

**INTERAGENCY COOPERATION CONTRACT
BETWEEN
TEXAS FACILITIES COMMISSION
AND
HEALTH AND HUMAN SERVICES COMMISSION**

This Interagency Cooperation Contract (“Contract”) is entered into by and between the **Texas Facilities Commission** (“TFC”) and the **Health and Human Services Commission** (hereinafter referred to as “HHSC” or “Receiving Agency”), pursuant to the authority granted by and in compliance with the provisions of the Interagency Cooperation Act, Tex. Gov’t Code Ann. §§ 771.001-.010 010 and Tex. Gov’t Code Ann. Ch. 2166.

I. STATEMENT OF WORK TO BE PERFORMED.

1.1 **SCOPE OF SERVICES.** TFC shall provide or cause to be provided, security services at DSHS Main Campus building and for the Dr. Bob Glaze Laboratory (hereinafter referred to as “DBGL”) located at 1100 West 49th Street, Austin, Texas.

- 1.1.1 DSHS FY 2024: \$1,705,379.52
- 1.1.2. DSHS FY 2025: \$1,705,379.52
- 1.1.3. DBGL FY 2024 \$569,189.28
- 1.1.4. DBGL FY 2025: \$569,189.28

all as more specifically described in **Exhibit A, Pricing, Schedule & Monthly Costs** (hereinafter referred to as the “Project”). **Exhibit A** is attached hereto and incorporated herein for all purposes. The Project will comply with applicable safety and building codes and all other applicable rules, regulations, and laws.

II. BASIS FOR COMPUTING REIMBURSABLE COSTS.

2.1 **REIMBURSABLE COSTS.** Subject to the Cost Principles set forth in the *Texas Grant Management Standards Version 1.1*, the basis for computing reimbursable costs under this Contract shall be for actual costs incurred by TFC and developed from estimates received from third-party contractors.

III. CONSIDERATION.

3.1 **CONTRACT AMOUNT.** Receiving Agency agrees to pay TFC an amount not to exceed the sum of **\$4,549,137.60** for providing the services required to fulfill the terms of this Contract. TFC will be responsible for oversight and payment for all third-party contracted services for the Project.

3.2 **ACTUAL COSTS.** If actual costs for contracted services provided by third-party contractors for work requested by Receiving Agency will exceed the amount allocated for said service, TFC will provide notice and a revised estimate to Receiving Agency. Prior to exceeding

the Contract Amount, the parties will agree to amend this Contract to reimburse for such increased actual costs on a dollar-for-dollar basis. If actual costs for contracted services by third-party contractors are less than the maximum contract amount, TFC will return any amount that exceeds actual costs to Receiving Agency.

IV. PAYMENT FOR SERVICES.

4.1 **PAYMENT.** An Interagency Transaction Voucher or Invoice (ITV) for these services will be prepared by TFC monthly in advance for this Contract. Receiving Agency shall reimburse TFC within thirty (30) calendar days from receipt of ITV or invoice for the invoiced amount. If payment by Receiving Agency is not received within thirty (30) calendar days, TFC may cancel the Contract without further notice to Receiving Agency, and Receiving Agency shall remain liable for all actual costs incurred by TFC prior to the termination of this Contract in delivering services under this Contract. All payments to be made to a third-party contractor for services performed under this Contract shall be paid by TFC directly to third-party contractor(s). TFC will be responsible for any interest that accrues as a result of a late payment as defined under the Texas Government Code, Chapter 2251. TFC will process all expenditures under this Contract as non-TFC capital budget expenses in that Receiving Agency shall have processed these expenditures as capital expenditures pursuant to General Appropriations Act (“GAA”), GAA, Acts 2023, H.B. 1, 88th Leg., R.S., art. IX, Sec. 14.03, *Transfer-Capital Budget*.

4.2 **UNIFORM STATE ACCOUNTING SYSTEM (“USAS”).** To the extent possible, interagency payments involving only treasury funds will be processed as paperless document transfers in the USAS system subject to audit by the Fund Accounting Division of the Comptroller’s Office. Payments from treasury funds for deposit into local bank accounts will be processed in USAS through the paperless purchase vouchers process. Interagency payments received from local funds for deposit into the State Treasury must be submitted according to policies and procedures for USAS deposits.

4.3 **REIMBURSEMENT.** (a) Reimbursements with funds contained in the State Treasury shall be made via USAS funds transfers, with Receiving Agency initiating the transfers. TFC will provide Receiving Agency with all the necessary USAS coding elements. Reimbursement with funds outside the State Treasury shall be made by Receiving Agency issuing warrants for payment to TFC.

(b) All reimbursements must be made through the use of local funds or drawn on the appropriated item(s) or account(s) of Receiving Agency from which the agency would ordinarily make expenditures for similar services or resources. Reimbursements will be credited to the appropriation year in which the expenses were incurred.

(c) To comply with the GAA, Acts 2023, H.B. 1, 88th Leg., R.S., art. IX, sec. 6.08, *Benefits Paid Proportional by Method of Finance* entities making payments from funding sources other than General Revenue Fund appropriations, shall remit an additional amount equal to the percentage of direct labor costs, necessary to cover the cost of the benefits.

4.4 **CAPITAL BUDGET AUTHORITY.** Pursuant to Rider 15 entitled, *Capital Construction on Behalf of State Agencies*, found in GAA, Acts 2023, H.B. 1, 88th R.S., art. I (Facilities Commission), any capital items related to construction of buildings and facilities including minor construction on behalf of other state agencies provided by the Facilities Commission do not apply to the Commission for the purpose of the capital budget rider limitations specified in Article IX, Sec. 14.03, *Transfers-Capital Budget*, of the General Provisions of this Act. The state agency requesting construction of buildings and facilities including minor construction must have the requisite capital budget authority to support its request.

V. TERM OF CONTRACT.

5.1 **TERM.** This Contract shall be effective as of **September 1, 2023**, and shall terminate on **August 31, 2025**, unless terminated earlier by either party, as provided in Section 5.

5.2 **OPTION TO EXTEND.** This Contract may be extended by a written amendment signed by both parties.

5.3 **DISPUTE RESOLUTION.** The parties agree to use good-faith efforts to decide all questions, difficulties, or disputes of any nature that may arise under or by this Contract; provided however, nothing in this paragraph shall preclude either party from pursuing any remedies as may be available under Texas law.

5.4 **EARLY TERMINATION.** (a) Either party may terminate this Contract upon thirty (30) days prior written notice to the other. Upon receipt of notice of early termination, TFC shall cancel, withdraw, or otherwise terminate outstanding orders or subcontracts which relate to the performance of this Contract and shall otherwise cease to incur costs under this Contract. Early termination will be subject to an equitable settlement of the respective interests of the parties accrued up to the date of termination.

(b) If this Contract is terminated for any reason, TFC will not be liable for any damages, claims, or losses, or any other amounts arising from or related to any such termination.

VI. FUNDING.

6.1 **NO DEBT.** This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or Receiving Agency and/or TFC in violation of Tex. Const. art. III, § 49. In compliance with Tex. Const. art. VIII, § 6, it is understood that all obligations of TFC and Receiving Agency hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

VII. FORCE MAJEURE.

7.1 FORCE MAJEURE. Except as otherwise provided, neither TFC nor Receiving Agency is liable to the other for any delay in, or failure of performance, of a requirement contained in this 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, strike, fires, explosions, or other causes that are beyond the reasonable control of either party and that by exercise or 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. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure.

VIII. PUBLIC RECORDS.

8.1 PUBLIC RECORDS. This Contract and/or any amendment to this Contract and all data and other information generated or otherwise obtained in its performance is subject to the Texas Public Information Act. Notwithstanding any provisions of this Contract to the contrary, Receiving Agency understands that TFC will comply with the Texas Public Information Act, Tex. Gov't. Code Ann. Ch. 552. If contacted by TFC, Receiving Agency will cooperate with TFC in the production of documents responsive to the request. Receiving Agency agrees to provide the documents responsive to the request in the format and within the time frame specified by TFC. Receiving Agency may request that TFC seek an opinion from the Office of the Attorney General of Texas. However, the final decision whether to seek a ruling from the Office of the Attorney General of Texas will be made by TFC in its sole discretion to comply with the legal requirements of the Texas Public Information Act. Additionally, in accordance with the requirements of the Texas Public Information Act, Receiving Agency will notify TFC's general counsel of any third-party requests for information written, produced, collected, assembled, or maintained in connection with this Contract and/or any amendment to this Contract. Receiving Agency agrees to maintain the confidentiality of information received from TFC during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers.

IX. MISCELLANEOUS PROVISIONS.

9.1 INDEPENDENT CONTRACTOR. It is further mutually understood and agreed that Receiving Agency is contracting with TFC as an independent contractor.

9.2 INCORPORATION BY REFERENCE. Incorporated by reference the same as if specifically written herein are the rules, regulations, and all other requirements imposed by law, including but not limited to compliance with those applicable rules and regulations of the State of Texas and the federal government, all of which shall apply to the performance of the services under this Contract.

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

9.8 **AUDIT.** Pursuant to Section 2262.154 of the Texas Government Code, TFC and Receiving Agency agree to the following:

(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;

(b) 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;

(c) 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;

(d) Receiving Agency may conduct an audit or investigation of TFC or any other entity receiving funds from Receiving Agency directly under the contract or indirectly through a subcontract under the Contract;

(e) acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of Receiving Agency to conduct an audit or investigation in connection with those funds;

(f) an entity, including TFC, that is the subject of an audit or investigation by Receiving Agency must provide Receiving Agency with timely access to any information Receiving Agency considers relevant to the investigation or audit;

(g) an entity, including TFC, that is receiving funds under the contract must maintain all such documents and other records relating to the contract for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later; and

(h) in the event that an audit by Receiving Agency reveals any errors that resulted in overpayments to an entity, including TFC, that is receiving funds under the contract, the entity must refund to Receiving Agency the full amount of such overpayments within thirty (30) calendar days of such audit findings, or Receiving Agency at its option may deduct such amounts from any payments due to the entity.

9.9 **ENTIRE AGREEMENT.** This Contract constitutes the entire agreement of the parties. No other agreement, statement, or promise that is not contained in this Contract shall be binding except a subsequent written amendment to this Contract signed by both parties.

9.10 **THE UNDERSIGNED** do hereby certify that:

(a) the services specified above are necessary and essential and are properly within the statutory functions and programs of the affected agencies of State Government.

(b) the proposed arrangements serve the interest of efficient and economical administration of those agencies;

(c) the services, supplies or materials contracted for are not required by Tex. Const. art. XVI, § 21 to be supplied under contract to the lowest responsible bidder; and

(d) the contract neither requires, nor permits either party to exceed its duties and responsibilities or the limitations of its appropriated funds.

TFC certifies that it has the authority to enter into this Contract by virtue of the authority granted in Chapter 771, Tex. Gov't Code Ann.

Receiving Agency further certifies that it has the authority to enter into this Contract by virtue of the authority granted in Chapter 771, Tex. Gov't Code Ann.

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TFC Contract 24-013-000
Health and Human Services Commission Receiving
Agency Contract No. HHS001404300001

TEXAS FACILITIES COMMISSION

**HEALTH AND HUMAN SERVICES
COMMISSION**

DocuSigned by:
Mike Novak
By: _____
07CF7E0555204CB...
Mike Novak
Executive Director

DocuSigned by:
Rolland Niles
By: _____
33B54A6FDF2041D...
Rolland Niles
Deputy Executive Commissioner
System Support Services


Date signed: 12/11/2023 | 10:03 AM CST

Date signed: November 30, 2023

Approved:

DocuSigned by:
Stephen M. Foster

Stephen M. Foster/mvb
General Counsel

Mgr/Mandy Burrell 

Dir/Tommy Oates 

COO/Joel Speight 

TFC Contract No. 24-013-000

Exhibit A

Pricing, Schedule & Monthly Costs

(4 Pages)

DSHS

Position Title	Weekly Hours	Hours for the year	Monthly average	Current Rate	Total Monthly Cost	Total Annual Cost
Armed Lead Officer - Regular Rate	168	08736	728.00	\$33.94	\$24,708.32	\$296,499.84
Armed Lead Officer - Overtime Rate				\$49.21	\$0.00	\$0.00
Armed Commissioned Officer - Regular Rate	768	39936	3,328.00	\$32.38	\$107,760.64	\$1,293,127.68
Armed Commissioned Officer - Overtime Rate				\$46.95	\$0.00	\$0.00
Unarmed Commissioned Officer - Regular Rate	55	02860	238.33	\$28.23	\$6,728.15	\$80,737.80
Unarmed Commissioned Officer - Overtime Rate				\$40.93	\$0.00	\$0.00
HB3042	991	51532	4,294.33		\$139,197.11	\$1,670,365.32

LAB

Position Title	Weekly Hours	Hours for the year	Monthly average	Current Rate	Total Monthly Cost	Total Annual Cost
Armed Lead Officer - Regular Rate	0	00000	0.00	\$33.94	\$0.00	\$0.00
Armed Lead Officer - Overtime Rate				\$49.21	\$0.00	\$0.00
Armed Commissioned Officer - Regular Rate	336	17472	1,456.00	\$32.38	\$47,145.28	\$565,743.36
Armed Commissioned Officer - Overtime Rate				\$46.95	\$0.00	\$0.00
Unarmed Commissioned Officer - Regular Rate	0	00000	0.00	\$28.23	\$0.00	\$0.00
Unarmed Commissioned Officer - Overtime Rate				\$40.93	\$0.00	\$0.00
HB3042	336	17472	1,456.00		\$47,145.28	\$565,743.36

Location - Austin	Weekly Armed Lead	Weekly Armed	Weekly Unarmed	Total
Main Campus DSHS	168	432	55	655
DSHS LAB		336		336
HB 3042	168	768	55	991

	LAB	Annual cost	Golf cart	Site Supervisor	Total
1 year cost		\$565,743.36	\$0.00	\$3,445.92	\$569,189.28
1 year cost		\$565,743.36	\$0.00	\$3,445.92	\$569,189.28
2 year cost		\$1,131,486.72	\$0.00	\$6,891.84	\$1,138,378.56
	DSHS	Annual cost	Golf cart	Site Supervisor	Total
1 year cost		\$1,670,365.32	\$4,740.00	\$30,274.20	\$1,705,379.52
1 year cost		\$1,670,365.32	\$4,740.00	\$30,274.20	\$1,705,379.52
2 year cost		\$3,340,730.64	\$9,480.00	\$60,548.40	\$3,410,759.04
				TOTAL	\$4,549,137.60

Golf cart 395.00/mo
 Site supervisor 2,522.85/mo Main Campus DSHS
 Site supervisor 287.16/mo LAB

Security Site A - Department of Health Services Campus

LOCATION: DSHS CAMPUS (RDM)

1100 W 49th St

Austin, TX 78756

Post	Officer Type	Post Description	Sunday	Hours	Monday	Hours	Tuesday	Hours	Wednesday	Hours	Thursday	Hours	Friday	Hours	Saturday	Hours	Weekly Hours
Post A - 1	Armed Lead Officer	Lead	0600-1400	8	0600-1400	8	0600-1400	8	0600-1400	8	0600-1400	8	0600-1400	8	0600-1400	8	56
Post A - 1	Armed Lead Officer	Lead	1400-2200	8	1400-2200	8	1400-2200	8	1400-2200	8	1400-2200	8	1400-2200	8	1400-2200	8	56
Post A - 1	Armed Lead Officer	Lead	2200-0600	8	2200-0600	8	2200-0600	8	2200-0600	8	2200-0600	8	2200-0600	8	2200-0600	8	56
Post A - 2	Armed Officer	Rover			0600-1400	8	0600-1400	8	0600-1400	8	0600-1400	8	0600-1400	8			40
Post A - 2	Armed Officer	Rover			1400-2200	8	1400-2200	8	1400-2200	8	1400-2200	8	1400-2200	8			40
Post A - 2	Armed Officer	Rover			2200-0600	8	2200-0600	8	2200-0600	8	2200-0600	8	2200-0600	8			40
Post A - 3	Armed Officer	Weekend Rover	1800-0600	12											1800-0600	12	24
Post A - 4	Armed Officer	Building G	0600-1400	8	0600-1400	8	0600-1400	8	0600-1400	8	0600-1400	8	0600-1400	8	0600-1400	8	56
Post A - 4	Armed Officer	Building G	1400-2200	8	1400-2200	8	1400-2200	8	1400-2200	8	1400-2200	8	1400-2200	8	1400-2200	8	56
Post A - 4	Armed Officer	Building G	2200-0600	8	2200-0600	8	2200-0600	8	2200-0600	8	2200-0600	8	2200-0600	8	2200-0600	8	56
Post A - 5	Armed Officer	VSU			0700-1900	12	0700-1900	12	0700-1900	12	0700-1900	12	0700-1900	12			60
Post A - 6	Unarmed Officer	RDM Employee Entrance			0600-1700	11	0600-1700	11	0600-1700	11	0600-1700	11	0600-1700	11			55
Post A - 7	Armed Officer	Rover VSU			0700-1900	12	0700-1900	12	0700-1900	12	0700-1900	12	0700-1900	12			60
				60		107		107		107		107		107		60	655

Officer Type	Weekly Hours	Current Cost	Weekly Cost
Lead Armed Officer	168	33.94	5701.92
Armed Officer	432	32.38	13988.16
Unarmed Officer	55	28.23	1552.65
	<u>655</u>		<u>21,242.73</u>

Security Site A - Department of Health Services - Laboratory

LOCATION: DSHS CAMPUS (RDM)

1100 W 49th St

Austin, TX 78756

Post	Officer Type	Post Description	Sunday	Hours	Monday	Hours	Tuesday	Hours	Wednesday	Hours	Thursday	Hours	Friday	Hours	Saturday	Hours	Weekly Hours
Post A - 8	Armed Officer	Lab A600	0600-1400	8	0600-1400	8	0600-1400	8	0600-1400	8	0600-1400	8	0600-1400	8	0600-1400	8	56
Post A - 8	Armed Officer	Lab A600	1400-2200	8	1400-2200	8	1400-2200	8	1400-2200	8	1400-2200	8	1400-2200	8	1400-2200	8	56
Post A - 8	Armed Officer	Lab A600	2200-0600	8	2200-0600	8	2200-0600	8	2200-0600	8	2200-0600	8	2200-0600	8	2200-0600	8	56
Post A - 9	Armed Officer	DBGL	0600-1400	8	0600-1400	8	0600-1400	8	0600-1400	8	0600-1400	8	0600-1400	8	0600-1400	8	56
Post A - 9	Armed Officer	DBGL	1400-2200	8	1400-2200	8	1400-2200	8	1400-2200	8	1400-2200	8	1400-2200	8	1400-2200	8	56
Post A - 9	Armed Officer	DBGL	2200-0600	8	2200-0600	8	2200-0600	8	2200-0600	8	2200-0600	8	2200-0600	8	2200-0600	8	56
				48		48		48		48		48		48		48	336

Officer Type	Hours	Current Cost	Weekly Cost
Armed Officer	336	32.38	\$ 10,879.68
	<u>336</u>		<u>\$ 10,879.68</u>

Security Site Monthly cost FY2023 & FY2024 N. Campus	Sq. Ft.	Share Percentage	Share Cost Site Supervisor	Monthly	MONTH	Total Sq. Ft.	Total Management Cost	
Security Site A - Department of Health Services Campus and Laboratory / DBGL	167417	4.90%		\$287.16		3415067	\$5,857.60	Monthly: Site Supervisor 1
Security Site A - Complex - Department of Health Services / RDM	1470856	43.07%		\$2,522.85				
Security Site B - Brown Heatly Building and Garage H / BHB	259278	7.59%		\$444.72				
Security Site C - Dars Adminstration Building / TWC NLBB	47447	1.39%		\$81.38				
Security Site D - JH Winters Building & PK 26 / JHW	991887	29.04%		\$1,701.31				
Security Site E - Dept of Health Headquarters Complex / DHB	72182	2.11%		\$123.81				
Security Site F - North Austin Complex & Garage / NAC	406000	11.89%		\$696.38				
Total	3415067	100.00%		\$5,857.60				

Security Site Monthly cost FY2023 & FY2024 TCEQ	Sq. Ft.	Share Percentage	Share Cost Site Supervisor	Monthly		Total Sq. Ft.	Total Management Cost	
Security Site H - PK35 / TCEQ	968485	100.00%		\$5,857.60			\$5,857.60	Monthly: Site Supervisor 2
							<u>\$11,715.20</u>	

Site supervisor distribution	Monthly cost
Security Site A - Department of Health Services Campus and Laboratory / DBGL	\$287.16
Security Site A - Complex - Department of Health Services / RDM	\$2,522.85
Security Site B - Brown Heatly Building and Garage H / BHB	\$444.72
Security Site C - Dars Adminstration Building / TWC NLBB	\$81.38
Security Site D - JH Winters Building & PK 26 / JHW	\$1,701.31
Security Site E - Dept of Health Headquarters Complex / DHB	\$123.81
Security Site F - North Austin Complex & Garage / NAC	\$696.38
Security Site H - PK35 / TCEQ	\$5,857.60
Total	<u><u>\$11,715.20</u></u>

TFC Contract No. 24-013-000

Exhibit B

Health and Human Services Uniform Terms and Conditions-Governmental

Entity (Version 3.2)

(22 pages)



TEXAS

Health and Human Services

Health and Human Services (HHS)

**Uniform Terms and Conditions -
Governmental Entity**

Version 3.2

Published and Effective - May 2020

Responsible Office: Chief Counsel

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ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 DEFINITIONS

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

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

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

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

“DSHS” means the Department of State Health Services.

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

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

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“HHSC” means the Health and Human Services Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 INTERPRETIVE PROVISIONS

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

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

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

ARTICLE II. PAYMENT PROVISIONS

2.1 PAYMENT

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

2.2 ANCILLARY AND TRAVEL EXPENSES

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

2.3 NO QUANTITY GUARANTEES

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

2.4 TAXES

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

ARTICLE III. STATE AND FEDERAL FUNDING

3.1 EXCESS OBLIGATIONS PROHIBITED

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

3.2 NO DEBT AGAINST THE STATE

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

3.3 DEBT AND DELINQUENCIES

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

3.4 REFUNDS AND OVERPAYMENTS

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

ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES, AND CERTIFICATIONS

4.1 WARRANTY

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

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

4.2 CONTRACT AFFIRMATIONS

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

4.3 FEDERAL ASSURANCES

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

4.4 FEDERAL CERTIFICATIONS

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

ARTICLE V. INTELLECTUAL PROPERTY

5.1 OWNERSHIP OF WORK PRODUCT

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

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

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

5.2 PERFORMING AGENCY'S PRE-EXISTING WORKS

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

5.3 THIRD PARTY IP

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

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

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

5.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS

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

5.5 DELIVERY UPON TERMINATION OR EXPIRATION

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

5.6 SURVIVAL

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

5.7 SYSTEM AGENCY DATA

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

ARTICLE VI. PROPERTY

6.1 USE OF STATE PROPERTY

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

6.2 DAMAGE TO GOVERNMENT PROPERTY

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

6.3 PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT

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

ARTICLE VII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY

7.1 RECORD MAINTENANCE AND RETENTION

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

7.2 AGENCY'S RIGHT TO AUDIT

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

7.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS

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

7.4 STATE AUDITOR'S RIGHT TO AUDIT

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

7.5 CONFIDENTIALITY

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

ARTICLE VIII. CONTRACT REMEDIES AND EARLY TERMINATION

8.1 CONTRACT REMEDIES

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

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

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

8.2 TERMINATION FOR CONVENIENCE

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

8.3 TERMINATION FOR CAUSE

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

i. Material Breach

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

ii. Failure to Maintain Financial Viability

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

8.4 PERFORMING AGENCY RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS

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

ARTICLE IX. GENERAL PROVISIONS

9.1 AMENDMENT

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

9.2 INSURANCE

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

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

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

9.3 LIMITATION ON AUTHORITY

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

9.4 LEGAL OBLIGATIONS

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

9.5 CHANGE IN LAWS AND COMPLIANCE WITH LAWS

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

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

9.6 E-VERIFY PROGRAM

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

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

9.7 PERMITTING AND LICENSURE

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

9.8 SUBCONTRACTORS

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

9.9 INDEPENDENT PERFORMING AGENCY

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

9.10 GOVERNING LAW AND VENUE

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

9.11 SEVERABILITY

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

9.12 SURVIVABILITY

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

9.13 FORCE MAJEURE

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

9.14 DISPUTE RESOLUTION

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

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

9.15 NO IMPLIED WAIVER OF PROVISIONS

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

9.16 MEDIA RELEASES

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

9.17 NO MARKETING ACTIVITIES

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

9.18 PROHIBITION ON NON-COMPETE RESTRICTIONS

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

9.19 SOVEREIGN IMMUNITY

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

9.20 ENTIRE CONTRACT AND MODIFICATION

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

9.21 COUNTERPARTS

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

9.22 CIVIL RIGHTS

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

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

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

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

9.23 ENTERPRISE INFORMATION MANAGEMENT STANDARDS

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

9.24 DISCLOSURE OF LITIGATION

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

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

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

9.25 NO THIRD-PARTY BENEFICIARIES

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

9.26 BINDING EFFECT

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

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TFC Contract No. 24-013-000

Exhibit C

**SUPPLEMENTAL CONDITIONS TO HHS UNIFORM TERMS AND CONDITIONS –
GOVERNMENTAL ENTITY VERSION 3.2**

(1 Pages)

Exhibit C

**SUPPLEMENTAL CONDITIONS TO HHS UNIFORM TERMS AND CONDITIONS –
GOVERNMENTAL ENTITY VERSION 3.2**

(For Use with Interagency Cooperation Contract for Security Services with Texas Facilities Commission)

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

1. **Section 2.3, No Quantity Guarantees**, is deleted in its entirety.
2. **Section 3.1, Excess Obligations Prohibited**, is deleted in its entirety.
3. **Section 3.4, Refunds and Overpayments**, is deleted in its entirety.
4. **Section 4.1, Warranty**, is deleted in its entirety.
5. **Article V, Intellectual Property**, is deleted in its entirety.
6. **Article VI, Property**, is deleted in its entirety.
7. **Section 7.3(A), Response/Compliance with Audit or Inspection Findings**, is deleted in its entirety.
8. **Section 8.1, Contract Remedies**, is deleted in its entirety.
9. **Section 8.2, Termination for Convenience**, is deleted in its entirety and replaced with the following:

8.2 Termination for Convenience
The System Agency may terminate the Contract, in whole or in part, at any time when, it is 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.
10. **Section 8.4, Performing Agency Responsibility for System Agency's Termination Costs**, is deleted in its entirety.
11. **Section 9.6, E-Verify Program**, is deleted in its entirety.
12. **Section 9.7, Permitting and Licensure**, is deleted in its entirety.
13. **Section 9.8, Subcontractors**, is deleted in its entirety.
14. **Section 9.9, Independent Performing Agency**, is deleted in its entirety.

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