 Prohibited Communication

Except as provided in **Section 3.3.1 (Sole Point of Contact)** and **Section 3.3.3 (Exception to Sole Point of Contact)**, potential Respondents and Respondents are prohibited from any communication with HHSC regarding the Solicitation. HHSC and DFPS, its representative(s), and partners will not answer any questions or otherwise discuss the contents of this Solicitation with

any potential Respondent or its representative(s). Attempts to ask questions by phone or in person will not be allowed or recognized as valid. Respondent shall rely only on written statements issued by or through HHSC PCS designated staff as provided by **Section 3.3 (Inquiries)**. This restriction does not preclude discussions between affected parties for the purposes of conducting business unrelated to this Solicitation. **Failure to comply with these restrictions may result in disqualification of Respondent's Solicitation Response.**

3.3.3 Exception to Sole Point of Contact

Exceptions to **Section 3.3.1** are as follows:

- a. Respondents with questions relating to the HUB Subcontracting Plan are permitted to direct those questions to the HUB coordinator at Cheryl.Bradley@hhs.texas.gov.
- b. Where it is expressly directed by the Sole Point of Contact that another designated HHSC representative may speak to the Respondent, such as during Contract negotiations. Respondents are required to ensure that communications have been authorized by the Sole Point of Contact before engaging in such communication. Failure to comply with this requirement may result in the disqualification of a Respondent's Solicitation Response.

3.3.4 Solicitation Questions

HHSC will allow written questions and requests for clarification regarding this Solicitation. Questions must be submitted by e-mail to the Sole Point of Contact (**Section 3.3.1**) by the deadline established in **Section 3.1 (Schedule of Events)**. Responses to questions or other written requests for clarification will be consolidated and posted to the ESD and will not be provided individually to requestors.

HHSC reserves the right to amend answers previously posted, prior to the Solicitation response deadline (**Section 3.1**). Amended answers will be posted on the ESD. It is the Respondent's responsibility to check the ESD. HHSC also reserves the right to provide a single consolidated response to all similar questions at the agency's sole discretion.

- a. All questions and requests for clarification must include the following information:
 1. Solicitation number;
 2. Solicitation package reference (page number, section, and exhibit or attachment, if applicable);
 3. Question topic (e.g., "Schedule of Events," or "**Exhibit G, Cost Proposal**"); and
 4. Question for HHSC.
- b. Requestor contact information below must be included in the body of the e-mail and submitted with the question(s):
 1. Company name;
 2. Company representative name;
 3. Phone number; and
 4. E-Mail address.

Questions or requests for clarification received after the deadline in **Section 3.1 (Schedule of Events)**, may be reviewed by HHSC but may not be answered. Only answers to questions submitted to the Sole Point of Contact in writing, in accordance with this section, are binding.

3.4 PRE-PROPOSAL CONFERENCE

3.4.1 Attendance

HHSC PCS will conduct a pre-proposal conference. Attendance is optional but highly recommended.

In-person attendees are required to sign an attendance log prior to leaving the pre-proposal conference. Attendees to virtual pre-proposal conferences are required to send an email to the Sole Point of Contact (**Section 3.3.1**), advising of participation in the pre-proposal conference. Attendees must provide their name, phone number, and name of the company they are representing regardless of whether the pre-proposal conference is in-person or virtual.

3.4.2 Conference Logistical Information

HHSC PCS will hold the pre-proposal webinar on the date and time set out in **Section 3.1 (Schedule of Events)**.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact the Sole Point of Contact identified in **Section 3.3.1 (Sole Point of Contact)**, at least seventy-two (72) hours before the meeting in order to have reasonable accommodations made by HHSC.

Webinar Information:

Registration URL: <https://attendee.gotowebinar.com/register/3412163246526156891>

Webinar ID: 205-067-691

3.4.3 Questions at Pre-Proposal Conference

- a. Reference **Section 3.3.4 (Solicitation Questions)** for the required format and information to be provided for submission of questions and requests for clarification.
- b. Attendees may submit questions in writing at the conference. All questions must be in the required format and include the information as referenced in **Section 3.3.4 (Solicitation Questions)**.
- c. During the conference, HHSC may provide responses to questions and requests for clarification, but only written responses posted by HHSC PCS as an Addendum to the Solicitation on the ESBD will be considered an official, binding update to the Solicitation.
- d. HHSC reserves the right to amend, prior to the Solicitation Response Deadline, answers previously posted. Amended answers will be posted on the ESBD. Notification of posting will be in accordance with **Section 3.1 (Schedule of Events)**.
- e. Conversations with HHSC program area staff **before or after the pre-proposal conference** are prohibited.

3.5 SOLICITATION RESPONSE COMPOSITION

3.5.1 General Information

Failure to submit all required Solicitation Response documents in the required format(s) may result in disqualification of the Solicitation Response without further consideration (**Section 3.6.3, Submission Checklist**). Respondent shall prepare a Solicitation Response that clearly and concisely represents its qualifications and capabilities. Expensive bindings, colored displays, promotional materials, etc. are not necessary or desired. Respondent should focus on the instructions and requirements of the Solicitation.

3.5.2 Page Limit and Supporting Documentation

The narrative proposal must not exceed forty (40) pages and should be formatted for 8 ½" x 11" paper with 1-inch margins and typed in Times New Roman, 12-point font. Pages in excess of this limit shall not be considered.

3.5.3 Discrepancies

In the event of any discrepancies or variations between copies, HHSC is under no obligation to resolve the inconsistencies and may make its scoring and selection decisions accordingly, including the decision to potentially disqualify a Solicitation Response. If Respondent is required to designate an "Original" Solicitation Response but fails to do so, HSHC, in its sole discretion, will determine the version to be used as the original or may disqualify the Solicitation Response. If the Respondent submits a redacted Solicitation Response as the "Original," HSHC will disqualify the Solicitation Response and it will not be evaluated. HHSC will not accept submissions after the "Deadline for Submission of Solicitation Responses" in the **Schedule of Events (Section 3.1)** to remedy discrepancies or variations in Solicitation Response submissions.

3.5.4 Exceptions

Respondents are highly encouraged, in lieu of including exceptions in their Solicitation Responses, to address all issues that might be advanced by way of exception by submitting such issues as questions or requests for clarification pursuant to **Section 3.3.4 (Solicitation Questions)**.

Any exception included in a Solicitation Response may result in a Respondent not being awarded a Contract. If a Respondent includes exceptions in its Solicitation Response, Respondent is required to use the **Exceptions Form** included as **Exhibit E** to this Solicitation and provide all information requested on the form. Any exception that does not provide all required information in the format set forth in **Exhibit E** may be rejected without consideration.

No exception, nor any other term, condition, or provision in a Solicitation Response that differs, varies from, or contradicts this Solicitation will be considered to be part of any Contract resulting from this Solicitation unless expressly made a part of the Contract in writing by HHSC.

3.5.5 Assumptions

Respondent must identify on **Exhibit F, Assumptions Form** any business, economic, legal, programmatic, or practical assumptions that underlie the Respondent's response to the Solicitation.

HHSC reserves the right to accept or reject any assumptions. All assumptions not expressly identified and incorporated into any Contract resulting from this Solicitation are deemed rejected by HHSC.

3.5.6 Binding Offer

A Solicitation Response should be responsive to the Solicitation as worded and without any assumption that any or all terms, conditions, or provisions of the Solicitation will be negotiated. Furthermore, all Solicitation Responses constitute binding offers. **Any Solicitation Response that includes any type of disclaimer or other statement indicating that the response does not constitute a binding offer may be disqualified.**

If a Respondent's ability to enter into a Contract is contingent upon any exception or assumption provided in accordance with **Section 3.5.4 (Exceptions)** or **Section 3.5.5 (Assumptions)**, the Respondent may be disqualified from further consideration for Contract award.

3.6 SOLICITATION RESPONSE SUBMISSION AND DELIVERY

3.6.1 Deadline

Solicitation Responses must be received at the address in **Section 3.6.4 (Labeling and Delivery for USB Submission and Other Materials)** and time stamped by HHSC PCS no later than the date and time specified in **Section 3.1 (Schedule of Events)**.

Solicitation Responses received after the deadline specified in Section 3.1 will be rejected and not considered for Contract award.

3.6.2 Submission Option

- a. **Submission Option #1:** Respondent shall submit two USB drives—one (1) labeled “Original Proposal” and one (1) labeled “Copy”—containing the following documents:
 1. Each USB must contain one file named “Original” that contains the Respondent's entire Solicitation Response (except the cost proposal and HUB Subcontracting Plan) in searchable portable document format (PDF), unless otherwise specified for a particular attachment or exhibit.
 2. If applicable in accordance with **Section 8.1.5 (Public Information Act – Respondent Requirement Regarding Disclosure)**, each USB must contain one file named “Public Information Act Copy” that contains the Respondent's entire Solicitation Response, including all exhibits and attachments, in searchable PDF.
 3. In accordance with **Section 7.1 (Cost Proposal)**, each USB must contain one file named “Cost Proposal” that contains the Respondent's cost proposal in Excel format with active formulas (compatible with Microsoft Office 2016).
 4. In accordance with **Section 6.8 (HUB Subcontracting Plan)**, each USB must contain one file named “HUB Subcontracting Plan” in searchable PDF, that contains the Respondent's HUB Subcontracting Plan and all supporting documentation.
- b. **Submission Option #2:** Respondent shall submit the following through the Online Bid Room utilizing the procedures in **Exhibit K, HHS Online Bid Room Instructions**:

1. One file named “Original” that contains the Respondent’s entire Solicitation Response (except the cost proposal and HUB Subcontracting Plan) in searchable portable document format (PDF), unless otherwise specified for a particular attachment or exhibit.
2. If applicable in accordance with **Section 8.1.5 (Public Information Act – Respondent Requirements Regarding Disclosure)**, one file named “Public Information Act Copy” that contains the Respondent’s entire Solicitation Response, including all exhibits and attachments, in searchable PDF.
3. In accordance with **Section 7.1 (Cost Proposal)**, each submission must contain one file named “Cost Proposal” that contains the Respondent’s cost proposal in Excel format with active formulas (compatible with Microsoft Office 2016).
4. In accordance with **Section 6.8 (HUB Subcontracting Plan)**, each submission must contain one file named “HUB Subcontracting Plan” in searchable PDF, that contains the Respondent’s HUB Subcontracting Plan and all supporting documentation.

3.6.3 Submission Checklist

Solicitation Consideration and Award Consideration Documents, reference **Section 1.2 (Definitions)** must be submitted by the deadline for Solicitation Response submissions, reference **Section 3.1 (Schedule of Events)**. Solicitation Consideration Documents will be reviewed as received, and Respondent will not have an opportunity to remedy missed requirements. At its sole discretion, HHSC may request some or all of the Respondents to remedy missing elements of Award Consideration Documents. Those marked “SC” are Solicitation Consideration Documents and those marked “AC” are Award Consideration Documents.

The Solicitation Response must be submitted using one of the approved methods identified in **Section 3.6, (Solicitation Response Submission and Delivery)**. Below are the documents required to be submitted with the Solicitation Response. Where searchable PDF files are required, submission of non-searchable (image only) PDF files may result in disqualification from further consideration for Contract award.

A.	Proposal and Respondent Information			
1.	Narrative Proposal	(Section 5.1)	SC	_____
2.	Company Information	(Section 6.1)	SC	_____
3.	Franchise Tax Information	(Section 6.2)	AC	_____
4.	References	(Section 6.3)	AC	_____
5.	Major Subcontractor Information	(Section 6.4)	SC	_____
6.	HHS Solicitation Affirmations	(Section 6.5, Exhibit A)	SC	_____
7.	Exceptions (if applicable)	(Section 3.5.4, Exhibit E)	AC	_____
8.	Assumptions (if applicable)	(Section 3.5.5, Exhibit F)	AC	_____

9.	Dun and Bradstreet Report	(Section 6.6.1)	AC	_____
10.	Financial Statements and Financial Solvency	(Section 6.6.2)	AC	_____
11.	Corporate Guarantee	(Section 6.7)	AC	_____
12.	SPI (if applicable)	(Section 2.9, Exhibit D-1)	AC	_____
13.	Certificate of Authority	(Section 6.9)	AC	_____
B.	Cost Proposal	(Article VII)	SC	_____
C.	HUB Subcontracting Plan	(Section 6.8, Exhibit H)	SC	_____

3.6.4 Labeling and Delivery for USB Submission and Other Materials

Respondent must deliver Solicitation Responses submitted via USB by one of the methods below.

Overnight/Express/Priority Mail	Hand Delivery
Health and Human Services Commission ATTN: Response Coordinator Tower Building Room 108 1100 W. 49th St., MC 2020 Austin, Texas 78756	Health and Human Services Commission ATTN: Response Coordinator Procurement & Contracting Services Building 1100 W. 49th St., MC 2020 Austin, Texas 78756

BE ADVISED, all Solicitation Responses become the property of HHSC after submission and will not be returned to the Respondent. It is the Respondent’s responsibility to appropriately mark and deliver the Solicitation Response to HHSC PCS by the specified date. A dated shipping label, invoice of receipt from a from USPS or commercial carrier, or any other documentation in lieu of the on-site time stamp WILL NOT be accepted.

Each Respondent is solely responsible for ensuring its Solicitation Response is submitted in accordance with all Solicitation requirements, including, but not limited to, proper labeling of packages, sufficient postage, or delivery fees, and ensuring timely receipt by HHSC. **In no event will HHSC or DFPS be responsible or liable for any delay or error in delivery. Solicitation Response must be RECEIVED by HHSC PCS by the Solicitation Response Deadline identified in Section 3.1 (Schedule of Events).**

Solicitation Responses submitted via USB by mail or hand delivery shall be placed in a sealed package. The sealed package and the USB drives shall be clearly labeled on the outside as follows:

SOLICITATION NO:	HHS0013928
SOLICITATION NAME	Senate Bill 593 Assessment
PURCHASER NAME:	Lauren Contreras, CTCD
RESPONDENT NAME:	

It is Respondent's sole responsibility to ensure that packaging is sufficient to prevent damage to contents. HHSC will not be responsible or liable for any damage, and damaged Solicitation Responses will not be considered at HHSC's sole discretion.

HHSC will not be held responsible for any Solicitation Response that is mishandled prior to receipt by HHSC PCS. It is the Respondent's sole responsibility to mark appropriately and deliver the Solicitation Response to HHSC PCS by the specified date and time. HHSC will not be responsible for late delivery, inappropriately identified documents, or other submission errors that may lead to disqualification or nonreceipt of the Respondent's Solicitation Response.

3.6.5 Modifications and Withdrawals

Prior to the Solicitation Response submission deadline in **Section 3.1 (Schedule of Events)**, Respondent may: (1) withdraw its Solicitation Response by submitting a written request to the Sole Point of Contact identified in **Section 3.3.1 (Sole Point of Contact)**; or (2) modify its Solicitation Response by submitting a written amendment to the Sole Point of Contact identified in **Section 3.3.1 (Sole Point of Contact)**. When modifying its Solicitation Response, Respondent must include in writing the section(s) of its submission that will be replaced or removed by the amendment.

ARTICLE IV. SOLICITATION RESPONSE EVALUATION AND AWARD PROCESS

4.1 CONFORMANCE WITH STATE LAW

Solicitation Responses shall be evaluated in accordance with Texas Government Code Section 2254.027. HHSC shall not be obligated to select the lowest priced Solicitation Response but shall make an award to the Respondent that provides the best value to the State of Texas.

4.2 BEST VALUE DETERMINATION

4.2.1 Selection Methodology

Solicitation Responses that meet the minimum qualifications will be submitted to the evaluation team for review and scoring. Each member of the evaluation team will receive a copy of each responsive Solicitation Response. The evaluators will review the Solicitation Responses considering the criteria listed in **Section 4.2.5 (Written Response Evaluation Criteria)**.

Evaluators will individually score the Solicitation Responses. This procurement will utilize an aggregated individual evaluation methodology as outlined by this Article IV.

The following sections describe the evaluation process, including any criteria for advancement to the various phases of evaluation, if applicable.

4.2.2 Minimum Qualifications

Respondents must meet the minimum qualifications listed below.

- a. Respondents must have recently been in business for a minimum of five (5) years;
- b. Respondents must affirm that the Respondent is an Independent Entity. See **Exhibit N, Special Affidavit Regarding Independent Entity Status**.
- c. Respondents must be financially solvent and adequately capitalized, as determined based on a review of documentation required by **Section 6.6 (Other Reports)**;
- d. Respondents have submitted the Solicitation Response in accordance with **Section 3.6, (Solicitation Response Submission and Delivery)** including all Solicitation Consideration and Award Consideration Documents, see **Section 3.6.3 (Submission Checklist)**;
- e. Respondents who receive an overall score on the VPTS of less than a “C” may be disqualified from consideration for award.

4.2.3 Initial Compliance Screening

HHSC will review Solicitation Responses for compliance with the **Submission Checklist (Section 3.6.3)** and for demonstrated ability to meet the **Minimum Qualifications (Section 4.2.2)** required to advance to evaluations. Failure to meet the **Minimum Qualifications (Section 4.2.2)**, will result in the disqualification of the Solicitation Response.

HHSC will automatically disqualify any Solicitation Response that does not include one or more of the completed and signed (as applicable) Solicitation Consideration Documents listed in the **Submission Checklist (Section 3.6.3)**.

At its sole discretion, HHSC may disqualify any Solicitation Response that does not include all required Award Consideration Documents. Reference **Section 3.6.3 (Submission Checklist)**.

HHSC may contact references provided in response to this Solicitation. HHSC may contact Respondent’s clients, or solicit information from any available source, including the Comptroller’s VPTS. Any information received may be grounds for disqualification if that information, in HHSC’s sole discretion, suggests that the Respondent may perform poorly if selected.

4.2.4 Written Solicitation Response Evaluation

Each member of the evaluation team will read the Solicitation Responses in preparation for evaluation. The evaluation team will score all Solicitation Responses that pass initial screening **Section 4.2.3 (Initial Compliance Screening)**. Solicitation Responses will be scored against the criteria in **Section 4.2.5 (Written Response Evaluation Criteria)**.

Solicitation Responses will be evaluated utilizing aggregated individual scoring and any other methods outlined in **Article IV (Solicitation Response Evaluation and Award Process)**. The individual evaluators’ scores will be aggregated and weighted, resulting in the Final Written Response Scores, unless BAFOs are conducted.

4.2.5 Written Response Evaluation Criteria

Solicitation Responses shall be consistently evaluated and scored in accordance with the following criteria.

- a. Staffing, Qualifications, and Experience – 35%
- b. Project Approach and Understanding – 35%
- c. Cost – 30%

See also, **Exhibit J, Evaluation Tool**.

4.2.6 Best and Final Offer

HHSC may, at its sole discretion, following the execution of **Section 4.2.1 (Selection Methodology)** request a Best and Final Offer (BAFO) from all Respondents or, only those Respondents whose Solicitation Responses ranked most highly by the evaluation committee. The request for a BAFO will allow a Respondent the opportunity to revise its original Solicitation Response, including pricing, or leave its Solicitation Responses originally submitted. Revisions must be submitted in the manner and form prescribed by the BAFO request. Requests will be sent to the point of contact provided by the Respondent. HHSC is not responsible for a Respondent's failure to timely receive the BAFO request.

HHSC reserves the right to request more than one BAFO from each of the selected Respondents. If a response is submitted to a request for a BAFO, the Final Written Response Scores (as outlined by **Section 4.2.7, Final Written Response Score**) will be revised in accordance with the stated criteria in **Section 4.2.5 (Written Response Evaluation Criteria)** as to any changes made to the Respondent's original Solicitation Response. A request for a BAFO does not guarantee an award or further negotiations.

If BAFOs are requested by HHSC and submitted by the Respondent, they will be evaluated using the criteria stated in the BAFO invitation, scored, and ranked by the evaluation committee. The award will then be granted to the highest scoring Respondent. However, a Respondent should provide its best offer in its original Solicitation Response. Respondents should not expect or assume that HHSC will request a BAFO.

4.2.7 Final Written Response Score

A Respondent's Final Written Response Score is the score from the **Written Solicitation Response Evaluation (Section 4.2.4)**. If BAFOs are conducted, the Final Written Response Score may be adjusted in accordance with **Section 4.2.6, Best and Final Offer**. Final Written Response Score may not always determine best value or selection for negotiation and award, see **Summary of Best Value Determination (Section 4.2.8)** for more information.

4.2.8 Summary of Best Value Determination

The final selection for award will be based on best value, as determined by **Section 4.2 (Best Value Determination)**. This includes any scoring adjustments for outliers, best and final offers, or other additional considerations as specified by this Solicitation. Respondents are encouraged to thoroughly review the processes outlined in **Section 4.2 (Best Value Determination)**, as it documents the best value considerations to be made by HHSC when selecting a Respondent for negotiation and Contract award.

4.3 QUESTIONS OR REQUESTS FOR CLARIFICATION

By submitting a Solicitation Response, Respondent grants HHSC the right to ask questions, request clarifications and to obtain any information from any lawful source regarding the past history, practices, conduct, ability, and eligibility of the Respondent to supply Goods or Services and to fulfill requirements under this Solicitation, and the past history, practices, conduct, ability, and eligibility of any director, officer, or key employee of the Respondent. By submitting a Solicitation Response, the Respondent generally releases from liability and waives all claims against any party providing information about the Respondent at the request of HHSC. Such information may be taken into consideration in evaluating the Solicitation Response.

ARTICLE V. NARRATIVE/TECHNICAL PROPOSAL

5.1 NARRATIVE PROPOSAL

5.1.1 Executive Summary

Respondents must provide an executive summary of their proposal (excluding cost information) that asserts the Respondent is providing, in its proposal, all the requirements of this Solicitation, including **Article II (Scope of Work)**. The summary must demonstrate Respondent's understanding of HHSC and DFPS goals and objectives for this Solicitation.

If the Respondent is providing goods or services beyond those specifically requested, those goods or services must be identified. If the Respondent is offering goods or services that do not meet the specific requirements of this Solicitation, but in the opinion of the Respondent are equivalent or superior to those specifically requested, any such differences must be noted in the executive summary. The Respondent should realize, however, that failure to provide the Goods and Services specifically requested may result in disqualification.

The executive summary must not exceed **five (5) pages** and should represent a full and concise summary of the contents of the proposal.

5.1.2 Project Work Plan

Respondents must describe their proposed processes and methodologies for providing all components of the Scope of Work described in **Article II (Scope of Work)**, including their approach to meeting the Project schedule. Respondents should identify all tasks to be performed, including all Project activities, materials and other products, services, and reports to be generated throughout the Contract Term and relate them to the stated purpose(s) and specifications described in this Solicitation.

5.1.3 Experience, Qualifications and Key Staffing Information

Respondents must describe their experience, qualifications, and key staffing information for the Project. Respondents must provide resumes for all key staff who will be responsible for the performance of the Services requested under the Solicitation. Respondents must demonstrate

expertise in evaluating state child welfare systems and have knowledge of human regulatory practices. Respondents must demonstrate knowledge and experience in conducting qualitative and quantitative analysis. Respondents must demonstrate a general understanding of the HHSC and DFPS processes and procedures related to the Work required by the Contract.

ARTICLE VI. REQUIRED RESPONDENT INFORMATION

6.1 COMPANY INFORMATION

In accordance with **Article III (Administrative Information)**, Respondents must include the following information with their responses:

6.1.1 Company Narrative

Respondents must provide a detailed narrative explaining why they are qualified to provide the Services enumerated in **Article II (Scope of Work)**, focusing on their key strengths and competitive advantages.

6.1.2 Company Profile

Respondents must provide a company profile, including:

- a. Their ownership structure (e.g., corporation, partnership, LLC, or sole proprietorship), including any wholly-owned subsidiaries, affiliated companies, or joint ventures. *(Please provide this information in a narrative and as a graphical representation.)* If Respondent is an affiliate of, or has a joint venture or strategic alliance with, another company, Respondent must identify the percentage of ownership of each joint venture member or affiliate and the percentage of the parent's ownership. The entity performing the majority of the Work under any Contract resulting from this Solicitation, throughout the Contract Term, must be the primary bidder. Finally, Respondents must provide their proposed operating structure for the Services requested under this Solicitation and which entities (i.e., parent company, affiliate, joint venture, subcontractor) will be performing them;
- b. The year the company was founded and/or incorporated. If incorporated, please indicate the state where the company is incorporated and the date of incorporation;
- c. The location of company headquarters and any field office(s) that may provide Services for any resulting Contract under this Solicitation;
- d. The number of employees in the company, both locally and nationally, and the location(s) from which employees will be assigned;
- e. The name, address, and telephone number of Respondent's point of contact for any resulting Contract under this Solicitation;
- f. The name, address, and telephone number of Respondent's point of contact for any questions regarding the Solicitation Response; and
- g. Indicate whether the company has ever been in contract with any Texas state agency. If "Yes," specify the contract term, for what duties, and for which agency.

6.2 FRANCHISE TAX – RIGHT TO TRANSACT BUSINESS IN TEXAS

The Texas franchise tax is imposed on each taxable entity formed or organized in Texas or doing business in Texas. Respondent must provide their 11-digit Comptroller's Taxpayer Number or the 9-digit Federal Employer's Identification Number.

Respondent must be set up in the Texas franchise tax system prior to Contract award. Texas franchise tax information can be accessed at <https://comptroller.texas.gov/taxes/franchise/>.

6.3 REFERENCES

Respondents shall provide a minimum of three (3) references from similar contracts or projects performed, preferably for state and/or local government, within the last five (5) years. Respondents must verify current contracts and provide the following information:

- a. Client name;
- b. Contract/project description;
- c. Total dollar amount of contract/project;
- d. Key staff assigned to the referenced contract/project who will be designated for Work under any Contract resulting from this Solicitation; and
- e. Client contract/project manager name, telephone number, fax number, and email address.

6.4 MAJOR SUBCONTRACTOR INFORMATION

Respondents must identify any major subcontractors who will perform fifteen percent (15%) or more of the Work under any Contract resulting from this Solicitation. Respondents must indicate whether or not they hold any financial interest in any major subcontractor. As a condition of award, an authorized officer or agent of each proposed major subcontractor may be required to sign a statement to the effect that the Subcontractor has read, and will agree to abide by, Respondent's obligations under any Contract awarded pursuant to this Solicitation.

6.5 AFFIRMATIONS AND CERTIFICATIONS

Respondents must complete and return with their Solicitation Response **Exhibit A, HHS Solicitation Affirmations v2.3.**

6.6 OTHER REPORTS

6.6.1 Dun and Bradstreet Reports

Respondents with a Dun and Bradstreet number must include a Comprehensive Insight Plus Report, Business Information Report, or Credit eValuator Report (collectively referred to as "Dun and Bradstreet Reports") with their Solicitation Response.

6.6.2 Financial Statements and Financial Solvency

- a. Respondents must submit electronically in a searchable PDF an annual report, which must include:
1. Audited financial statements for calendar year 2020, 2021, and 2022, including all supplements, management discussion and analysis, and actuarial opinions;
 2. If applicable, consolidated statements for calendar year 2020, 2021, and 2022 for any holding companies or affiliates; and
 3. A full disclosure of any events, liabilities, or contingent liabilities that could affect Respondent's financial ability to perform this Contract.

At a minimum, financial statements must include:

- i. Balance sheet;
 - ii. Income statement;
 - iii. Statement of changes in financial position;
 - iv. Statement of cash flows; and
 - v. Capital expenditures.
- b. If the Respondent is a corporation that is required to report to the Securities and Exchange Commission (SEC), Respondent must submit its three (3) most recent SEC Form 10K, Annual Reports, pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, Title 15 of the United States Code Chapter 2B, Sections 78m or 78o(d). Financial materials must be submitted electronically as a word searchable PDF.
- c. If audited financial statements are not available, Respondent must submit unaudited financial information and any other information the Respondent believes meets the requirements of this section. Reference **Section 6.6.3 (Alternate Report)**. If the submitted documents do not provide adequate assurance of financial stability or solvency, HHSC reserves the right to request additional information or to disqualify the Respondent.
- d. If the Respondent is either substantially or wholly owned by another corporate (or legal) entity, the Respondent must include the information required in this section for each such entity, including the most recent detailed financial report for each such entity.
- e. If HHSC determines that an entity does not have sufficient financial resources to guarantee the Respondent's performance, HHSC may require the Respondent to obtain another acceptable financial instrument or resource from such entity, or to obtain an acceptable guarantee from another entity with sufficient financial resources to guarantee Respondent's performance.

6.6.3 Alternate Report

If any Respondent(s) is unable to provide the annual report specified above, the Respondent(s) may, at the discretion of HHSC, provide the following alternate report:

- a. Unaudited financial statements for calendar year 2020, 2021, and 2022, including all supplements, management discussion and analysis, and actuarial opinions;
- b. An unaudited financial statement of the most recent quarter of operation; and

- c. A full disclosure of any events, liabilities, or contingent liabilities that could affect Respondent's financial ability to perform this Contract.

At a minimum, such financial statements must include:

1. Balance sheet;
2. Income statement;
3. Statement of changes in financial position;
4. Statement of cash flows; and
5. Capital expenditures.

6.7 CORPORATE GUARANTEE

If the Respondent is substantially or wholly owned by another corporate (or other) entity, HHSC reserves the right to request that such entity unconditionally guarantee performance by the Respondent in each and every obligation, warranty, term, covenant, and condition of any Contract resulting from this Solicitation.

6.8 HUB SUBCONTRACTING PLAN

Respondents must submit the HUB Subcontracting Plan in accordance with **Section 3.6 (Solicitation Response Submission and Delivery)**. The HSP should be labeled: "HUB Subcontracting Plan," and include all supporting documentation in accordance with **Exhibit H, HUB Subcontracting Plan (HSP) Requirements** and the HSP.

A courtesy review of a Respondent's completed HSP is optional and is available upon request to assist in providing a compliant and responsive HSP. This courtesy review may only identify possible deficiencies, but a final compliant determination cannot be provided until the Solicitation Response is submitted.

To request a courtesy review, submit the completed HSP including all supporting documentation in a PDF format by e-mail to the HHSC HUB Program Office by or before the Courtesy Review of HUB Subcontracting Plan Deadline in **Section 3.1 (Schedule of Events)**.

E-Mail for Courtesy Review: Cheryl.Bradley@hhs.texas.gov.

E-mail Subject Line: HSP Courtesy Review, No. HHS0013928

Due Date: [Respondent to add Solicitation Response deadline information from **Section 3.1, Schedule of Events**]

HSPs received after the courtesy review deadline in **Section 3.1 (Schedule of Events)**, will not be processed. A response regarding the HSP will be provided at least eight (8) Business Days prior to the Solicitation Response deadline in **Section 3.1 (Schedule of Events)** from the HUB Office, allowing enough time to rectify any potential deficiencies for the final HSP submission.

The final HSP must be submitted with the Solicitation Response by the deadline in **Section 3.1 (Schedule of Events)**. Solicitation Responses that do not include a completed HUB Subcontracting Plan shall be rejected due to material failure to comply with Texas Government Code Section 2161.252(b).

6.9 SECRETARY OF STATE CERTIFICATION

The Respondent must be currently authorized to do business in the State of Texas as evidenced by Certificate of Authority from the Texas Secretary of State submitted with the Solicitation Response.

ARTICLE VII. COST PROPOSAL

7.1 COST PROPOSAL

As noted above in **Section 3.6 (Solicitation Response Submission and Delivery)**, cost information must be included as a separate document or file, using **Exhibit G, Cost Proposal**, with the Respondent's Solicitation Response for each Deliverable set forth in **Article II (Scope of Work)**.

Respondents must state their fixed, all-inclusive price for each Deliverable, taking into account the Services and Deliverables to be rendered during the Contract Term, including any and all costs involved that are to be paid by HHSC. The Services required by **Section 2.6 (Contractor Support and Restrictions)** must be provided without any additional cost. The pricing for the Services and Deliverables is to be presented only in the format set forth in **Exhibit G, Cost Proposal**. Pricing information shall include all costs associated with providing the required Deliverables and Services in accordance with **Article II (Scope of Work)** and must be submitted and labeled as specified in **Section 3.6 (Solicitation Response Submission and Delivery)**.

The cost proposal provided by Respondent is for the Deliverables and Services as specified in this Solicitation and shall include all labor, materials, tools, supplies, equipment, and personnel, including but not limited to, travel expenses, associated costs, and incidental costs necessary to provide the Deliverables and Services according to the minimum specifications, requirements, provisions, terms, and conditions set forth in this Solicitation.

ARTICLE VIII. GENERAL TERMS AND CONDITIONS

8.1 GENERAL CONDITIONS

8.1.1 Changes, Modifications, and Cancellation

HHSC reserves the right to make changes to and/or cancel this Solicitation and will post all changes and modifications, whether made as a result of a potential Respondent's written inquiries or otherwise, and cancellation notices on the ESBD. It is the responsibility of the Respondent to

check the ESD for any additional information regarding this Solicitation. If the Respondent fails to monitor the ESD for any changes or modifications to the Solicitation, such failure will not relieve the Respondent of its obligation to fulfill the requirements as posted.

8.1.2 Offer Period

Solicitation Responses shall be binding for a period of 240 days after the submission due date. A Respondent may extend the time for which its Solicitation Response will be honored. Upon Contract execution, prices agreed upon by the successful Respondent(s) are an irrevocable offer for the term of the Contract and any Contract renewals or extension(s). No other costs, rates, or fees shall be payable to the successful Respondent unless expressly agreed upon in writing by HHSC.

8.1.3 Costs Incurred

Respondents understand that issuance of this Solicitation in no way constitutes a commitment by HHSC to award a Contract or to pay any costs incurred by a Respondent in the preparation of a response to this Solicitation. HHSC is not liable for any costs incurred by a Respondent. Costs of developing Solicitation Responses, or any other similar expenses incurred by a Respondent are entirely the responsibility of the Respondent and will not be reimbursed in any manner by the State of Texas.

8.1.4 Contract Responsibility

HHSC will look solely to the successful Respondent for the performance of all contractual obligations that may result from an award based on this Solicitation. The successful Respondent shall not be relieved of its obligations for any nonperformance by its Subcontractors.

8.1.5 Public Information Act - Respondent Requirements Regarding Disclosure

Proposals and contracts are subject to the Texas Public Information Act (PIA), Texas Government Code Chapter 552, and may be disclosed to the public upon request. Other legal authority also requires HHSC to post contracts and proposals on its public website and to provide such information to the Legislative Budget Board for posting on its public website.

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

a. Mark Original Solicitation Response:

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

b. Certify in Original Solicitation Response – HHS Solicitation Affirmations Version 2.3 (attached as Exhibit A to this Solicitation):

Certify, in the designated section of the HHS Solicitation Affirmations Version 2.3, Respondent's confidential information assertion and the filing of its Public Information Act Copy; and

c. Submit Public Information Act Copy of Solicitation Response:

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

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

By submitting a response to this Solicitation, Respondent agrees that, if Respondent does not mark the Original Solicitation Response, provide the required certification in the Affirmations and Solicitation Acceptance, and submit the Public Information Act Copy, Respondent's Solicitation Response will be considered to be public information that may be released to the public without notice to the Respondent in any manner including, but not limited to, in accordance with the Public Information Act, posted on HHSC' public website, and posted on the Legislative Budget Board's public website.

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

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

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

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

For more information concerning the types of information that may be withheld under the PIA or questions about the PIA, please refer to the Public Information Act Handbook published by the Office of the Texas Attorney General or contact the attorney general's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX). To access the Public Information Act Handbook, please visit the attorney general's website at <http://www.texasattorneygeneral.gov>.

8.1.6 Respondent Waiver – Intellectual Property

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

8.1.7 Standards of Conduct for Vendors

Pursuant to Title 1 of the TAC Part 15, Chapter 391, Subchapter D, Rule §391.405(a), Contractors, Respondents, and vendors interested in working with HHSC are required to implement standards of conduct for their own personnel and agents on terms at least as restrictive as those applicable to HHSC. These standards must adhere to ethics requirements adopted in rule, in addition to any ethics policy, or code of ethics approved by the HHSC Executive Commissioner. A Respondent must sign and submit all ethics, disclosure, confidentiality, and other forms required under the procurement and any resulting contract.

The standards of conduct must include the ten standards of ethical conduct set forth in Section I of the [HHS Ethics Policy](#) and requirements to comply with ethical standards set forth in federal and

state law (including, but not limited to, Title 1 of the TAC Part 15, Chapter 391, Subchapter D, Rule §391.405(a)).

Standards of conduct of any Contractor, Respondent, or vendor may be reviewed and/or audited by the State Auditor and HHSC, the Contractor, Respondent, or vendor must cooperate with the review and/or audit. Additionally, pursuant to Title 1 of the TAC Part 15, Chapter 391, Subchapter D, Rule §391.405(a), HHSC may examine a Respondent's standards of conduct in the evaluation of a bid, offer, proposal, quote, or other applicable expression of interest in a proposed purchase of Goods or Services.

Any vendor, Contractor, or Subcontractor, that violates a provision of Title 1 of the TAC Part 15, Chapter 391, Subchapter D may be barred from receiving future contracts or have an existing contract canceled. Additionally, HHSC may report the vendor's actions to the Comptroller of Public Accounts for statewide debarment, or law enforcement.

8.1.8 Disclosure of Interested Parties

Pursuant to Section 2252.908 of the Texas Government Code, a successful Respondent to be awarded a Contract with a value of \$1 million or more or awarded a Contract that would require the successful Respondent to register as a lobbyist under Texas Government Code Chapter 305 must submit a disclosure of interested parties form to HHSC at the time the Respondent submits the signed Contract. Rules and filing instructions may be found on the Texas Ethics Commission's public website and additional instructions will be given by HHSC to the successful Respondent.

8.2 INSURANCE

Respondent must provide the required insurance documentation upon invitation to Contract negotiations by HHSC.

8.2.1 Required Coverage

For the duration of any Contract resulting from this Solicitation, the successful Respondent shall acquire insurance, bonds, or both, with financially sound and reputable independent insurers, in the type and amount listed in **Exhibit I, Insurance Requirements**. Failure to maintain insurance coverage or acceptable alternative methods of insurance shall be deemed a breach of Contract.

8.2.2 Alternative Insurability

Notwithstanding the preceding, HHSC reserves the right to consider reasonable alternative methods of insuring the Contract in lieu of the insurance policies customarily required. It will be the Respondent's responsibility to recommend to HHSC alternative methods of insuring the Contract. Any alternatives proposed by Respondent should be accompanied by a detailed explanation regarding Respondent's inability to obtain the required insurance and/or bonds. HHSC shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.

8.3 PROTEST

Any protest shall be governed by the rules published by HHSC in the TAC, Title 1, Part 15, Chapter 391, Subchapter C (Protests).

ARTICLE IX. LIST OF EXHIBITS

<u>EXHIBIT A</u>	HHS SOLICITATION AFFIRMATIONS v2.3
<u>EXHIBIT B</u>	HHS UNIFORM TERMS AND CONDITIONS – VENDOR v3.3
<u>EXHIBIT C</u>	HHS ADDITIONAL PROVISIONS v1.0
<u>EXHIBIT D</u>	DATA USE AGREEMENT (DUA) v8.5
<u>EXHIBIT D-1</u>	ATTACHMENT 2 TO THE DUA, SECURITY AND PRIVACY INQUIRY v2.1
<u>EXHIBIT E</u>	EXCEPTIONS FORM
<u>EXHIBIT F</u>	ASSUMPTIONS FORM
<u>EXHIBIT G</u>	COST PROPOSAL
<u>EXHIBIT H</u>	HUB SUBCONTRACTING PLAN (HSP) REQUIREMENTS
<u>EXHIBIT I</u>	INSURANCE REQUIREMENTS
<u>EXHIBIT J</u>	EVALUATION TOOL
<u>EXHIBIT K</u>	HHS ONLINE BID ROOM INSTRUCTIONS
<u>EXHIBIT L</u>	RULES, STATUTES, AND MINIMUM STANDARDS
<u>EXHIBIT M</u>	WEIGHTED ENFORCEMENT SYSTEM
<u>EXHIBIT N</u>	SPECIAL AFFIDAVIT REGARDING INDEPENDENT ENTITY STATUS

Solicitation Number HHS0013928**Exhibit A. HHS SOLICITATION AFFIRMATIONS**

In this document, HHS includes both the Health and Human Services Commission (HHSC) and the Department of State Health Services (DSHS). System Agency refers to HHSC, DSHS, or both, that will be a party to any contract resulting from the Solicitation. In this document, the terms Respondent, Contractor, Applicant, and Vendor, when referring to the following affirmations (whether framed as certifications, representations, warranties, or in other terms) refer to Respondent, and the affirmations apply to all Respondents regardless of their business form (e.g., individual, partnership, corporation). To the extent applicable for DFPS solicitations, the definition of System Agency includes DFPS.

Respondent must provide information, as applicable, and affirms, without exception, as follows:

1. Respondent represents and warrants that all certifications, representations, warranties, and other provisions in this Affirmations and Solicitation Acceptance apply to Respondent and all of Respondent's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Solicitation or any contract resulting from this Solicitation.
2. **Complete and Accurate Information.** Respondent represents and warrants that all statements and information provided to HHS are current, complete, and accurate. This includes all statements and information in this Solicitation Response.
3. **Public Information Act.** Respondent understands that HHS will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
4. **Contracting Information Requirements.** Respondent represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the contract and the Respondent agrees that the contract can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.
5. **Confidential or Proprietary Information.** Respondent acknowledges its obligation to specifically identify information it contends to be confidential or proprietary and, if Respondent designated substantial portions of its Solicitation Response or its entire Solicitation Response as confidential or proprietary, the Solicitation Response is subject to being disqualified.

6. **Binding Offer.** Respondent's Solicitation Response will remain a firm and binding offer for 240 days from the date the Solicitation Response is due.
7. **Assignment.** Respondent shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from System Agency. Any attempted assignment in violation of this provision is void and without effect.
8. **Terms and Conditions.** Respondent accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation. No exceptions, terms, or conditions will be considered if not advanced in the form and manner directed in the Solicitation. Respondent agrees that all exceptions to the Solicitation as well as terms and conditions advanced by Respondent that differ in any manner from HHS' terms and conditions are rejected unless expressly accepted by System Agency in writing in a fully executed contract.
9. **HHS Right to Use.** Respondent agrees that HHS has the right to use, produce, and distribute copies of and to disclose to HHS employees, agents, and contractors and other governmental entities all or part of Respondent's Solicitation Response as HHS deems necessary to complete the procurement process or comply with state or federal laws.
10. **Release from Liability.** Respondent generally releases from liability and waives all claims against any party providing information about the Respondent at the request of HHS.
11. **Addenda and Amendments to Solicitation.** Respondent acknowledges all addenda and amendments to the Solicitation.
12. **Texas Bidder.** Respondent certifies that if a Texas address is shown as the address of Respondent on this Response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.
13. **Preferences.** Respondent represents and warrants that it qualifies for all preferences claimed under 34 Texas Administrative Code, Section 20.306 or Chapter 2155, Subchapter H of the Texas Government Code as indicated below (check applicable boxes):
 - Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
 - Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
 - Agricultural products grown in Texas
 - Agricultural products offered by a Texas bidder
 - Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
 - Services offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
 - Texas Vegetation Native to the Region
 - USA-produced supplies, materials or equipment
 - Products of persons with mental or physical disabilities

- Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- Energy efficient products
- Rubberized asphalt paving material
- Recycled motor oil and lubricants
- Products produced at facilities located on formerly contaminated property
- Products and services from economically depressed or blighted areas
- Vendors that meet or exceed air quality standards
- Recycled or reused computer equipment of other manufacturers
- Foods of higher nutritional value
- Commercial production company or advertising agency located in Texas

14. Dealings with Public Servants. Respondent has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Solicitation Response, this Solicitation, or any contract resulting from this Solicitation.

15. Financial Participation Prohibited. Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

16. Prior Disaster Relief Contract Violation. Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

17. Child Support Obligation. Under Section 231.006(d) of the Texas Family Code regarding child support, Respondent certifies that the individual or business entity named in this Response is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. If the certification is shown to be false, Respondent may be liable for additional costs and damages set out in 231.006(f). Furthermore, any Respondent subject to Section 231.006 of the Texas Family Code must include in the Response the names and social security numbers (SSNs) of each person with at least 25% ownership of the business entity submitting the Response:

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

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of requested SSNs is required under Section 231.006(c) and

Section 231.302(c)(2), Texas Family Code. The SSNs will be used to identify persons that may owe child support. The SSNs will be kept confidential to the fullest extent permitted by law.

If submitted by email, Responses containing SSNs must be encrypted. Failure by a Respondent to provide or encrypt the SSNs as required may result in disqualification of the Respondent's Response.

- 18. Suspension and Debarment.** Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Respondent's subcontracts, if any, if payment in whole or in part is from federal funds.
- 19. Excluded Parties.** Respondent certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism,*" published by the United States Department of the Treasury, Office of Foreign Assets Control.
- 20. Foreign Terrorist Organizations.** Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- 21. Executive Head of a State Agency.** In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of the contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.
- 22. Human Trafficking Prohibition.** Under Section 2155.0061 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- 23. Franchise Tax Status.** Respondent represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
- 24. Debts and Delinquencies.** Respondent agrees that any payments due under any contract resulting from this Solicitation shall be applied towards any debt or delinquency that is owed to the State of Texas.
- 25. Lobbying Prohibition.** Respondent represents and warrants that payments to Respondent and Respondent's receipt of appropriated or other funds under any contract resulting from this Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).

26. **Buy Texas.** Respondent agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
27. **Disaster Recovery Plan.** Respondent agrees that upon request of HHS, Respondent shall provide copies of its most recent business continuity and disaster recovery plans.
28. **Computer Equipment Recycling Program.** If Respondent is submitting a Response for the purchase or lease of computer equipment, then Respondent certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
29. **Television Equipment Recycling Program.** If Respondent is submitting a Response for the purchase or lease of covered television equipment, then Respondent certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.
30. **Cybersecurity Training.** Respondent represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
31. **Restricted Employment for Certain State Personnel.** Respondent acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Respondent may not accept employment from Respondent before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.
32. **No Conflicts of Interest.** Respondent represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to System Agency under this Solicitation and any resulting contract and that Respondent's provision of the requested goods and/or services under this Solicitation and any resulting contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
33. **Fraud, Waste, and Abuse.** Respondent understands that HHS does not tolerate any type of fraud, waste, or abuse. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Pursuant to Texas Government Code, Section 321.022, if the administrative head of a department or entity that is subject to audit by the state auditor has reasonable cause to believe that money received from the state by the department or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the administrative head shall report the reason and basis for the belief to the Texas State Auditor's Office (SAO). All employees or contractors who have reasonable cause to believe that fraud, waste, or abuse has occurred (including misconduct by any HHS employee, Grantee officer, agent, employee, or subcontractor that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to the Health and Human Services Commission's Office of Inspector General. Respondent agrees to comply with all applicable laws, rules, regulations, and System Agency policies regarding fraud, waste, and abuse including, but not limited to, HHS Circular C-027.

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

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

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

- OIG Toll Free Hotline 1-800-436-6184
- OIG Website: ReportTexasFraud.com
- Internal Affairs Email: InternalAffairsReferral@hhsc.state.tx.us
- OIG Hotline Email: OIGFraudHotline@hhsc.state.tx.us.
- OIG Mailing Address: Office of Inspector General
Attn: Fraud Hotline
MC 1300
P.O. Box 85200
Austin, Texas 78708-5200

- 34. Antitrust.** The undersigned affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Response, neither I nor any representative of the Respondent has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (b) in connection with this Response, neither I nor any representative of the Respondent has violated any federal antitrust law; and (c) neither I nor any representative of the Respondent has directly or indirectly communicated any of the contents of this Response to a competitor of the Respondent or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Respondent.
- 35. Legal and Regulatory Actions.** Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Respondent or any of the individuals or entities included in numbered paragraph 1 of this Affirmations and Solicitation Acceptance within the five (5) calendar years immediately preceding the submission of this Solicitation response that would or could impair Respondent's performance under any contract resulting from this Solicitation, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into a contract. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment to this Solicitation Affirmations document a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Respondent's performance under a contract awarded as a result of this Solicitation, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into a contract. Respondent must identify here how many pages, if any, are attached: _____. Respondent acknowledges this is a continuing disclosure requirement. In addition, Respondent represents and warrants that, if awarded a contract as a result of this Solicitation, Respondent shall notify System Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update System Agency shall constitute breach of contract and may result in immediate contract termination.
- 36. E-Verify.** Respondent certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of:

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

37. Former Agency Employees – Certain Contracts. If this Solicitation is for an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code, Respondent represents and warrants that neither Respondent nor any of Respondent’s employees including, but not limited to, those authorized to provide services under the contract, were former employees of an HHS Agency during the twelve (12) month period immediately prior to the date of the execution of the contract.

38. Disclosure of Prior State Employment – Consulting Services. If this Solicitation is for consulting services,

A. In accordance with Section 2254.033 of the Texas Government Code, a Respondent offering to provide consulting services in response to this solicitation who has been employed by, or employs an individual who has been employed by, System Agency or another State of Texas agency at any time during the two years preceding the submission of Respondent's Solicitation Response must disclose the following information in its Solicitation Response and hereby certifies that this information is true, correct, and complete:

(1) Name of individual(s) (Respondent or employee(s)):

(2) Status (check one): Respondent Employee

(3) The nature of the previous employment with System Agency or the other State of Texas agency:

(4) The date the employment was terminated and the reason for the termination:

(5) The annual rate of compensation for the employment at the time of its termination: _____

If more than one individual is identified in A(1) above, Respondent must provide responses to A(2)-(5) as to each identified individual. To satisfy this requirement, Respondent must attach a separate page or pages, as necessary, and include the information required in Section A, including subsections (1)-(5). Respondent must identify here how many pages, if any, are attached: _____. Respondent acknowledges, agrees, and certifies that all information provided is true, correct, and complete on this and all attached pages.

B. If no information is provided in response to Section A above, Respondent certifies that neither Respondent nor any individual employed by Respondent was employed by System Agency or any other State of Texas agency at any time during the two years preceding the submission of Respondent's Solicitation Response.

39. Entities that Boycott Israel. Pursuant to Section 2271.002 of the Texas Government Code, Respondent certifies that either (1) it meets an exemption criteria under Section 2271.002; or (2) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this Solicitation. If Respondent refuses to make that certification, Respondent shall state here any facts that make it exempt from the boycott certification:

40. Abortion Funding Limitation. Respondent understands, acknowledges, and agrees that, pursuant to Article IX of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act: (1) performs an abortion procedure that is not reimbursable under the state's Medicaid program; (2) is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program; or (3) is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program. The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Respondent represents and warrants that it is not ineligible, nor will it be ineligible during the term of the contract resulting from this Solicitation, to receive appropriated funding pursuant to Article IX.

41. Funding Eligibility. Respondent understands, acknowledges, and agrees that, pursuant to Chapter 2272 (eff. Sept. 1, 2021, Ch. 2273) of the Texas Government Code, except as exempted under that Chapter, System Agency cannot contract with an abortion provider or an affiliate of an abortion provider. Respondent certifies that it is not ineligible to contract with System Agency under the terms of Chapter 2272 (eff. Sept. 1, 2021, Ch. 2273) of the Texas Government Code. If Respondent refuses to make that certification, Respondent shall state here any facts that make it exempt from the certification:

42. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR 200.216). Respondent certifies that the individual or business entity

named in this Response or contract is not ineligible to receive the specified contract or funding pursuant to 2 CFR 200.216.

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

44. Entities that Boycott Energy Companies. In accordance with Senate Bill 13, Acts 2021, 87th Leg., R.S., if Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code (relating to prohibition on contracts with companies boycotting certain energy companies), Respondent verifies that Respondent does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Respondent does not make that verification, Respondent must state here why the verification is not required:

45. Entities that Discriminate Against Firearm and Ammunition Industries. In accordance with Senate Bill 19, Acts 2021, 87th Leg., R.S., if Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code (relating to prohibition on contracts with companies that discriminate against firearm and ammunition industries), Respondent verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Respondent does not make that verification, Respondent must state here why the verification is not required:

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

47. Cloud Computing State Risk and Authorization Management Program (TX-RAMP). In accordance with Senate Bill 475, Acts 2021, 87th Leg., R.S., pursuant to Texas Government Code, Section 2054.0593, Respondent acknowledges and agrees that, if providing cloud computing services for System Agency, Respondent must comply with

the requirements of the state risk and authorization management program and that System Agency may not enter or renew a contract with a vendor to purchase cloud computing services for the agency that are subject to the state risk and authorization management program unless the vendor demonstrates compliance with program requirements. If providing cloud computing services for System Agency that are subject to the state risk and authorization management program, Respondent certifies it will maintain program compliance and certification throughout the term of the Contract.

- 48. Foreign-Owned Companies in Connection with Critical Infrastructure.** If Texas Government Code, Section 2274.0102(a)(1) (relating to prohibition on contracts with certain foreign-owned companies in connection with critical infrastructure) is applicable to a contract resulting from this Solicitation, pursuant to Government Code Section 2274.0102, Respondent certifies that neither it nor its parent company, nor any affiliate of Respondent or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.
- 49. Critical Infrastructure Subcontracts.** For purposes of this Paragraph, the designated countries are China, Iran, North Korea, Russia, and any countries lawfully designated by the Governor as a threat to critical infrastructure. Pursuant to Section 113.002 of the Business and Commerce Code, Respondent shall not enter into a subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business and Commerce Code, in this state, other than access specifically allowed for product warranty and support purposes to any subcontractor unless (i) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is majority owned or controlled by citizens or governmental entities of a designated country; and (ii) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is headquartered in a designated country. Respondent will notify the System Agency before entering into any subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business & Commerce Code, in this state.
- 50. Enforcement of Certain Federal Firearms Laws Prohibited.** In accordance with House Bill 957, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 2.101 is applicable to Respondent, Respondent certifies that it is not ineligible to receive state grant funds pursuant to Texas Government Code, Section 2.103.
- 51. Prohibition on Abortions.** Respondent understands, acknowledges, and agrees that, pursuant to Article II of the General Appropriations Act, (1) no funds shall be used to pay the direct or indirect costs (including marketing, overhead, rent, phones, and utilities) of abortion procedures provided by contractors of HHSC; and (2) no funds appropriated for Medicaid Family Planning, Healthy Texas Women Program, or the Family Planning Program shall be distributed to individuals or entities that perform elective abortion procedures or that contract with or provide funds to individuals or entities for the performance of elective abortion procedures. Respondent represents and warrants that it is not ineligible, nor will it be ineligible during the term of the contract resulting from this Solicitation, to receive appropriated funding pursuant to Article II.

- 52. Public Information Act Copy.** Respondent understands, acknowledges, and agrees, that solicitation responses and contracts are subject to the Texas Public Information Act (PIA), Texas Government Code Chapter 552, and may be disclosed to the public upon request or through posting on the System Agency’s website, the LBB’s website, or as otherwise required by law. Respondent certifies that it:
- asserts that information provided in its response is exempt from disclosure under the PIA, and Respondent, therefore, has submitted a “Public Information Act Copy” as required under the solicitation; or
 - asserts that there is no information provided in its response that is exempt from disclosure under the PIA, and Respondent, therefore, has not submitted a “Public Information Act Copy.”
- 53. No Felony Criminal Convictions.** Respondent represents that neither Respondent nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Respondent has fully advised System Agency in writing of the facts and circumstances surrounding the convictions.
- 54. Unfair Business Practices.** Respondent represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Respondent has not been found to be liable for such practices in such proceedings. Respondent certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.
- 55. False Representation.** Respondent understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Respondent is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of any contract resulting from this Solicitation.
- 56. Permits and Licenses.** Respondent represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to any contract resulting from this Solicitation.
- 57. False Statements.** Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.
- 58. Signature Authority.** By submitting this Response, Respondent represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of this Response.

Signature Page Follows

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

Legal Name of Respondent

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

**Texas County(s) for Assumed Business Name (d/b/a or ‘doing business as’)
Attach Assumed Name Certificate(s) filed with the Texas Secretary of State and Assumed
Name Certificate(s), if any, for each Texas County Where Assumed Name Certificate(s) has
been filed.**

Signature of Authorized Representative

Date Signed

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

Title of Authorized Representative

Physical Street Address

City, State, Zip Code

Mailing Address, if different

City, State, Zip Code

Phone Number

Fax Number

Email Address

DUNS Number

Federal Employer Identification Number

Texas Identification Number (TIN)

Texas Franchise Tax Number

Texas Secretary of State Filing Number

SAM.gov Unique Entity Identifier (UEI)



TEXAS

Health and Human Services

**Exhibit B, Health and Human Services
(HHS) Uniform Terms and Conditions -
Vendor Version 3.3**

Effective: July 2022

Responsible Office: Chief Counsel

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ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 DEFINITIONS

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

“Amendment” means a written agreement, signed by the Parties, which documents changes to the Contract other than those permitted by Work Orders.

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

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

“Contractor” means the Party selected to provide the goods or Services to the State under this Contract.

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

“Effective Date” means the date agreed to by the Parties as the date on which the Contract takes effect.

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

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“Goods” means supplies, materials, or equipment.

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

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

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

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

- i. any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement;

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

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

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

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

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

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

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

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

“[Solicitation Response](#)” means Contractor’s full and complete response (including any Attachments and addenda) to the Solicitation, which is incorporated by reference for all purposes in its entirety.

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

“[State of Texas Textravel](#)” means the State Travel Management Program through the Texas Comptroller of Public Accounts website and Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

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

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

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

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

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

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

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

1.2 INTERPRETIVE PROVISIONS

- A. The meanings of defined terms include the singular and plural forms.
- B. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
- C. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.
- D. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
- E. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to these documents as amended, modified, or supplemented from time to time during the term of the Contract.
- F. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
- G. All Attachments, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- H. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative, and each will be performed in accordance with its terms.
- I. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver will be deemed modified by the phrase “in its sole discretion.”
- J. Time is of the essence in this Contract.

ARTICLE II. PAYMENT PROVISIONS

2.1 PROMPT PAYMENT

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

2.2 ANCILLARY AND TRAVEL EXPENSES

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

2.3 NO QUANTITY GUARANTEES

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

2.4 TAXES

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

ARTICLE III. STATE AND FEDERAL FUNDING

3.1 EXCESS OBLIGATIONS PROHIBITED

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

3.2 NO DEBT AGAINST THE STATE

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

3.3 DEBT AND DELINQUENCIES

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

3.4 REFUNDS AND OVERPAYMENTS

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

ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES, AND CERTIFICATIONS

4.1 WARRANTY

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

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

4.2 GENERAL AFFIRMATIONS

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

4.3 FEDERAL ASSURANCES

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

4.4 FEDERAL CERTIFICATIONS

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

ARTICLE V. INTELLECTUAL PROPERTY

5.1 OWNERSHIP OF WORK PRODUCT

- A. All right, title, and interest in the Work Product, including all Intellectual Property Rights therein, is exclusively owned by System Agency. Contractor and Contractor's employees will have no rights in or ownership of the Work Product or any other property of System Agency.
- B. Any and all Work Product that is copyrightable under United States copyright law is deemed to be "work made for hire" owned by System Agency, as provided by Title 17 of the United States Code. To the extent that Work Product does not qualify as a "work made for hire" under applicable federal law, Contractor hereby irrevocably assigns and transfers to System Agency, its successors and assigns, the entire right, title, and interest in and to the Work Product, including any and all Intellectual Property Rights embodied therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing.
- C. Contractor agrees to execute all papers and to perform such other acts as System Agency may deem necessary to secure for System Agency or its designee the rights herein assigned.
- D. In the event that Contractor has any rights in and to the Work Product that cannot be assigned to System Agency, Contractor hereby grants to System Agency an exclusive, worldwide, royalty-free, transferable, irrevocable, and perpetual license, with the right to sublicense, to reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, make, have made, use, sell and offer for sale the Work Product and any products developed by practicing such rights.
- E. The foregoing does not apply to Incorporated Pre-existing Works or Third-Party IP that are incorporated in the Work Product by Contractor. Contractor shall provide System Agency access during normal business hours to all Vendor materials, premises, and computer files containing the Work Product.

5.2 CONTRACTOR'S PRE-EXISTING WORKS

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

5.3 THIRD PARTY IP

- A. To the extent that any Third Party IP is included or incorporated in the Work Product by Contractor, Contractor hereby grants to System Agency, or shall obtain from the applicable third party for System Agency's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for System Agency's internal business purposes only,
 - i. to use, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Third-Party IP and any derivative works thereof embodied in or delivered to System Agency in conjunction with the Work Product, and
 - ii. to authorize others to do any or all of the foregoing.
- B. Contractor shall obtain System Agency's advance written approval prior to incorporating any Third-Party IP into the Work Product, and Contractor shall notify System Agency on delivery of the Work Product if such materials include any Third Party IP.
- C. Contractor shall provide System Agency all supporting documentation demonstrating Contractor's compliance with this **Section 5.3**, including without limitation documentation indicating a third party's written approval for Contractor to use any Third Party IP that may be incorporated in the Work Product.

5.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS

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

5.5 DELIVERY UPON TERMINATION OR EXPIRATION

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

5.6 SURVIVAL

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

5.7 SYSTEM AGENCY DATA

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

ARTICLE VI. PROPERTY

6.1 USE OF STATE PROPERTY

- A. Contractor is prohibited from using State Property for any purpose other than performing Services authorized under the Contract.
- B. State Property includes, but is not limited to, System Agency's office space, identification badges, System Agency information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads or tablets, external hard drives, data storage devices, any System Agency-issued software, and the System Agency Virtual Private Network (VPN client)), and any other resources of System Agency.
- C. Contractor shall not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access System Agency's network or e-mail while outside of the continental United States.
- D. Contractor shall not perform any maintenance services on State Property unless the Contract expressly authorizes such Services.
- E. During the time that State Property is in the possession of Contractor, Contractor shall be responsible for:
 - i. all repair and replacement charges incurred by State Agency that are associated with loss of State Property or damage beyond normal wear and tear, and

- ii. all charges attributable to Contractor's use of State Property that exceeds the Contract scope. Contractor shall fully reimburse such charges to System Agency within ten (10) calendar days of Contractor's receipt of System Agency's notice of amount due. Use of State Property for a purpose not authorized by the Contract shall constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to System Agency under contract, at law, or in equity.

6.2 DAMAGE TO GOVERNMENT PROPERTY

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

6.3 PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT

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

ARTICLE VII. WORK ORDERS

7.1 WORK ORDERS

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

7.2 PROPOSALS

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

7.3 RESPONSIBILITY

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

7.4 TERMINATION

If this Work Order is in effect on the day the Contract would otherwise expire, the Contract will remain in effect until this Work Order is terminated or expires; and the Contract and this Work Order may be amended after such termination or expiration to

extend the performance period or add ancillary deliverables or services, only to the extent necessary.

ARTICLE VIII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY

8.1 RECORD MAINTENANCE AND RETENTION

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

8.2 AGENCY'S RIGHT TO AUDIT

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

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

8.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS

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

8.4 STATE AUDITOR'S RIGHT TO AUDIT

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

8.5 CONFIDENTIALITY

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

ARTICLE IX. CONTRACT REMEDIES AND EARLY TERMINATION

9.1 CONTRACT REMEDIES

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

- i. suspending all or part of the Contract;
- ii. requiring the Contractor to take specific actions in order to remain in compliance with the Contract;

- iii. recouping payments made by the System Agency to the Contractor found to be in error;
- iv. suspending, limiting, or placing conditions on the Contractor's continued performance of Work; or
- v. imposing any other remedies, sanctions, or penalties authorized under this Contract or permitted by federal or state law.

9.2 TERMINATION FOR CONVENIENCE

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

9.3 TERMINATION FOR CAUSE

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

- i. **Material Breach**

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

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

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

9.4 CONTRACTOR RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS

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

ARTICLE X. INDEMNITY

10.1 GENERAL INDEMNITY

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

RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT.

- B. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE SYSTEM AGENCY OR ITS EMPLOYEES.**
- C. For the avoidance of doubt, System Agency shall not indemnify Contractor or any other entity under the Contract.**

10.2 INTELLECTUAL PROPERTY

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

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

10.3 ADDITIONAL INDEMNITY PROVISIONS

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

FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE SYSTEM AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF SYSTEM AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, SYSTEM AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR SHALL PAY ALL REASONABLE COSTS OF SYSTEM AGENCY'S COUNSEL.

ARTICLE XI. GENERAL PROVISIONS

11.1 AMENDMENT

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

11.2 INSURANCE

- A. Unless otherwise specified in this Contract, Contractor shall acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper fulfillment of this Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the System Agency. Contractor shall provide evidence of insurance as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the System Agency the nature and extent of coverage granted by each such policy, upon request by the System Agency. In the event that any policy is determined by the System Agency to be deficient to comply with the terms of this Contract, Contractor shall secure such additional policies or coverage as the System Agency may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Contractor must produce renewal certificates for each type of coverage.
- B. These and all other insurance requirements under the Contract apply to both Contractor and its Subcontractors, if any. Contractor is responsible for ensuring its Subcontractors' compliance with all requirements.

11.3 LIMITATION ON AUTHORITY

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

programs or the Contract. However, upon System Agency request and with reasonable notice from System Agency to the Contractor, the Contractor shall assist the System Agency in communications and negotiations regarding the Work under the Contract with state and federal governments.

11.4 LEGAL OBLIGATIONS

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

11.5 CHANGE IN LAWS AND COMPLIANCE WITH LAWS

Contractor shall comply with all laws, regulations, requirements and guidelines applicable to a vendor providing services and products required by the Contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of the Contract. System Agency reserves the right, in its sole discretion, to unilaterally amend the Contract to incorporate any modifications necessary for System Agency's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

11.6 E-VERIFY PROGRAM

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

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

11.7 PERMITTING AND LICENSURE

At Contractor's sole expense, Contractor shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or Services required by this Contract.

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

11.8 SUBCONTRACTORS

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

ensuring that the services performed under all Subcontracts are rendered in compliance with the Contract.

11.9 INDEPENDENT CONTRACTOR

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

11.10 GOVERNING LAW AND VENUE

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

11.11 SEVERABILITY

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

11.12 SURVIVABILITY

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

11.13 FORCE MAJEURE

Neither Contractor nor System Agency shall be liable to the other for any delay in, or failure of performance of, any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to

avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

11.14 DISPUTE RESOLUTION

- A. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the Contract. If the Contractor's claim for breach of contract cannot be resolved informally with the System Agency, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by Chapter 2260, to the individual identified in the Contract for receipt of notices. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under §2260.051 of the Texas Government Code. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.
- B. The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by the System Agency if the Parties are unable to resolve their disputes as described above.
- C. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the System Agency, the Contractor shall continue performance and shall not be excused from performance during the period of any breach of contract claim or while the dispute is pending. However, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

11.15 NO IMPLIED WAIVER OF PROVISIONS

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

11.16 MEDIA RELEASES

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

11.17 NO MARKETING ACTIVITIES

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

11.18 PROHIBITION ON NON-COMPETE RESTRICTIONS

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

11.19 SOVEREIGN IMMUNITY

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

11.20 ENTIRE CONTRACT AND MODIFICATION

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

11.21 COUNTERPARTS

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

11.22 CIVIL RIGHTS

- A. Contractor agrees to comply with state and federal anti-discrimination laws, including:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.);
 - ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
 - iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);
 - iv. Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
 - v. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
 - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011 et seq.); and
 - vii. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Contract.

- B. Contractor agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.
- C. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. State and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Contractor agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- D. Contractor agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at: <https://hhs.texas.gov/about-hhs/your-rights/civil-rights-office/civil-rights-posters>
- E. Contractor agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- F. Upon request, Contractor shall provide HHSC's Civil Rights Office with copies of the Contractor's civil rights policies and procedures.
- G. Contractor must notify HHSC's Civil Rights Office of any complaints of discrimination received relating to its performance under this Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:
HHSC Civil Rights Office
701 W. 51st Street, Mail Code W206
Austin, Texas 78751
Phone Toll Free: (888) 388-6332
Phone: (512) 438-4313
Fax: (512) 438-5885
Email: HHSCivilRightsOffice@hhsc.state.tx.us

11.23 ENTERPRISE INFORMATION MANAGEMENT STANDARDS

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

11.24 DISCLOSURE OF LITIGATION

- A. The Contractor must disclose in writing to the contract manager assigned to this Contract any material civil or criminal litigation or indictment either threatened or pending involving the Contractor. “Threatened litigation” as used herein shall include governmental investigations and civil investigative demands. “Litigation” as used herein shall include administrative enforcement actions brought by governmental agencies. The Contractor must also disclose any material litigation threatened or pending involving Subcontractors, consultants, and/or lobbyists. For purposes of this section, “material” refers, but is not limited, to any action or pending action that a reasonable person knowledgeable in the applicable industry would consider relevant to the Work under the Contract or any development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the Work, together with any litigation threatened or pending that may result in a substantial change in the Contractor’s financial condition.
- B. This is a continuing disclosure requirement; any litigation commencing after Contract Award must be disclosed in a written statement to the assigned contract manager within seven calendar days of its occurrence.

11.25 NO THIRD-PARTY BENEFICIARIES

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

11.26 BINDING EFFECT

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