

**SIGNATURE DOCUMENT FOR
TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CONTRACT NO. HHS00127500001**

The **TEXAS HEALTH AND HUMAN SERVICES COMMISSION** (“**SYSTEM AGENCY**” or “**HHSC**”), an administrative agency within the executive branch of the State of Texas, and **THE NORTH HIGHLAND COMPANY, LLC** (“**CONTRACTOR**”), having its principal office at 111 Congress Avenue, Suite 500, Austin, Texas 78701 (each a “Party” and collectively the “Parties”), enter into the following contract for Independent Verification and Validation (IV&V) services (the “Contract”). The Parties execute the Contract as a procurement by System Agency under and via the Texas Department of Information Resources (“DIR”) Contract No. DIR-CPO-4924 (the “DIR Contract”).

I. LEGAL AUTHORITY

The Contract is entered into pursuant to the DIR Contract and *Texas Government Code* Chapter 531 and Section 2157.0685.

II. DURATION

The Contract is effective on the signature date of the latter of the Parties to sign the Contract and expires **August 31, 2026**, unless sooner terminated, renewed, or extended in accordance with the terms and conditions of the Contract and the DIR Contract. System Agency, at its sole discretion, may renew the Contract for two (2) additional years for a maximum Contract term of five (5) years.

Notwithstanding the limitation in the preceding paragraph, and with at least thirty (30) Calendar Days advance written notice to Contractor, at the conclusion of the Contract term, System Agency, at its sole discretion, may extend the Contract as necessary to address immediate operational or service delivery needs; to ensure continuity of service; for purposes of transition; or as otherwise determined by System Agency to serve the best interests of the State for up to 12 months, in one-month intervals, at the then-current Contract rate or rates as modified during the term of the Contract.

At the sole discretion of System Agency, any Work Order issued hereunder may survive the expiration or termination of the Contract.

III. STATEMENT OF WORK

The Solicitation, including all addenda, is incorporated into and made a part of the Contract for all purposes and included as **ATTACHMENT F, SYSTEM AGENCY’S STATEMENT OF WORK SOLICITATION NO. HHS0012750**.

IV. BUDGET

The total amount of the Contract shall not exceed **\$10,000,000.00**. By executing the Contract,

Contractor agrees to the contracted rates and budget for the Contract term. All expenditures under the Contract shall be in accordance with **ATTACHMENT A, DIR CONTRACT NO. DIR-CPO-4924** and **ATTACHMENT H, CONTRACTOR'S COST PROPOSAL TO SYSTEM AGENCY'S STATEMENT OF WORK SOLICITATION No. HHS0012750**.

The Parties agree that the monetary amounts stated in the **PRICING SCHEDULE TEMPLATE** in **SECTION 1** of **ATTACHMENT H, CONTRACTOR'S COST PROPOSAL TO SYSTEM AGENCY'S STATEMENT OF WORK SOLICITATION No. HHS0012750** for the stated Deliverables and Project Sizes are not-to-exceed amounts for the Contract term.

V. CONTRACT REPRESENTATIVES

The following will act as the Contract Representatives authorized to administer activities under the Contract on behalf of their respective Party.

System Agency Contract Representative

Lauren Josey
c/o Charles Davenport
Health and Human Services Commission
4601 W. Guadalupe St, MC-3049
Austin, Texas 78751
Lauren.Josey@hhs.texas.gov

Contractor Contract Representative

Robert Flasch
The North Highland Company, LLC
111 Congress Ave, Suite 500
Austin, Texas 78701
robert.flasch@northhighland.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 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 System Agency's Contract Representative:

**Health and Human Services Commission
Attn: Office of Chief Counsel
4601 W. Guadalupe Street, MC-1100
Austin, Texas 78751**

- C. System Agency shall send legal notices to Contractor at the address below and provide a copy to Contractor's Contract Representative identified above:

**The North Highland Company, LLC.
Office of Chief Counsel
111 Congress Avenue, Suite 500
Austin, Texas 78701**

- D. 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 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 System Agency with a common carrier, overnight delivery, signature required.

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

VII. CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

The following documents are incorporated by reference and made a part of the Contract for all purposes. In the event of a conflict, ambiguity, or inconsistency between the terms and conditions set forth in the documents that comprise the Contract, this five (5) page Signature Document shall take precedence, followed by its attachments in the following list in the order stated:

ATTACHMENT A: DIR CONTRACT No. DIR-CPO-4924

ATTACHMENT B: HHS CONTRACT AFFIRMATIONS (VERSION 2.2)

ATTACHMENT C: HHS UNIFORM TERMS AND CONDITIONS – VENDOR (VERSION 3.3)

ATTACHMENT D: ADDITIONAL PROVISIONS

ATTACHMENT E: HHS DATA USE AGREEMENT AND SECURITY AND PRIVACY INQUIRY FORM

ATTACHMENT F: SYSTEM AGENCY’S STATEMENT OF WORK SOLICITATION No. HHS0012750

ATTACHMENT G: CONTRACTOR’S RESPONSE (BUSINESS AND TECHNICAL PROPOSAL) TO SYSTEM AGENCY’S STATEMENT OF WORK SOLICITATION No. HHS0012750

ATTACHMENT H: CONTRACTOR’S COST PROPOSAL TO SYSTEM AGENCY’S STATEMENT OF WORK SOLICITATION No. HHS0012750

ATTACHMENT I: FEDERAL ASSURANCES FOR NON-CONSTRUCTION

ATTACHMENT J: FEDERAL CERTIFICATION – LOBBYING

ATTACHMENT K: FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT FORM FORM

The terms and conditions of the Contract may not weaken or diminish any terms or conditions of the DIR Contract.

VIII. ENTIRE CONTRACT

The Contract contains all the terms and conditions between System Agency and Contractor relating to the subject matter set forth herein and no prior or contemporaneous agreement or understanding pertaining to the same, including, without limitation, any electronic mail

correspondence between the Parties or other correspondence, shall be deemed or considered included in the Contract. No modification, addendum to, or amendment of the Contract shall be effective unless set forth in writing and executed by the duly authorized representatives of System Agency and Contractor.

IX. SIGNATURE AUTHORITY

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

SIGNATURE PAGE FOLLOWS

**SIGNATURE PAGE FOR
SYSTEM AGENCY CONTRACT No. HHS00127500001**

**TEXAS HEALTH AND HUMAN SERVICES
COMMISSION**

THE NORTH HIGHLAND COMPANY, LLC

DocuSigned by:
Maurice McCreary
F30073A81CCD41C

DocuSigned by:
Rick Zelznak
31764B714C80463

Name: Maurice McCreary

Name: Rick Zelznak

Title: COO

Title: Vice President

Date of execution: October 17, 2023

Date of execution: October 17, 2023

The DIR signature below is solely to verify that the Statement of Work is within the scope of the DIR Contract being utilized. The DIR signature does not make DIR a party to the Contract or to any constituent document.

**DIR SOW ID No. HHS0012750
DIR REVIEW – HHSC SOW ID No. HHS0012750
DIR REVIEW – HHSC CONTRACT No. HHS00127500001**

DocuSigned by:
Lisa Massock
EACA16B7EFC6463...

TITLE: Chief Procurement Officer

TEXAS DEPARTMENT OF INFORMATION RESOURCES

DATE: 10/23/2023 | 2:34 PM CDT



TEXAS Health and Human Services

Cecile E. Young, Executive Commissioner

Health and Human Services Commission (“HHSC”)
Procurement No. HHS0012750

Texas Department of Information Resources (“DIR”)
Cooperative Contracts IT Products and Services Offerings
Statement of Work (“SOW”)
for

DIR DBITS Category: Independent Verification and Validation (“TV&V”)

Date of Release: February 06, 2023

Responses Due: March 20, 2023, by 10:30 AM Central Time

NIGP Class/Item Codes

920	DATA PROCESSING, COMPUTER, PROGRAMMING, AND SOFTWARE SERVICES
920-15	* Assessment and Profiling Services of Software
920-44	* Risk Management for Software Development
920-65	* System Requirements Quality Assurance Review
920-75	* Technical Writing and Documentation – IT Services

() Automated Information Systems (“AIS”)*

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Executive Summary

The Health and Human Services Commission (“HHSC”), a “System Agency” within the Health and Human Services System (“HHS System”) issues this Statement of Work (“SOW”) to solicit Information Technology (“IT”) services as provided by the State of Texas Department of Information Resources (“DIR”) Cooperative Contracts Program of IT Commodity Item(s) for Automated Information Systems (“AIS”) Types associated with Independent Verification and Validation (“IV&V”) services.

This SOW, including all attachments thereto, is authorized by and in compliance with the provisions of Tex. Gov’t Code § 2157.0685. Accordingly, this SOW is not valid, and money may not be paid to the Contractor under this SOW, unless approved by the authorized signature of DIR. Refer to the Contractor’s agreement with DIR (the “DIR Contract”) for defined terms in addition to those provided herein.

This SOW is subject to the DIR Contract between the competitively selected Respondent (the “Contractor”) and DIR, as mutually agreed-upon with their published DIR Contract. This SOW, including the DIR Contract and all other documents attached to or incorporated by reference, make up the entire “Agreement” or “Agency Contract”. This SOW will facilitate the procurement of Deliverables as described in this SOW, in support of strategically and tactically assisting the HHSC IT Division with oversight of various Projects.

Terms not defined in this SOW have the meaning attributed to them in the resulting Agency Contract or DIR’s Cooperative Contracts Program Offerings of the selected IT Commodity Items unless otherwise specified. Refer to **Exhibit A, HHS Uniform Terms and Conditions – Vendor (version 3.3)**; **Exhibit B, HHS Additional Provisions (version 1.0)**; and **Exhibit C, HHS Solicitation Affirmations (version 2.3)**, and this SOW’s Section 1 - Definitions for additional explanations and meanings.

1 Definitions

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

“Addendum” means a written clarification or revision to this SOW, issued by HHSC Procurement and Contracting Services (“PCS”) division.

“Ad-hoc” means a business intelligence process used to quickly create output (dashboards or reports) on an as-needed basis, generally created for one-time use to find the answer to a specific business question; also used to describe related as-needed meetings, occurring not on a set schedule.

“Advancement Criteria” means the published criteria for Respondent to advance to the next phase of evaluation if multiple evaluation methods are utilized.

“Agency Contract”, “Contract”, or “Agreement” is the contract resulting from this SOW. See also the definition for “Contract” in **Exhibit A, HHS Uniform Terms and Conditions – Vendor (version 3.3)**.

“Contractor” means a business entity or individual that is awarded an Agency Contract to provide Goods or Services to an HHS System Customer Organization (also referenced in HHS System SOW and Contract packets’ addenda, attachments, and/or exhibits as authorized: Vendor, Service

Provider, Reseller, Publisher, Proposer, Manufacturer, Distributor, Dealer, Contractor, Bidder, and/or Applicant).

“[Business Day](#)” means any day (24-hour period) in which normal business operations of HHSC are conducted (e.g., excludes weekends and the national holidays specified in Section 662.003(a) of the Texas Government Code).

“[Business Hours](#)” is defined as the hours from 8:00 A.M. through 5:00 P.M. Central Time on Business Days.

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

“[Competitive Range](#)” has the same meaning as the definition under Title 1 of the Tex. Admin. Code, Part 15, Chapter 391, Subchapter A, Rule § 391.107(3).

“[Customer](#)” or “[Customer Organization](#)” means HHSC, a DIR eligible Customer (as defined by [Tex. Gov’t Code § 2054.003 \(13\)](#), [Tex. Gov’t Code § 2151.002](#)), county or local government offices, and public education entities of all sizes).

“[Deliverable Acceptance Criteria](#)” means a set of requirements that must be met before Deliverables are accepted by Customer.

“[Designee](#)” means a person who has been officially chosen to carry out a duty or role as the secondary, in the absence of the primary; a person who has been designated as a backup.

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

“[HHSC IT Division](#)” means HHSC Information Technology Division, a division of HHSC.

“[HHSC Program Area](#)” means the function or program area of HHSC that provides an access point for users to search for and/or acquire a particular good and/or service.

“[HUB Subcontracting Plan](#)” or “[HSP](#)” refers to 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 subcontracting opportunities have been determined by the State agency to be probable. The HSP subsequently becomes a provision of the awarded Agency Contract and will be monitored for compliance by the State agency during the term of the Agency Contract.

“[Interview](#)” refers to a secondary evaluation method following the evaluation of the written Responses for the purpose of further distinguishing between the SOW Responses through verbal questioning of the Respondents aimed at clarifying their written Response.

“[Key Performance Measures](#)” means measurable value that demonstrates how effectively a company is achieving Agency Contract obligations.

“[Project](#)” means a set of tasks that must be completed in order to arrive at a particular goal or outcome; depending on the scale and scope of the Project, these tasks may be simple or elaborate, but all Projects can be broken down into objectives and what needs to be engaged to achieve them – specifically, Deliverables as defined in in **Exhibit A, HHS Uniform Terms and Conditions – Vendor (version 3.3)**.

“[Respondent](#)” means the individual or entity responding to this SOW.

“[Site Visit](#)” refers to a secondary evaluation method following the evaluation of the written Responses and is utilized to evaluate and ensure on-site specifications meet the needs outlined in the SOW.

“[SOW](#)” means this DIR SOW, inclusive of its exhibits, attachments, forms, references, and addenda thereto.

“[SOW Response](#)” or “[Response](#)” means Respondent’s full and complete Response (including any attachments and addenda) to this SOW, which is incorporated by reference for all purposes in its entirety.

“[State](#)” means the State of Texas and its instrumentalities, including HHSC, and any other State agency, its officers, employees, or authorized agents.

“[Template](#)” means a predesigned written, printed, or electronic matter that provides information or that serves as an official record, used to create documents or files quickly without having to recreate the formatting specifications each time it is used. Many of the larger mediums design decisions such as margin size, font style and size, and spacing are predetermined to meet the Customer's needs.

“[VPTS](#)” means Vendor Performance Tracking System, as defined under Tex. Gov’t Code § [2262.055](#) and Title 34 of the Tex. Admin. Code, Part 1, Chapter 20, Subchapter B, Division 2, Rule § [20.115](#) and Subchapter F, Division 2, Rule § [20.509](#).

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2 Introduction

HHSC seeks a Respondent to provide as-needed IV&V Services to various Projects as a deliverables-based engagement using a Work Order structure which provides the HHS IT Division the flexibility to request specific Deliverables when needed to assist HHSC strategically and tactically with various Projects.

In addition to supplementing its State staff capacity, the HHS IT Division plans to use IV&V Services from the Agency Contract to improve visibility into the progress and quality of Project efforts and provide an objective perspective on Project issues and risks. This will assist the HHS IT Division in delivering IT Projects on time, on budget, with demonstrated outcomes and Customer satisfaction.

The terms and conditions of this SOW may not, and shall not be construed to, weaken any terms and conditions in the DIR Contract. To the extent any terms and conditions of this SOW are less rigorous than or otherwise diminish the Contractor's obligations under the DIR Contract, the terms and conditions of the DIR Contract shall supersede and control over this SOW.

The terms and conditions of this SOW may, however, add to or strengthen the terms and conditions under the Contractor's DIR Contract. To the extent that any HHSC terms and conditions add to or strengthen the Contractor's obligations, the HHSC terms and conditions shall control.

To be considered for award, Respondents must execute and provide with its proposal all required information and documentation as set forth in this SOW. Information regarding HHSC and its programs is available online and can be accessed at <https://hhs.texas.gov/>.

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3 Background

Since 1991, HHSC has overseen and coordinated the planning and delivery of Health and Human Services programs in Texas. HHSC is responsible for the oversight of all other HHS System Customer Organizations. The HHSC mission is to provide leadership, direction, and foster the spirit of innovation needed to achieve an efficient and effective Health and Human Services System for Texans.

HHSC operates from **three hundred plus (300+)** offices statewide and delivers services to more than **eight million (8,000,000)** citizens annually. The HHS IT Division provides support and services for more than **forty thousand (40,000)** staff and supports **one hundred twenty (120)** websites, more than **two hundred twenty (220)** programs, and more than **three hundred seventy-six (376)** applications—**one hundred eighty-three (183)** of which are HHS System mission-critical.

These IT services are critical to support the performance of HHSC's business functions. As those functions occasionally change, Projects are initiated to update the IT services to better support the revised business functions.

As of June 30, 2022, the HHSC IT Division was developing or implementing **ninety-three (93)** active Projects, with budgets totaling **\$671,850,367.00**. To ensure successful completion of these Projects to meet HHSC's business needs, the HHSC IT Division occasionally requires independent reviews of Project activities and progress.

The IV&V Services include independent oversight of Software Development Life Cycle (SDLC) processes and specifications. In addition, independent application/system performance reviews may occasionally be required.

The HHSC IT Division's project management policies and processes apply to Projects based on their size and complexity. Factors considered during the project proposal process include size of Project budget, length of Project schedule, size of Project team, number of departments and agencies involved, newness of technology, vendor involvement, and system complexity.

The resulting Project designation (small, medium, large, extra-large) determines the Project management processes and artifacts required for the Project. The "extra-large" designation is synonymous with the Texas' designation of a Major Information Resources Project (MIRP).

More information on this designation can be found at Tex. Gov't Code § 2054.003 (10). HHSC anticipates that the majority of IV&V Services requested under this SOW will support large and extra-large Projects.

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4 *Scope of Work*

The Contractor shall provide the Deliverables described in this SOW, and under the terms and conditions of this SOW. These Deliverables must be provided in compliance with HHSC Policies, Procedures, Standards, and Guidelines under the direction from HHSC Program and HHSC IT Division Management.

4.1 Description of IT Services / Specifications

In performing the Work, the Contractor shall adhere to industry standards and best practices, identify risks and issues, and develop actionable recommendations for remediation. Deliverables shall be provided in compliance with HHS System policies, procedures standards, and guidelines. Deliverables will be reviewed by project stakeholders, the Project Management Center of Excellence, HHSC IT Division Management, or the Customer's Contract Manager ("CM") or Designee.

4.1.1 IV&V Process

1. For this SOW, the core purpose of the IV&V Services is to confirm whether a product, service, or system meets specifications and that it fulfills its intended purpose. In performing Services under the Agency Contract, the Contractor shall consider the following:
 - a. The "Independent" in IV&V is to ensure the validation is performed by an impartial third party. "Independence" refers to technical independence as well as managerial independence. An IV&V vendor will review both products and processes, with a particular emphasis on the technical aspects of the products;
 - b. "Validation" involves confirming that the software and processes meet the user's needs; and
 - c. "Verification" involves confirming that the system is well engineered. This is sometimes expressed as "Are we building the right *system*?" and "Are we building the system *right*?".
2. IV&V processes vary based on the approach applied to each Work Order, but generally the Contractor shall:
 - a. Perform independent monitoring and assessments of quality assurance and business processes;
 - b. Provide an independent source for identification and escalation of issues and risks, along with actionable recommendations for resolving issues or mitigating risks to the appropriate HHSC administration level;
 - c. Monitor Project progress;
 - d. Provide test validation and support; and
 - e. Escalate IV&V findings to the HHSC IT Division for presentation to HHSC Stakeholders.

4.1.2 Scope of Services

The Contractor shall provide IV&V Services for HHSC IT Division utilization through Work Orders executed by both Parties to the Agency Contract. Work Orders shall not act to modify the Agency Contract. The Work Orders shall comply with the following processes:

1. Work Order Origination

- a. The HHSC IT Division shall provide information regarding the Project, requested Deliverables, and target timeframes when each Work Order is released;
- b. The HHSC IT Division will select the relevant Deliverables for each Work Order issued based on HHSC's business needs and available funding;
- c. In response to a new Work Order, the Contractor shall:
 - 1) review the Work Order;
 - 2) work with the HHSC IT Division to select the appropriate scope of work to produce the requested Deliverable(s);
 - 3) determine the number of staff required to perform the Work; and
 - 4) negotiate the resulting Work Order pricing.
- d. If required by HHSC, the Contractor shall perform Work on more than **one (1)** Project in parallel.

SEE SAMPLE IN: EXHIBIT P, WORK ORDER REQUEST

2. Work Order Modifications

HHSC or Contractor may, at any time, recognize the need to modify a Work Order. The Parties shall comply with the following procedures to engage Work Order modifications:

- a. To initiate a modification to a Work Order, either Contractor or the HHSC IT Division will send a completed **Exhibit R, Work Order Change Request Form** ("Change Request") to the other Party;
- b. While a Change Request is under review, the Contractor must continue to perform in compliance with the original Work Order;
- c. The mutually accepted modifications to a Work Order shall be documented in a Work Order Amendment executed by both Parties:
 - 1) The Work Order Amendment shall document any modifications to Services or Deliverables and the cost or the time required for the performance of any part of the Work under the Work Order; and
 - 2) All Work Order modifications shall be deployed in conjunction with ongoing application development and maintenance activities, with the goal of reducing impact to HHSC business operations resulting from the modifications;
- d. Work Order Amendments shall not include any corrections resulting from Service or Deliverable deficiencies;

e. Work Order Amendments shall not amend the Agency Contract.

3. Work Order Termination

- a. Without prejudice to any other remedies available to HHSC, HHSC may terminate any Work Order under the Agency Contract at any time, without any prior written notice, and without cause by giving written notice to Contractor; and
- b. If HHS terminates a Work Order for convenience, HHSC's only obligation relating to the terminated Work Order is to pay for Work or Deliverables under the relevant Work Order before the effective date of termination, and only the Work or Deliverables HHSC has accepted, at its sole discretion.

4.1.3 IV&V Meetings

The Contractor shall attend the following meetings:

1. After each Work Order is negotiated, the Contractor and HHSC personnel will conduct a kick-off meeting to introduce critical stakeholders and review requirements;
2. The Contractor shall be invited to appropriate Project meetings to accumulate information to engage IV&V assessments;
3. The Contractor may conduct additional meetings with HHSC personnel, other Project vendor partners, and end users and other stakeholders while performing its assessments; and
4. The Contractor shall schedule sufficient lead time to allow advance scheduling of non-routine meetings.

DETAILS ON THE TYPES OF MEETINGS THE HHSC IT DIVISION EXPECTS ARE DISCUSSED IN:

SECTION 6 – REPORTS AND MEETINGS

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4.2 Service Descriptions

Service functions include the following high-level task elements:

4.2.1 Objectives

The Contractor, in close coordination with HHS System Staff, shall be responsible for the IV&V Services of this HHSC IT Division SOW.

4.2.2 Approach

The Deliverables shall be provided in accordance with the requirements specified in this SOW and consistent with HHSC policies, procedures, standards, and guidelines.

4.2.3 Process

The HHSC IT Division will provide guidance to the Contractor in providing the IV&V Services, including access to historical records, Subject Matter Experts (SMEs), Stakeholders, and Project Plans. The HHSC IT Division will oversee the process and review required documentation submitted by the Contractor, in accordance with established guidelines and timeframes.

4.3 Roles and Responsibilities

4.3.1 Staffing Requirements:

The Contractor's personnel shall have demonstrated experience, qualifications, and skillsets and have knowledge and experience with assignments commensurate to the Services provided under the Agency Contract within the past **five (5)** years.

4.3.2 Contractor Responsibilities:

1. The Contractor shall provide IV&V Services adhering to, at a minimum, the following HHS System business principles:

- a. Contractor Main Point of Contact (POC)

The Main POC shall:

- 1) Escalate issues to the Customer as appropriate;
- 2) Ensure start of onboarding activities such as background checks within **three (3)** days of execution of a new Work Order by the Parties;
- 3) Coordinate various Contractor personnel to produce Deliverables;
- 4) Ensure rapid staff replacement in the event Contractor personnel depart any Project; and
- 5) Escalate issues to the Customer as appropriate.

- b. Contractor Personnel

- 1) The Contractor personnel shall accomplish the assigned activities within Project scope and schedule for the negotiated cost, working collaboratively with Customer personnel;
- 2) The Contractor personnel shall facilitate or participate in information gathering sessions as needed to complete Deliverables, with active participation from SMEs from HHS divisions such as IT and various HHS System program areas;

- 3) The Contractor personnel shall review and acknowledge in writing HHSC's applicable computer usage, confidentiality, and non-disclosure policies;
 - 4) Contractor personnel shall adjust their working/interview schedule to correspond with the working hours of the involved SMEs;
 - 5) Contractor personnel are expected to perform Services, including attending meetings, virtually using Microsoft Teams or other HHSC-approved virtual meeting methods, whereas physical reviews requiring onsite activities must be performed onsite;
 - 6) Contractor personnel are expected to perform Work onsite as needed, and be available by phone and e-mail during normal business hours, 8:00 AM to 5:00 PM Central Time; and
 - 7) The Contractor and its personnel are required to use HHSC-provided email accounts as the system of record for all communication conducted between the Contractor and HHSC personnel.
2. The Contractor shall adhere to the following in accordance with HHSC policies, procedures, standards, and guidelines:
- a. The Contractor shall provide a staffing plan detailing the number of resources provided, each member's résumé showing skillset and/or qualifications, and how the Contractor will remediate planned or unplanned changes of Contractor personnel during each Work Order ("Staffing Plan");
 - b. Any Contractor replacement personnel shall have equal or better credentials, experience, training, and skills as the Contractor personnel he or she is replacing. All replacement personnel are subject to review and approval by HHSC, at its sole discretion;
 - c. The Contractor shall provide the résumé of any potential Contractor replacement personnel for HHSC to review and approve prior to assigning the resource to a Project;
 - d. The Contractor shall notify HHSC on the same day any Contractor personnel leaves the Project for any unplanned reason;
 - e. The Contractor shall remove any Contractor personnel immediately based upon HHSC's determination at its sole discretion, and request;
 - f. The Contractor must review and comply with the HHS Enterprise Information Security Policy ("EIS-Policy"), with the current HHS Information Security Resource guidelines published on the HHS website: [Home](#) / [Business](#) / [Contracting with HHS](#) / [Vendor Resources](#);
 - g. The Contractor must review and comply with the HHS Electronics and Information Resources (EIR) Accessibility Policy Manual, published on HHS Accessibility Center's *Policy* website¹;

¹ Reference: <https://accessibility.hhs.texas.gov/policy.htm>

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- h. A standard work week of **forty (40)** hours, Monday through Friday, except on State holidays² is required for full-time Contractor personnel to perform the Services;
 - i. The Contractor is not responsible for delays or additional impacts associated with the unavailability of required HHSC resources or delays in the delivery or performance of third-party tools and/or services; and
 - j. The Contractor shall meet the standards described in Section 7.6 – Service Levels.

4.3.3 Customer Contract Manager

1. The Customer Contract Manager (“Customer CM”) or Designee reviews and makes comments on the Contractor’s progress and ensures that the deadlines, Work, reporting, and invoicing are accomplished as described in this SOW;
2. The Customer CM or Designee will work with HHSC personnel (*e.g.*, Administration, HHS System Legal, Procurement, and/or Security), as required, to lead resolution of any contractual issues;
3. The Customer CM or Designee will receive, review, and coordinate the acceptance of any Work Order Modifications;
4. The Customer CM or Designee, in conjunction with appropriate stakeholders, will complete the reviews of the overall quality, completeness, technical accuracy, and relevance and appropriateness of recommendations in the Contractor’s Deliverables within **ten (10)** Business Days of receipt;
5. If a disagreement between the Parties to the Agency Contract occurs regarding scope or quality of Deliverables, the Customer CM or Designee will coordinate an HHS Funding Sponsors meeting with the Contractor and relevant HHSC stakeholders to review and determine a corrective course of action; and
6. The Customer CM or Designee will ensure deadlines, work products, reporting, and invoicing are completed in compliance with this SOW.

4.3.4 Customer Project Manager

1. The Customer Project Manager (“Customer PM”) or Designee is responsible for planning, executing, and controlling the overall Project(s);
2. The Customer PM or Designee will work with the Customer CM for the completion of activities and Deliverables related to this SOW;
3. The Customer PM or Designee will assist the Contractor with business-related activities and decisions, as necessary;
4. The Customer PM or Designee reports monthly progress to the Program Managers as well as HHSC executive management, based on the Contractor’s status meeting updates; and
5. The Customer PM or Designee will assist the Contractor with the coordination of technical resources.

² Reference: <http://www.hr.sao.texas.gov/Holidays/>

4.3.5 Customer IT Management and Technical Staff

1. The HHSC IT Division Managers or Designee are responsible for providing and directing Customer and Contractors IT Technical SMEs for technical requirements, as applicable; and
2. The HHSC IT Division Managers or Designee are responsible for providing input regarding existing IT Policies, Procedures, Standards, and Guidelines - as applicable.

4.3.6 Customer Program Managers and Staff

1. The Customer Program Managers or Designee will identify and schedule HHSC Program SMEs to provide necessary Project-related information;
2. The Customer Program Managers or Designee will identify external stakeholders for requirements gathering and Customer interfaces, as applicable;
3. The Customer Program Managers or Designee will assist with resolving or advancing Project issues within HHSC when escalated by HHSC IT Division Management, the Customer CM, and/or the Customer PM; and
4. The Customer Program Managers or Designee will obtain and provide program information, data, decisions, and approvals within **ten (10)** Business Days of the Contractor's request, unless both Parties agree to an extended response time.

4.4 Relevant Quality Processes

The Contractor is responsible for complying with all quality processes according to **Exhibit K, HHSC Information Security Controls**, to ensure the successful completion of all Deliverables:

1. Any recommended changes to Deliverables will be provided in writing to the Contractor for modification;
2. The Customer may query the Contractor at any time to ensure the Services are completed in compliance with the Agency Contract, and do not expose Deliverables to any unacceptable confidentiality or security risk level;
3. The Contractor shall submit Deliverables to the Customer CM or Designee – who in collaboration with the assigned HHSC team members, will evaluate the overall quality, technical accuracy, business criteria, and/or completeness of the Deliverables – as applicable; and
4. If disagreement exists regarding the scope or quality of Deliverables provided, the Customer PM will meet with the Contractor and relevant HHSC stakeholders to review the issues and determine a corrective course of action.

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5 Deliverables

Deliverables shall not be considered completed unless the Deliverables have been formally accepted by HHSC, at its sole discretion. HHSC will complete a review of each submitted Deliverable within specified working days from the date of receipt, based on the following requirements.

5.1 Specifications Overview

5.1.1 General Guidance

1. Deliverables must be provided on the dates specified in the corresponding Work Order; and
2. Any changes to the delivery date must be approved in writing by the Customer CM or Designee.
 1. Customer reserves the right to request a Draft of Deliverables;
 2. In the event Customer requests a Draft, the Contractor shall provide the Draft at least **ten (10)** Business Days before the final Deliverable submission date;
 3. Drafts must show the format and provide a summary outline of the content of the Deliverable;
 4. The Contractor shall revise the format and content to align with HHSC feedback prior to final submission of the Deliverable; and
 5. HHSC will not unreasonably withhold approval of Drafts to the detriment of the Project schedule.

5.2 Deliverable Requirements

To meet the objectives of the SOW, the Contractor must provide Deliverables as described in the Agency Contract to meet applicable business, technical, security, management, and administrative objectives. The Deliverables must also align with objectives of the enterprise service delivery model, and support HHSC's ability to deliver future sustainable services.

5.2.1 Work Order Deliverables

The Contractor shall provide requested Deliverables for specific Projects under the terms and conditions of this SOW through individual Work Orders as specific Projects need IV&V Services during the term of the Agency Contract:

1. All Contractor activities are subject to the direction of the designated Customer PM or CM, as specified by the HHSC IT Division;
2. The HHSC IT Division is relying on Contractor's experience and expertise in Project management, risk management, requirements gathering/management, documentation management, and software development life cycle processes;
3. The HHSC IT Division's primary desired outcome of these IV&V Services is that the Deliverables requested through Work Orders under the SOW result in successful Projects at the best value for the State of Texas;
4. Throughout the IV&V process, HHS expects the Contractor to place particular focus on

technical, operational, administrative, or financial items that indicate or create increased risk of Project failure.

5.3 Deliverables Acceptance Criteria

The Contractor shall develop Deliverable Acceptance Criteria which are consistent with the requirements of the SOW for each of the Deliverables identified in **Table 2 – Deliverables**, in Section 12.2.10 - Potential Deliverables. Deliverable Acceptance Criteria developed by the Contractor is subject to acceptance in writing by HHSC, at its sole discretion.

If any of the Contractor's proposed criteria are unacceptable, HHSC, at its sole discretion, may revise the acceptance criteria or require the Contractor to re-write and re-submit the acceptance criteria for HHSC to review and approve within **ten (10) Business Days** after written notification of HHSC's rejection of the criteria.

Deliverables produced by the Contractor shall meet Section 508 guidelines and be validated using the accessibility process, for various document types including Microsoft Word, Excel and PDF, which are discussed in Section 11.1.11 - EIR Accessibility and Section 508 Compliance.

5.4 Deliverables Acceptance Process

Deliverables shall be provided to HHSC's designated personnel on the dates specified in the Contractor's State-approved Project Work Plan:

1. The Contractor's Project Work Plan shall stagger (temporally) the submission of Deliverables to provide HHSC with adequate time to review and approve Deliverables;
2. All Deliverables shall be submitted to the Customer PM and/or CM (or Designee) in a format approved by the Customer, adhere to the Agency Contract, and be provided on the dates specified in the Project Work Plan;
3. If any Deliverable cannot be provided within the scheduled timeframe, the Contractor shall contact HHSC in writing with the reason for the delay and a proposed revised schedule, which HHSC may accept or reject at its sole discretion. The proposed revised schedule shall include any impact on related Project tasks and the overall Project. If a delay in providing a Deliverable may result in prolonging the Project completion date, the Contractor will include in its proposed revised schedule, alternative solutions to prolonging the Project other than a schedule delay. Agency Contract terms and conditions may implicate remedies, costs, and other actions based on the facts related to the request for a revised schedule;
4. HHSC will notify the Contractor in writing of HHSC's approval or rejection within **ten (10) Business Days** of HHSC's receipt of a Deliverable;
5. If rejected, the HHSC Customer CM or Designee will provide the reason(s) for rejection and actions the Contractor must engage to render the Deliverable acceptable to HHSC. Upon receipt of a notice of rejection, the Contractor will have **ten (10) Business Days** to complete remediation and resubmit the Deliverable unless other written approval or direction has been provided by the Customer CM or Designee. This process of submission by Contractor and review by HHSC will continue until HHSC provides Contractor final written acceptance of a Deliverable. Any Deliverable remediation shall be performed by

Contractor at no additional cost to the Customer. The Contractor shall perform Deliverable remediation without impact to the Customer-approved Project schedule;

6. The Contractor will accommodate additional review time for Deliverable acceptance, if necessary, when the same HHS System resources are to review multiple Deliverables simultaneously, or when the nature of the Deliverable(s) or other factors necessitate a longer review period;
7. Customer reserves the right to forego or conduct expedited reviews and approvals of Deliverables. Customer approval of the Deliverables will not relieve the Contractor from liability for defects, errors, or omissions in Deliverables that may be discovered after acceptance;
8. Approval will be granted if HHSC determines that the Deliverable conforms to the requirements of the SOW and the Deliverable Acceptance Criteria. For all Deliverables, the measure for acceptance by HHSC, at its sole discretion, is **one hundred percent (100%)** compliance with the Agency Contract. The Customer may choose to waive imperfections in Deliverables at its sole discretion; and
9. Non-delivery or non-acceptance of Deliverables may result in required continued corrective action until the Contractor has corrected the Deliverable to the satisfaction of HHSC.

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6 Reports and Meetings

6.1 Project Required Compliance on Reports and Data

The Contractor shall submit all reports and supporting documentation required by the Agency Contract. The reports may be revised, or additional reports may be added at the Customer's sole discretion:

Table 1 - Required Report/Data Table

Frequency	Due Date	Report Item	Requirement Reference	Agency Personnel to Receive Report
Monthly	5 th Business Day of the month	HSP Prime Contractor Progress Assessment Report (PAR), available from HHS HUB Program Office	In reference to Contractor's DIR Contract Appendix B (HSP)	Customer CM or Designee and HUB Coordinator
Monthly	Specific to Agency Contract	Invoices	<u>Section 9.0 – Invoices and Payments</u>	Agency Accounts Payable, Customer CM or Designee, and Record Management Group
Other	As issued	Audit Reports related to Services provided under this Agency Contract completed by an External Entity	<u>Reference Exhibit A, HHS Uniform Terms and Conditions (version 3.3)</u>	Customer CM or Designee and Budget Analyst
Other	Prior to Agency Contract award and upon any Contract renewals or extensions	Certifications for security: Cybersecurity Training Certification	<u>Section 4.3 - Roles and Responsibilities</u>	CISO Office, Budget Analyst, and Customer CM or Designee

6.2 Project Work Order Start-up

A Kick-off Meeting will be held after each Work Order execution at a location and time selected by HHSC during which Contractor personnel will be introduced to HHSC stakeholders:

1. Introduction of HHSC's Integrated Project Team (IPT);
2. Overview of Work Order scope and corresponding Deliverables;
3. Overview of Work Order schedule;
4. Review of the Work Order communication plan;
5. Review of the Project management approach and processes including:
 - a. Work Order Modifications;
 - b. incident remediation;
 - c. issue management; and
 - d. risk management.

6.3 Regular Status Meetings

The Contractor shall be available for regular status meetings with the Customer and other HHSC

stakeholders, as appropriate:

1. Frequency: the meetings will be held on a day, time and place as agreed upon by both Parties;
2. Medium: meetings can be in person or virtual, at the discretion of HHSC; and
3. Purpose: to provide an assessment of initiative activities, Project status, and status on pending recommendations for resolving Project issues, mitigating Project risks, or addressing stakeholder concerns.

6.4 Ad-Hoc Meetings

Ad-hoc meetings may be required by HHSC or the Contractor as needed, to support Work performed under the Agency Contract:

1. The meetings will be scheduled to address a specific or immediate problem or need;
2. The meetings will be scheduled **at least one (1)** Business Day in advance, except in the case of a system outage or emergency fix; and
3. The Contractor shall participate in the preparation of an agenda and the generation of meeting notes.

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7 *Performance Measures*

By execution of an Agency Contract, the Contractor represents that all Work shall be completed in a manner consistent with standards under the terms of the Agency Contract, in the applicable trade, profession, or industry; shall conform to or exceed the specifications set forth in the Agency Contract; and all Deliverables shall be fit for ordinary use, of good quality, and with no material defects.

7.1 Vendor Performance Standards

1. The achievement of schedule milestones and goals, both final and interim, is the Contractor's responsibility and the Contractor shall meet its IV&V Project Work Plan; and
2. The Contractor's performance will be evaluated based on adherence to the Agreement, acceptability of the Deliverables, and strength in communication and coordination throughout the Project.

7.2 Communication

1. The Contractor is responsible for preparation of all required communications (meetings, reports, e-mails) and all required documents (plans, estimates, schedules, analyses) as previously described.; and
2. All Deliverable documents required from Contractor under the Agency Contract shall be written in terms and language that can be easily understood by non-technical personnel without subject matter expertise.

7.3 Acceptance Criteria

All Work and Services shall meet acceptance criteria established by HHSC, including associated time periods (see Section 5.3 – Deliverables Acceptance Criteria).

7.4 Contractor Personnel Requirements

1. The Contractor shall comply with **Exhibit D, HHS Data Use Agreement (version 8.5)**;
2. The Contractor shall provide qualified personnel with suitable training, education, experience, and skill to execute the Deliverables in the Agency Contract (see Section 4.3.1 – Staffing Requirements); and
3. All current HHSC system functions (relevant to the c) must not be interrupted while meeting the production operation requirements as listed within the Agreement.

7.5 HUB Requirements

7.5.1 HSP and PAR

It is the policy of the HHS System to promote and encourage contracting and subcontracting opportunities for the State of Texas certified Historically Underutilized Business (HUB) in compliance with Tex. Gov't Code §§ 2161.001-253 and Tex. Admin. Code, Title 34, Part 1, Chapter 20, Subchapter D, Division 1.

The Contractor shall ensure that it is following the approved HUB Subcontracting Plan (HSP) in accordance with their DIR Contract. Any changes made to their HSP must be submitted to the DIR HUB Coordinator referenced in their DIR Contract.

Because this SOW is released under the jurisdiction of the DIR Cooperative Contracts Program, Respondents are not required to submit a DIR HSP with their Response to this SOW:

1. Any Agency Contract resulting from this SOW will incorporate the Contractor's DIR HSP as part of the Agency Contract;
2. Prior to issuing an Agency Purchase Order using a DIR Contract, the Contractor will provide clarification regarding what Subcontractors they will/will not be using from their DIR HSP to the HHS HUB Program Office (e-mail: HHSCHub@hhsc.state.tx.us);
3. At any point during the duration of the Agency Contract, should a need arise that requires any changes to the HSP, the Contractor must contact the HHS HUB Program Office to coordinate with DIR to amend the HSP;
4. The Contractor is required to comply with the state of Texas' good faith effort requirements and obtain prior approval from HHS and DIR before any changes may be made to the HSP; and
5. Once the HHS HUB Program Office obtains the clarifications to establish the HSP for the Agency Contract with HHSC, the HUB Program Office will provide an HSP Post-Contract-Award Overview to provide guidance to the Contractor in the monthly submission of their required Progress Assessment Reports (PAR)³, and address any questions regarding HSP compliance.

7.5.2 Use of Subcontractors

Subcontractors providing Services under the Agreement must meet the same requirements and level of experience as required of the Contractor:

1. Any Subcontractor must be listed on the Contractor's approved DIR HSP for their DIR contract. DIR will work with their Vendor in the event a new Subcontractor needs to be added;
2. No subcontract under the Agreement will relieve the Contractor of the responsibility for ensuring the requested Services are provided;
3. Respondents planning to subcontract all or a portion of the Work to be performed as detailed in their Response to this SOW must identify the proposed Subcontractors;
4. If the Contractor has identified additional subcontracting opportunities, the Respondent is required to submit a revised HSP to DIR for review; and
5. No Work may be performed by a Subcontractor before DIR has approved a revised HSP for its DIR Contract.

³ Reference: *Vendor's DIR Contract, Appendix B (HSP), form sourced from Texas Comptroller of Public Accounts.*

7.6 Service Levels

7.6.1 Performance Monitoring

The Customer's fundamental commitment is to contract for positive results - defined as the generation of discrete, defined, measurable, and beneficial outcomes that support HHSC Mission & Objectives, satisfying the requirements of the resulting Agency Contract. HHSC will monitor the performance of the Agency Contract (*i.e.*, Performance Monitoring) issued under this SOW based on monthly service period reporting that must include, but is not limited to the following:

1. Experience, professionalism, and expertise for providing the Deliverables (see Section 4 - Scope of Work);
2. On-time, detailed and accurate Deliverables; and
3. Discrete, well defined, realistic, meaningful, and measurable recommendations that support Project success.

7.6.2 Service Level Industry Standards

The Customer requires the following Service Level Industry Standards, in relation to the Service Level Agreements ("SLA") referenced in Section 5.2 – Deliverables Requirements and Section 7.7.2 – Remedial Steps for Failure to Perform. These specifications are considered essential for maintaining service levels and must be incorporated into the Respondent's Response to this SOW concerning the fulfillment of the SLA consistent with industry standards, as applicable:

1. Achievement of Budget Goals (total and subtotals);
2. Achievement of Schedule Goals (final and interim);
3. Security (as defined by HHSC);
4. Quality (as defined by HHSC);
5. Required communications (meetings, reports, calls, e-mails);
6. Required documents (plans, estimates, schedules, analyses);
7. Degree of accuracy of estimates (schedule, budget, resources, total);
8. Effective risk management and response (e.g., adherence to Project requirements); and
9. Effective scope management and change control (adherence to plans);

7.7 Contractor Performance

7.7.1 Overview

All Work shall be performed with promptness and diligence and will be executed in a professional manner, in accordance with the practices and high professional standards used in well-managed operations performing work similar to the Work described in this SOW:

1. The Customer and Contractor will agree to timely, professional communication in all ongoing interactions and appropriate responsiveness to ad hoc queries to accomplish the purpose of the Agency Contract; and
2. The Contractor warrants, represents, and covenants that:

- a. The Contractor personnel assigned to the Agency Contract shall have the requisite competence, skill, training, education, and resources necessary to perform the Services in a timely, competent, and professional manner in accordance with the highest industry standards;
- b. The Contractor shall comply with applicable state and federal laws;
- c. The Contractor has full rights and authority to enter into and perform the Services described in the Agency Contract;
- d. The Contractor personnel performing the Services shall use a level of care commensurate with the best industry practices for safeguarding highly sensitive data with respect to all HHS System data they have access to while performing the Services;
- e. The Contractor Services, Deliverables, and any Vendor intellectual property or third-party intellectual property provided to HHSC under this SOW shall not infringe any United States patent, copyright, trademark, trade secret, or other proprietary right of any third party or contain any viruses or other malicious code that will degrade or infect any Deliverables, product, service, or any other HHS System software or equipment.

7.7.2 Remedial Steps for Failure to Perform

In the event that the Contractor does not achieve the standards of performance set above, HHSC may request a Corrective Action Plan (CAP).

1. HHSC reserves the right to withhold or offset payment on all or part of any missed, incomplete, or unsatisfactory Deliverables for which HHSC and Contractor have not agreed upon a remedy; and
2. HHSC and the Contractor will work in good faith to ensure that all Agency Contract performance standards under the Agency Contract are met.

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8 *Period of Performance*

8.1 Contract Term

HHSC anticipates that the initial term of any Agency Contract resulting from this SOW will become effective **September 1, 2023**, and will have an initial Agency Contract Term of **three (3)** years. HHSC, at its sole discretion, may renew the Agency Contract. However, in no event may the Agency Contract Term, including all renewals exceed **five (5)** years.

Notwithstanding the limitation in the preceding sentence, and with **at least thirty (30)** calendar days advance written notice to Contractor, at the conclusion of the Agency Contract Term, HHSC, at its sole discretion, may extend the Agency Contract as necessary to address immediate operational or service delivery needs; to ensure continuity of service; for purposes of transition; or as otherwise determined by HHSC to serve the best interests of the State for up to **twelve (12)** months, in one-month intervals, at the then-current Agency Contract rate or rates as modified during the term of the Agency Contract.

8.2 Modification of Timeline

A modification of the timeline proposed in this SOW will be generated during the initial Project phase of the Agency Contract. Delays caused by HHSC and State holidays may affect the Project timelines under the Agency Contract. Any delays that impact Contractor's ability to perform in accordance with the Agency Contract will be subject to HHSC's Work Order Modification Procedures through written Amendment.

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9 *Invoices and Payments*

9.1 **Invoices**

Tex. Gov't Code § 2155.322, Inspection and Certification, provides:

(a) A state agency shall:

(1) inspect and evaluate at the time of receipt all goods or services that the agency receives to determine whether the goods or services comply with the contract under which they were purchased; and

(2) certify, if true, that the goods or services comply with contract requirements and that the invoice for them is correct.

Accordingly, a Deliverable is not considered “complete” by HHSC unless HHSC has reviewed and accepted the Deliverable as provided herein. HHSC shall accrue no obligation for payment for any Deliverables or Services provided hereunder unless HHSC has determined, at its sole discretion, that such Deliverables or Services conform to the requirements of the Agency Contract. The Contractor shall be responsible for invoicing HHSC for Deliverables upon completion of the specified agreed-upon Deliverables.

Contractor shall submit invoices in compliance with **Exhibit Q, HHSC Invoice Submission Requirements**.

9.2 **Payments**

Payments will be made in accordance with the DIR Contract, Appendix A, Standard Contract Terms and Conditions, and the Agency Contract:

1. HHSC will audit each invoice;
2. If HHSC determines that an invoice is not acceptable under the provisions of the Agency Contract or is otherwise incomplete, the Contractor shall correct any deficiencies and resubmit the invoice to the Customer CM or Designee for processing; and
3. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

10 *HHSC/Contractor - Furnished Equipment, Workspace, and Parking*

1. Currently, most HHSC IT Division work is conducted remotely. While no permanent office space will be provided to Contractor personnel, temporary workspace and network connectivity may be available at certain HHSC offices - unless prohibited by the ongoing COVID-19 pandemic, in which case work will be done remotely;
2. Files may only be transferred by e-mail (secure e-mail when warranted), CD, or by use of HHSC-approved, secure USB devices;
3. Phone conferences, Microsoft (MS) Teams/WebEx, and e-mail are acceptable modes of communication;
4. HHSC will not permit the Contractor to connect Contractor-furnished computers or devices

to its network;

5. HHSC will provide the Contractor personnel with hardware (desktops or laptops), software, and access to HHSC systems and tools required to support the scope of the Agency Contract; and
6. The Contractor and staff will review and acknowledge in writing HHSC's applicable computer usage, confidentiality, and non-disclosure policies before using HHSC equipment.

11 Additional HHSC Terms and Conditions

11.1 General Conditions

11.1.1 SOW Amendments

HHSC reserves the right to alter, amend, or modify any provision of this SOW, or to withdraw this SOW, at any time prior to award, if it is in the best interest of the State:

1. HHSC/Procurement and Contracting Services ("PCS") reserves the right to alter, amend, or modify any provision of this SOW, or to withdraw this SOW (in whole or in part) at any time prior to the award of an Agency Contract if doing so is in the best interest of the State;
2. HHSC reserve the right to re-solicit for like or similar products and Services whenever it determines re-Solicitation to be in the best interest of the State; and
3. Any changes or additional information regarding this SOW will be provided as an Addendum, posted to the selected Respondents by the assigned HHSC Purchaser (see: Section 14.2 – Sole Point of Contact).

11.1.2 Offer Period

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

11.1.3 SOW Obligations

The issuance of this SOW does not imply that HHSC and the Customer are making an offer to do business with any awarded Recipient or Respondent:

1. No agreement or other binding obligation is implied or will occur unless and until a definitive agreement is executed; and
2. The issuance of this SOW and the submission of a Respondent's Response to this SOW does not create any obligation upon HHSC and the Customer to purchase products or Services from the Respondent, or to enter into any binding legal relationship with any Respondent.

11.1.4 Agency Contract Responsibility

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

11.1.5 Costs Incurred

Respondents understand that issuance of this SOW in no way constitutes a commitment by HHSC and the Customer to award an Agency Contract or to pay any costs incurred by a Respondent in the preparation of a Response to this SOW:

1. HHSC and the Customer are not liable for any costs incurred by a Respondent; and
2. Costs of developing SOW Responses, preparing for or participating in oral presentations and site visits, and/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.

11.1.6 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 Agency 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 a Respondent asserts that information provided in its Response (also referred to as proposal) is exempt from disclosure under the PIA, the Respondent must:

A. Mark the Original SOW Response as follows:

1. Mark the Original Proposal, 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. Mark the bottom of each page on the SOW Response that contains information that Respondent claims is exempt from public disclosure with the words “CONTAINS CONFIDENTIAL INFORMATION”; and
3. Identify, adjacent to each portion of the SOW Response that Respondent claims is exempt from public disclosure, the claimed exemption from disclosure (NOTE: *no redactions are to be made in the Original SOW Response*).

B. Certify in its Original SOW Response – **HHS Solicitation Affirmations (version 2.3)** (attached as **Exhibit C** to this SOW):

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 Copy; and

C. Submit Public Information Act Copy of SOW Response:

Submit a separate “Public Information Act Copy” of the Original SOW Response (in addition to the original and all copies otherwise required under the provisions of this SOW).

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);
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 SOW Response as required in Subsection (A)(2), above; and
4. The only difference in required markings and information between the Original SOW Response and the “Public Information Act Copy” of the SOW Response will be redactions - which can only be included in the “Public Information Act Copy.” There must be no redactions in the Original SOW Response.

By submitting a Response to this SOW, the Respondent agrees that, if the Respondent does not mark the Original SOW Response, provide the required certification in **Exhibit C, HHS Solicitation Affirmations (version 2.3)**, and submit the Public Information Act Copy, Respondent’s SOW Response will be considered to be public information that may be released to the public in any manner including, but not limited to, in accordance with the Public Information Act, posted on HHSC’s 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 SOW 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.

A SOW 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 and, additionally, agrees to allow the State of Texas to provide a copy of the SOW Response to individuals making a PIA request for the Response.

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 SOW Response in response to this SOW 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) OPEN TEX (673-6839). To access the Public Information Act Handbook, please visit the attorney general's website at <http://www.texasattorneygeneral.gov>.

11.1.7 Respondent Waiver – Intellectual Property

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

11.1.8 Standards of Conduct for Vendors

Pursuant to Tex. Admin. Code, Title 1, 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 Agency Contract.

The standards of conduct must include the ten standards of ethical conduct set forth in Section I of the [HHS Ethics Policy](#)⁴ and requirements to comply with ethical standards set forth in federal and state law (including, but not limited to, Tex. Admin. Code, Title 1, 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 Tex. Admin. Code, Title 1, 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

⁴ Reference: <https://hhs.texas.gov/sites/default/files/documents/about-hhs/hhs-ethics-policy.pdf>

or Services.

Any Vendor, Contractor, or Subcontractor, that violates a provision of Tex. Admin. Code, Title 1, Part 15, Chapter 391, Subchapter D, may be barred from receiving future Texas State Agency Contracts or have an existing Agency Contract canceled. Additionally, HHSC may report these actions to the Comptroller of Public Accounts for statewide debarment, or law enforcement.

11.1.9 Protests

Any protest shall be governed by the rules published by HHSC in the Tex. Admin. Code, Title 1, Part 15, Chapter 391, Subchapter C, Protests.

11.1.10 Insurance

HHS System reserves the right to request reasonable Optional Insurance methods of insuring the Customer's Agency Contract, inclusive of the insurance policies documented in a solicited Vendor's DIR Contract's Appendix A - Standard Contract Terms and Conditions, within the REQUIRED INSURANCE COVERAGE section.

HHS System references these Optional Insurance methods as special and/or custom first- and third-party insurance coverages in Section 5.07 – Insurance of the DUA. HHS System provides a more detailed listing of Optional Insurance within the DUA's (A-2) – HHS Security and Privacy Inquiry (SPI), Section A, Number 11:

1. A Contractor shall acquire insurance, bonds, or both (if applicable), with financially sound and reputable independent insurers, in the type and amount listed in **Exhibit L, Insurance**;
2. HHS System makes the determination of which Optional Insurance methods apply based on prevailing industry standards associated with the risks affecting the Customer's unique program-specific SOW;
3. It will be the Respondent's obligation to recommend to the HHS System alternative methods of insuring the Agency Contract;
4. Any alternatives proposed by the Respondent must be accompanied by a detailed explanation regarding Respondent's inability to obtain the industry standard insurance and/or bonds;
5. Failure to maintain insurance coverage or acceptable alternative methods of insurance will be deemed a Breach of Contract with the Customer, and HHS System; and
6. HHS System will be the sole and final judge as to the adequacy of any substitute form of insurance coverage.

11.1.11 EIR Accessibility and Section 508 Compliance

For each Electronic and Information Resource (EIR) accessible product or service included in SOW Responses subject to Tex. Admin. Code, Title 1, Part 10, Chapters 206 and 213, which include the US Revised Section 508 Amendment to the Rehabilitation Act of 1973 for technical specifications, the Respondent will provide documentation of how each requirement or specification is met:

1. It is the Respondents' responsibility to maintain the integrity of any accessibility documentation provided to the Customer;
2. Any documentation will be considered a self-attestation, unless expressly affirmed

otherwise;

3. If the Respondent plans to provide Commercial-Off-The-Shelf (COTS) software as part or all of their SOW Response, the Respondent will provide a completed Voluntary Product Accessibility Template (VPAT) for each COTS product offered;
4. For third-party COTS products, the Respondent must obtain and submit VPATS or links to them from the third party as part of the SOW Response; and
5. The process to determine accessibility requirements for this SOW and, if applicable, any Exceptions to the standards, can also be found at the HHS Accessibility Center:
 - <https://accessibility.hhs.texas.gov/index.htm>.

11.2 Precedence and Exhibits

11.2.1 Negotiating Terms and Conditions

HHSC and the Customer may negotiate the terms and conditions of their SOW to suit their business needs, so long as their terms and conditions do not conflict or weaken the DIR Contract, addenda, appendices, attachments, and/or exhibits.

11.2.2 DIR Precedence

The DIR terms and conditions have precedence; other terms required by HHSC and the Customer may not conflict with or weaken the DIR terms.

11.2.3 HHSC Policies, Procedures, Standards, and Guidelines

By entering into an Agency Contract with HHSC, the Contractor and its Subcontractors agree to follow HHSC's policies, procedures, standards, and guidelines governing this procurement and the Agency Contract by:

1. Complying with the following Exhibits:
 - a. Exhibit A: HHS Uniform Terms and Conditions – Vendor (version 3.3); and
 - b. Exhibit B: HHS Additional Provisions (version 1.0).
2. Completing, returning with the Proposal, and complying with the following Exhibits:
 - a. Exhibit E: Certification Regarding Lobbying;
 - b. Exhibit F: Assurances - Non-Construction Programs;
 - c. Exhibit G: Federal Funding Accountability and Transparency Act (FFATA) Certification;
 - d. Exhibit C: HHS Solicitation Affirmations (version 2.3); and
 - e. Exhibit D, HHS Data Use Agreement (“DUA”) (version 8.5), inclusive of:
 - i. the DUA's Attachment 1 (A-1) – Subcontractor Agreement Form (SAF), if applicable; and
 - ii. the DUA's Attachment 2 (A-2) – HHS Security and Privacy Inquiry (SPI).

NOTICES:

- Exhibit designations are tentative, subject to change based on negotiations with the selected Respondent - or revisions to the Texas Government Code, Texas Administrative Codes, and/or HHSC and the Customer's Policies, Procedures, Standards, and Guidelines;
- Per HHSC and the Customer's Policies, Procedures, Standards, and Guidelines – additional contractual documents (that may be incorporated into the Agency Contract as Exhibits to the Signature Packet with the Contractor, or are inferred by doing business with HHSC and the Customer), as applicable, are

published on HHS' [Vendor Resources](#) webpage⁵.

- HHSC and the Customer reserve the right to reorder and/or revise the Exhibits prior to the execution of the finalized (signed) Agreement, accordingly. If unchanged, it is intended for these completed and signed Exhibits to be utilized in the Signature Packet at award.
 - On HHSC's public-facing [Home](#) webpage there is a link at the bottom ([File Viewing](#)), which takes the user to the [File Viewing Information](#) page that offers a remedy when a user is having trouble viewing, downloading and/or using an HHS form – one of those being direct links to *Adobe Acrobat Reader DC software*.
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12 Response Requirements

The Customer will select the qualified Response to this SOW that offers the best value as determined by the information provided in the solicited Vendor's Response. The Respondent must demonstrate, in its Offer, the ability to perform the required Services to produce the Deliverables described.

12.1 Content Synopsis

The Respondent's SOW Response containing Business, Technical, and Costs & Pricing Requirements (see [Section 14.9.3 – Submission Checklist](#)) will consist of the following:

1. The Respondent must demonstrate its knowledge and expertise of the best practices for IV&V analysis of a variety of Projects, including application development or infrastructure, outsourced, or performed in-house, Agile or Waterfall development, in any phase of Project execution, throughout its Response;
2. Respondent must provide an Executive Summary of the Proposal (excluding any cost information) asserting the approach and qualifications for meeting the SOW requirements. The summary must demonstrate an understanding of HHSC's goals and objectives for the SOW. The Executive Summary must not exceed **five (5)** pages and must represent a full and concise summary of the contents of the Proposal.
3. Responses must include an active and valid DIR Contract number referenced on the Response, and all products and Services must be offered under that DIR Contract through which the Respondent can provide solicited Deliverables;
4. In order to be eligible to respond to this SOW, the Respondent must hold a relevant DIR Contract through which the Respondent can provide IV&V Services;
5. Responses will be phrased in terms and language easily understood by non-technical personnel. This does not prohibit the inclusion of relevant technical appendices;
6. All written Deliverables must be in formats specified by the Customer - at a minimum, the mediums must be in industry standards (i.e., MS Word, MS PowerPoint, MS Project):
 - a. Submitted Proposals may be in PDF or another portable format;
 - b. The proposed Project Schedule can be in Microsoft Project or Excel; and

⁵ Reference: <https://www.hhs.texas.gov/business/contracting-hhs/vendor-resources>

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- c. Any documentation requiring legal review by either Party will be submitted in editable Microsoft Word electronic copy, allowing “TRACK CHANGES” utilization.
7. The Respondent must describe its capabilities and approach to each potential Deliverable, describing the scope of the Deliverable as the Respondent intends to provide it. A Response that only repeats, acknowledges, or reiterates the requirements of the SOW will be considered a weak Response. Focus should be centered on the assessment content as detailed in Section 12.2.10 - Potential Deliverables, **Table 2 - Deliverables**.
8. The Respondent must demonstrate its knowledge and expertise of the environment (platforms, software, applications, network, tools) for which Work is to be performed:
- Outline of capability to deliver the required Services - including process, functional, and technical expertise; and
 - Process Methodologies to be used to complete this SOW.
9. Submitted SOW Responses must be submitted in **two (2)** separate files, in the form of a Business Proposal and Technical Proposal (Business and Technical Requirements combined) and a Cost Proposal:
- The Business and Technical Proposal must contain:
 - At a minimum the content detailed in Section 12.2 – Business Requirements and Section 12.3 – Technical Requirements (if applicable);
 - SOW Exhibit Affirmations, Assurances, and Certifications as detailed in Section 11.2.3, #2; and
 - If applicable, **Exhibit H, Assumptions Form**, and **Exhibit I, Exceptions Form**, as detailed in Sections 12.4 and 12.5.
 - The Cost Proposal must contain at a minimum the content detailed in Section 13 – Costs and Pricing.

12.2 Business Requirements

12.2.1 Company Information

Respondent must provide satisfactory evidence of its ability to manage and coordinate the types of activities described in this SOW and to produce the specified Goods or Services on time. As a part of the SOW Response requested in this Section 12, Respondent must provide the following information.

12.2.2 Company Narrative

Respondent must provide a detailed narrative explaining why Respondent is qualified to provide the Services enumerated in Section 4 – Scope of Work, focusing on its company’s key strengths and competitive advantages.

12.2.3 Company Profile

Respondent must provide a company profile to include:

- The company ownership structure (corporation, partnership, limited liability company (LLC), or sole proprietorship), including any wholly owned subsidiaries, affiliated companies, or joint ventures:

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- a. Provide this information in a narrative and as a graphical representation;
 - b. If Respondent is an affiliate of, or has a joint venture or strategic alliance with, another company, Respondent must identify the percentage of ownership and the percentage of the parent's ownership;
 - c. The entity performing the majority of the Work under the Agency Contract must be the primary bidder; and
 - d. Finally, provide proposed operating structure for the Services requested under this Solicitation and which entities (*i.e.*, parent company, affiliate, joint venture, subcontractor) will be performing the Services.
2. The year the Respondent was founded and/or incorporated; if incorporated, please indicate the state where the Respondent is incorporated and the date of incorporation;
 3. The location of Respondent's headquarters and any field office(s) that may provide Services for any resulting Agency Contract under this SOW;
 4. The number of employees in the Respondent company, both locally and nationally, and the location(s) from which employees will be assigned;
 5. The name, address, and telephone number of Respondent's Point of Contact for any resulting Agency Contract under this SOW;
 6. Indicate whether the Respondent company has ever been engaged under a contract by any Texas state agency; if "Yes," specify when, for what duties, and for which agency; and
 7. 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 SOW Response.

12.2.4 Past Performance

Using **Exhibit N, Past Performance Template**, as a template for completion, Respondents will list and provide information concerning a minimum of **three (3)** Contracts or Projects similar to the Services enumerated in this SOW. HHSC prefers information from Projects or Contracts that were performed for states of comparable size and/or federal government demonstrating their experience with IV&V for large, complex Enterprise-wide systems and programs, and the resulting complex coordination required between Program and IT areas, within the last **five (5)** years. Respondents must verify client contacts are current.

12.2.5 Litigation and Contract History

Respondent must include in its SOW Response a complete disclosure of any alleged or significant contractual failures:

1. Respondent must disclose any civil or criminal litigation or investigation over the last five (5) years that involves Respondent or in which Respondent has been judged guilty or liable including any allegations of such that are currently pending;
2. Respondent must also disclose any settlement agreements entered in the last **five (5)** years related to alleged contractual failures;

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3. Failure to comply with the terms of this section may disqualify Respondent; and
 4. The SOW Response may be rejected based upon Respondent's prior history with the State of Texas or with any other party that demonstrates, without limitation, unsatisfactory performance, adversarial or contentious demeanor, or significant failure(s) to meet contractual obligations.

12.2.6 Conflicts of Interest

Respondent must certify that it does not have any personal or business interests that present a conflict of interest with respect to this SOW and any resulting Agency Contract. Accordingly, the Respondent shall:

1. Disclose all potential conflicts of interest, if applicable;
2. Describe the measures it will take to ensure that there will be no actual conflict of interest and that its fairness, independence, and objectivity will be maintained;
3. Include any activities of affiliated or parent organizations and individuals who may be assigned to the HHSC Agency Contract, if any;
4. HHS System will determine to what extent, if any, a potential conflict of interest can be mitigated and managed during the term of the Agency Contract; and
5. Rules and filing instructions may be found on the Texas Ethics Commission's public website and additional instructions will be given by HHSC to Contractor.

Additionally, pursuant to Tex. Gov't Code § 2252.908, a successful Respondent awarded a Texas State Agency Contract with a value of **One Million Dollars (\$1,000,000)** or more, or awarded an Agency Contract that would require the Contractor 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 Agency Contract as the Contractor.

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 Contractor.

12.2.7 Major Subcontractor Information

Respondent must identify any major subcontractors whom Respondent intends to utilize in performing **fifteen percent (15%)** or more of any Agency Contract awarded under this SOW:

1. Respondents must indicate whether Respondent holds any financial interest in any major subcontractor; and
2. It may be required as a condition of award that an authorized officer or agent of each proposed major subcontractor sign a statement to the effect that the subcontractor has read, and will agree to abide by, Respondent's obligations under any Agency Contract awarded pursuant to this SOW.

12.2.8 Staffing Capabilities

Respondent must provide a staffing profile and resumes for current staff similar to those who will be responsible for the performance of the Services requested under this SOW:

1. Respondent must provide an IV&V Services Staffing Plan that describes the Contractor personnel that will be responsible for the performance of the Services requested under this

SOW, describing:

- a. the Project organization;
 - b. number of personnel to be provided;
 - c. example personnel skillsets and/or qualifications; and
 - d. how the Respondent plans to remediate planned or unplanned changes in personnel during each Work Order.
2. Proposed Contractor personnel shall be aligned with Section 4.3 - Roles and Responsibilities as described; and
 3. Respondents shall provide the resumes of at least **three (3)** current staff assigned to IV&V efforts similar to those described in this SOW, with each resume including:
 - a. Professional employment history, with dates;
 - b. Education (degrees received and major studies);
 - c. Knowledge of and expertise with the subject matter of the Scope of Work in this SOW;
 - d. Relevant experience in software development, product expertise, toolsets, Project Management, and other areas specific to their role;
 - e. Relevant state government experience;
 - f. Past performances; and
 - g. Professional certifications.

12.2.9 Project Work Plan

Respondents must provide a draft high-level IV&V Project Work Plan addressing the tasks specified in this SOW, including:

1. The established milestones and Work Breakdown Structure (“WBS”) that will be used as the framework for status/issue tracking of Deliverables. This list is representative of major sub-categories and is not a complete list of all activities required to meet a specified Deliverable;
2. Work estimates must all include time, cost, and resources. Deliverables will be referenced back to the established milestones and WBS on all invoices for payment;
3. A description of key activities and milestones of the Respondent’s approach to meeting the IV&V Project Work Plan Schedule defined by the HHSC IT Division;
4. A detailed methodology description of the Respondent’s approach to analyze, assess, validate, document, and complete each milestone or iteration of their proposed processes and methodologies for providing all components of the Scope of Work described in Section 4 – Scope of Work;
5. A description of the resources necessary from HHSC to support the process, including estimates of time needed from the HHSC IT Division’s personnel and subject matter experts and high-level analysis of any additional HHSC requirements;
6. A description of their ability to commit sufficient staffing resources to fully meet the Section 12.2.8 - Staffing Capabilities requirements, as needed to execute the Services required under this SOW;
7. Identifying all tasks to be performed, including all Project activities, materials, and other

products, Services, and reports to be generated during the Agency Contract period and relate them to the stated purpose(s) and specifications described in this SOW;

8. A detailed description of the Respondent's approach to manage ongoing Maintenance and Technical Lead activities, identifying all tasks to be performed, including all Project activities, and other Services and reports to be generated during the contract period and relate them to the stated purposes and specifications described in this SOW; and
9. Identifying in their Project Work Plan - beginning with the Agency Contract targeted commencement date and covering the Agency Contract initial term, annual renewals, and/or additional services – the following specifications in accordance with the Project Work Plan requirements as defined in this SOW:
 - a. A detailed Project schedule, which addresses the proposed Project resources that will provide each identified Service and must, at a minimum, include a description of each resource's qualifications and relevant experience for the identified service;
 - b. Expected effort (in person-hours or person-days) for each Service area described above (Technical Lead, Maintenance, Enhancement);
 - c. Start and stop dates for each activity;
 - d. Submission of Deliverables identified in this SOW; and
 - e. Any Assumptions and dependencies related to the Project.

12.2.10 Potential Deliverables

Depending on Project requirements or HHSC to be analyzed, specific Work Orders will include some or all of the below Deliverables in Table 2. Work Orders will specify the frequency and desired delivery timeframe for Deliverables requested for specific Projects.

HHSC will provide guidance to the Contractor in completing these IV&V Deliverables, including access to historical records, SMEs, HHS stakeholders, and existing Project artifacts as applicable.

The **Table 2** below summarizes the Deliverables that the Contractor may provide during processing a Work Order based on this SOW, and the information Respondents must provide in their Response to demonstrate the ability to provide the described Deliverables:

Table 2 - Deliverables

1. Current State Assessment	
Description:	<p>Using best practices for IV&V Services and working in close coordination with HHSC personnel, perform in-depth analysis to assess Project activities, artifacts, progress, risks, and issues.</p> <p>Work requires the identification of problems, risks, and issues and the development of actionable recommendations for mitigation and process improvements. The analysis results and recommendations shall be documented in a Project status report.</p>
SOW Response Requirement:	<p>Respondent shall describe:</p> <ol style="list-style-type: none"> A. Its approach to Project current state assessment; and B. Its corporate experience with performing overall IV&V Services.

2. Risk Assessment	
Description:	Using the Texas Project Delivery Framework Risk Register for tracking the results, perform initial and possibly ongoing risk assessment for an assigned Project.
SOW Response Requirement:	Respondent shall describe: <ul style="list-style-type: none"> A. Its approach to risk assessments; and B. Its corporate experience with performing risk assessments.
3. Budget, Schedule, and Resource Assessment	
Description:	Assess Project progress against budget(s) and planned schedule(s), as well as the timing and skillsets of assigned staffing resources.
SOW Response Requirements:	Respondent shall describe: <ul style="list-style-type: none"> A. Its approach to measuring progress against budget and schedule; B. Its approach to determining the adequacy of the skillsets and quantity of the Project's assigned resources; C. The method(s) it will employ to perform budget and schedule analysis calculations; and D. Its corporate experience performing budget, schedule, and resource assessment.
4. Software Development Life Cycle Assessment	
Description:	HHS IT Projects are required to use a standard Software Development Life Cycle ("SDLC") process to ensure a structured approach to information systems development and operation. The Contractor shall review assigned Project's SDLC process, documentation, and other Project or system artifacts, such as user guides, and make recommendations for improvement.
SOW Response Requirements:	Respondent shall describe: <ul style="list-style-type: none"> A. Its approach to reviewing various approaches to software development, including but not limited to Agile and Waterfall; B. Its approach to reviewing and evaluating SDLC process and documentation; C. Its corporate experience with performing SDLC assessments.
5. Software Quality Assessment	
Description:	Through focus on best practices, requirements, and testing, assure that appropriate levels of Quality Management activities are performed in specific portions of the Project lifecycle: <ul style="list-style-type: none"> A. Code Reviews: <p>The Contractor will assess system code assessing for practices such as:</p> <ul style="list-style-type: none"> 1) use of modern principles in coding; 2) use of appropriate versions of software and utilities; and 3) adequacy of code documentation and maintenance processes. B. Requirements, Verification and Validation: <p>The Contractor shall identify potential gaps in requirements by assessing:</p>

	<ol style="list-style-type: none"> 1) Completeness - whether all the functional and nonfunctional requirements are captured, documented, and approved by the Customer; and 2) Testability – the adequacy of the test scenarios, plans, and processes to be used in ensuring that the requirements are met. <p>C. Testing: The Contractor shall review the process and results of Unit/System testing, User Acceptance Testing (UAT), and other planned testing to verify the:</p> <ol style="list-style-type: none"> 1) Adequacy of the test plans; 2) Ability to produce evidence of testing progress, results, and completion; 3) Appropriateness of the exit threshold criteria from each stage of testing; 4) Compliance with testing plan; 5) Tracking, remediation, and re-testing of defects found; and 6) Data integrity of any conversion activities.
SOW Response Requirements:	<p>Respondent shall:</p> <ol style="list-style-type: none"> A. Describe its approach to assessing the facets of software quality listed above; B. Provide an example Software Quality Assessment report; C. Propose any additional IV&V activities recommended for ensuring software quality; and D. Describe its corporate experience with performing Software Quality Assessments.
6. Implementation Incident Management Assessment	
Description:	<p>As new systems and enhancements are implemented and promoted into production, errors, system failures, and downtime may occur. The purpose of this assessment is to analyze these occurrences and submit a “lessons learned” document that can be leveraged for future implementations.</p> <p>The Contractor shall be responsible for:</p> <ol style="list-style-type: none"> A. Developing and populating a repository of incident management data through which an analysis of trends and performance can be performed; and B. Analyzing and highlighting potential deficiencies in implementation planning and processes.
SOW Response Requirements:	<p>Respondent shall describe:</p> <ol style="list-style-type: none"> A. Its approach to incident management analysis; and B. Its corporate experience with performing incident management analysis.

12.3 Technical Requirements

HHSC does not foresee any additional Technical Requirements the Contractor would need to provide IV&V Services at this time. If a Proposal requires additional Technical Requirements, Respondents must provide a detailed description of the proposed needed technical solution, which must support all business activities and requirements described in this SOW, if applicable. Respondents must describe their proposed strategies, processes, and methodologies for providing all components of the Section 4 - Scope of Work.

12.4 Assumptions

In lieu of including Assumptions in their Responses, Respondents are highly encouraged to address all issues that might be advanced by way of Assumptions by submitting such issues pursuant to Section 14.4 – SOW Questions.

Respondent must identify on the **Exhibit H, Assumptions Form**, any business, economic, legal, programmatic, or practical Assumptions that underlie the Respondent's Response to this SOW.

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

12.5 Exceptions

In lieu of including Exceptions in their Responses, Respondents are highly encouraged to address all issues that might be advanced by way of Exceptions by submitting such issues as questions or requests for clarification pursuant to Section 14.4 – SOW Questions.

Any Exception included in a SOW Response may result in a Respondent not being awarded an Agency Contract. If a Respondent includes Exceptions in its SOW Response, Respondent is required to use the Exceptions Form included as **Exhibit I, Exceptions Form**, to this SOW and provide all information requested on the form.

ANY EXCEPTION THAT DOES NOT PROVIDE ALL REQUIRED INFORMATION IN THE FORMAT SET FORTH IN **EXHIBIT I, EXCEPTIONS FORM**, MAY BE REJECTED WITHOUT CONSIDERATION.

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

12.6 Additional Considerations

1. Respondents shall indicate their agreement to comply with **Exhibit D, Data Use Agreement (version 8.5)**;
2. All written Deliverables must be phrased in terms and language that can be easily understood by non-technical personnel (e.g., laypersons without subject matter expertise);
3. All Agency Contract Deliverables must be performed in accordance with the Key Performance Measures; and
4. HHSC may request oral presentations to assist HHSC in selecting a Respondent for Contract award.

12.7 Page Limit and Supporting Documentation

The Business and Technical Proposal must not exceed **forty (40)** pages in length -- not including addenda, appendices, attachments, and/or exhibits - and should be formatted as follows:

1. Layout Size
 - a. Letter: 8 ½" x 11" paper with 1-inch margins;

- b. Legal: 8 ½" x 14" paper with 1-inch margins; and/or
 - c. Tabloid: 11" x 17" paper with 1-inch margins (if applicable).
2. Font Size
- a. 12-point font size; and
 - b. No smaller than 10-point font size on Tables/Graphics/Figures.
3. Font Type
- Use one of the more Accessible-rated fonts:
- a. Arial;
 - b. Helvetica;
 - c. Tahoma;
 - d. Times New Roman; and/or
 - e. Verdana.

Proposal pages must be numbered and contain an organized, tabbed, paginated table of contents corresponding to the section and pages of the Proposal. Variances to these specifications must be made in mutual agreement between the Parties.

If complete Responses cannot be provided without referencing supporting documentation, such documentation must be provided with the Response, with specific reference made to the file, page, section, and/or paragraph where the supporting information can be found.

ALL ITEMS OF THIS SECTION WILL BE ENGAGED AS DELINEATED IN THIS SOW, UNLESS OTHERWISE DIRECTED BY THE ASSIGNED HHSC PCS PURCHASER (SEE: SECTION 14.2 – SOLE POINT OF CONTACT).

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13 *Costs and Pricing*

13.1 SOW Pricing

The main purpose of this section is to detail the pricing for the delivery of Services detailed in Section 4 – Scope of Work:

1. Cost Proposal information must not be included with the Respondent's Business/Technical Proposal;
2. Unit Price for each specified agreed-upon Deliverable will be established prior to the Effective Date of the Agency Contract;
3. Once unit prices are established for the respective State Fiscal Year, those prices may not increase during the State Fiscal Year;
4. Prices may be decreased during the State Fiscal Year if agreed upon by the HHS System agency and the Contractor;
5. Respondents must provide a summary of any related **Assumptions** and **Exceptions**, if applicable (detailed in Section 12.4 and Section 12.5, respectively);
6. Travel and expenses that address State needs beyond the normal course of business may be reimbursed if travel is specifically requested from and approved in writing in advance by the Customer prior to that event (see: Section 13.2 - Incidental Expenses);
7. HHS-approved Agency Contract travel expenses will be reimbursed at the standard state of Texas rates (see: Section 13.2 - Incidental Expenses);
8. Local point-to-point mileage for travel to/from HHS System offices will not be reimbursed by the Customer;
9. Services as specified in this SOW must include all labor, materials, tools, supplies, equipment, and personnel, necessary to provide the Goods and Services according to the minimum specifications, requirements, provisions, terms, and conditions set forth in this SOW; and
10. Respondents must provide pricing based on the specifications in **Exhibit O, Pricing Schedule**, inclusive of additional pricing and details for anything necessary for Services.

13.2 Incidental Expenses

In accordance with a solicited Vendor's DIR Contract Appendix A, Standard Contract Terms and Conditions, pricing for Services provided under this SOW are exclusive of any travel expenses that may be incurred in the performance of those Services.

The Customer may reimburse the Contractor for reasonable, documented travel, lodging and meal expenses of the Contractor personnel engaged in performing Services for this Agreement only if such expenses are incurred in response to a special request by the Customer:

1. These anticipated travel expenses must be pre-approved in writing by the Customer prior

to the travel event;

2. When reimbursement of travel expenses is authorized by the Customer, all such expenses will be reimbursed in accordance with the State of Texas TexTravel Rates and requirements may be found on the Comptroller of Public Accounts' website⁶;
3. All reimbursement rates will not exceed the maximum rates established for State employees under the current State Travel Management Program⁷;
4. In the event such a request by the Customer is due to a problem with the SOW Deliverables attributable to the Contractor, there will be no such reimbursement; and
5. The Customer reserves the right not to pay travel expenses which are not pre-approved in writing by the Customer.

TRAVEL TIME MAY NOT BE INCLUDED AS PART OF THE AMOUNTS PAYABLE BY THE CUSTOMER FOR ANY SERVICES RENDERED UNDER THIS SOW.

13.3 Pricing Sheet for Hourly Rates

For HHSC convenience, Respondents may provide hourly rates as a point of reference for evaluating the pricing submitted for this SOW, as applicable. Pricing for Hourly Rates shall be included in **Exhibit O, Pricing Schedule**.

13.4 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 Agency Contract, if any, resulting from this SOW. Any awarded Agency Contract is subject to appropriations and the continuing availability of funds. HHSC reserves the right to cancel, make partial award, or decline to award an Agency Contract under this SOW at any time at its sole discretion.

13.5 Disputed Amounts

HHSC may withhold payment of any charges that it disputes in good faith and may set-off amounts the Contractor owes the Customer as credits against charges payable to the Contractor under the Agency Contract.

13.6 Availability of Funds

It is anticipated that budgeted funds will be available to reasonably fulfill the Agency Contract requirements; any Agency Contract resulting from the SOW is subject to the availability of State and/or federal funds.

HHSC reserves the right to cancel this SOW, to make a partial award, or to make no award if it determines that such action is in the best interest of the State of Texas. This SOW is expressly

⁶ Reference: <https://fmx.cpa.state.tx.us/fmx/travel/textravel/index.php>

⁷ Reference: <https://comptroller.texas.gov/purchasing/programs/travel-management/#skip-scroll>

conditioned on the availability of state and/or federal appropriated funds.

The Contractor will have no right of action against HHSC in the event HHSC is unable to perform its obligations under this Agreement as a result of the suspension, termination, withdrawal, or failure of funding to HHSC or lack of sufficient funding of HHSC for any activities or functions contained within the scope of the resulting Agency Contract.

In the event of termination of the Agency Contract for default, HHSC will offset against payments owed to the Contractor any reasonable amounts expended by HHSC to cure the event of default. HHSC will have no further obligations to the Contractor after such termination.

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14 *Response Submission Requirements*

14.1 **Schedule of Events**

EVENT	DATE/TIME
SOW Posting Date	February 06, 2023
Deadline for Submitting Questions or Requests for Clarification (Section 14.4 - SOW Questions)	February 20, 2023, at 10:30 AM Central Time
Tentative Date Responses to Questions or Requests for Clarification Posted (Section 14.4 - SOW Questions)	March 06, 2023
Deadline for Submission of Responses	March 20, 2023, by 10:30 AM Central Time
Anticipated Agency Contract Start Date	September 01, 2023

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

BE ADVISED:

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. After the Deadline for Submission, if there are delays that significantly impact the anticipated award date, HHSC, at its sole discretion, may post the updated anticipated award date to the [Procurement Forecast](#) on the HHS [Procurement Opportunities](#) webpage. Each Respondent is responsible for checking the posted addenda and [Procurement Forecast](#) for updates.

By submitting a SOW Response, Respondent represents and warrants that any individual submitting the SOW Response and any related documents on behalf of the Respondent is authorized to do so and to bind the Respondent under any Agency Contract that may result from this SOW.

14.2 **Sole Point of Contact**

All requests, questions, or other communications about this SOW shall be made in writing to HHSC PCS addressed to the person listed below (as Sole Point of Contact).

Additionally, a telephone number is provided for purposes such as instructing a potential Respondent through an IT system or website referenced in this SOW; communications via telephone are not binding.

Reference the title of the request (SOW Type: HHSC IT Division IV&V Services) in the SUBJECT line:

Name	Delia Arellano, CTCD, CTCM
Title	Purchaser VII
Address	1100 W. 49 th Street, MC 2020, Austin, TX 78756
Phone	(512) 406-2510
E-mail	Delia.arellano@hhs.texas.gov

14.3 Prohibited Communication

Except as provided in Section 14.2 – Sole Point of Contact, Respondents are prohibited from any communication with HHSC regarding this SOW. HHSC and its representative(s), will not otherwise discuss the contents of this SOW 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. Respondents shall rely only on written statements issued by or through HHSC PCS. This restriction does not preclude discussions between affected parties for the purposes of conducting business unrelated to this SOW. Failure to comply with these restrictions may result in disqualification of the Respondent's Response.

14.4 SOW Questions

Respondents have the opportunity to submit questions prior to official submission of their Response. HHSC will allow written questions and Requests for Clarification regarding this SOW. HHSC/PCS will respond to questions received no later than the date and time specified in Section 14.1 - Schedule of Events:

1. A signed SOW Questions Form acknowledges the Respondent has had sufficient opportunity to ask questions and obtain information about the SOW prior to submission of their SOW Response;
2. SOW Questions Form and Requests for Clarification must include the following information:
 - a. For each question:
 - 1) Under Document Location section:
 - a) Procurement number
 - b) SOW document;
 - c) Section number;
 - d) Paragraph reference; and
 - e) Page number.
 - 2) Under Question section:
 - a) Text of passage being questioned; and
 - b) The Respondent's question.
 - b. Submissions that deviate from this format may not be accepted;
3. If the Respondent has no questions, simply state “*No questions on this SOW*” in the first available textbox;

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4. The Respondent's SOW Questions Form must be completed and submitted to HHSC/PCS either prior to (for questions) or accompanying the SOW Response (no questions) using the provided template [see: **Exhibit S** (SOW Questions Form)];
 5. Respondent's signed SOW Questions Form (for questions) must be submitted by e-mail to the Section 14.2 - Sole Point of Contact by the deadline established in Section 14.1 - Schedule of Events;
 6. Requester contact information below must be included in the body of their e-mail:
 - a. Company name;
 - b. Company representative name;
 - c. Phone number; and
 - d. E-mail address.
 7. HHSC/PCS will respond to Respondent inquiries via e-mail;
 8. Respondent names will be removed from questions in any Responses released;
 9. HHSC/PCS will consolidate all written questions received from qualified Respondents;
 10. All qualified Respondents will receive a copy of the consolidated questions submitted, with HHSC's responses, in the format of the addendum;
 11. HHSC responses to written Requests for Clarification will be consolidated, de-identified, and posted as an addendum to this SOW to all qualified Respondents - and will not be provided individually to requestors;
 12. HHSC reserves the right to amend answers previously posted, prior to the SOW Response deadline, with amended answers posted as an addendum to the SOW;
 13. By submission of an inquiry, the Respondent acknowledges that the applicable inquiry and official answer may be shared with other Vendors and therefore Respondents will not include any confidential or proprietary information in such inquiries;
 14. SOW Questions or Requests for Clarification received after the deadline in Section 14.1 - Schedule of Events, may be reviewed by HHSC but may not be answered; and
 15. Neither the Customer nor HHSC/PCS will identify the Respondent that submitted any particular inquiry.

INFORMATION IN ANY FORM OTHER THAN THE MATERIALS CONSTITUTING THIS SOW, THE VENDOR QUESTION AND ANSWER DOCUMENT(S), AND ANY ADDENDUM WILL NOT BE BINDING.

14.5 Clarification

Respondents must notify the Sole Point of Contact of any ambiguity, conflict, discrepancy, exclusionary specifications, omission, or other error in the SOW in the manner, and by the deadline, for submitting questions:

1. If a Respondent fails to properly and timely notify the Sole Point of Contact of such issues, the Respondent submits its Response at its own risk;
2. If the selected Respondent is awarded an Agency Contract, they:

-
- a. will have waived any claim of error or ambiguity in the SOW, and any resulting Agency Contract;
 - b. will not contest the interpretation by the Customer or HHSC of such provision(s); and
 - c. will not be entitled to additional compensation, relief, or time by reason of ambiguity, error, or later correction.

14.6 Changes, Modifications, and Cancellation

HHSC reserves the right to make changes to and/or cancel this SOW and will post all changes and modifications, whether made as a result of a potential Respondent's written inquiries or otherwise, and cancellation notices. It is the responsibility of the Respondent to adhere to any additional information or advisories regarding this SOW. If the Respondent fails to follow the instructions as received from the assigned PCS Purchaser (Section 14.2 – Sole Point of Contact) concerning any changes or modifications to the SOW, such failure will not relieve the Respondent of its obligation to fulfill the requirements as advised.

14.7 Irregularities

Any irregularities or lack of clarity in this SOW must be brought to the attention of the HHSC Purchaser listed in Section 14.2 – Sole Point of Contact as soon as possible, so corrective Addenda may be furnished to prospective Respondents.

14.8 Informalities

HHSC reserves the right to waive minor informalities in a SOW Response, if it is in the best interest of the Customer, or the HHS System. A "minor informality" is an omission or error that, in HHSC's determination if waived or modified when evaluating SOW Responses, would not give a Respondent an unfair advantage over other Respondents, or result in a material change in the Response or SOW requirements.

14.9 SOW Response Submission and Delivery

14.9.1 Deadline

SOW Responses must be received at the address in Section 14.9.5 - Labeling and Delivery for USB Submission and Other Materials and time-stamped by HHSC no later than the date and time specified in Section 14.1 - Schedule of Events. SOW Responses received after the deadline specified in Section 14.1 - Schedule of Events will be rejected and not considered for Agency Contract award.

14.9.2 Submission Ownership

All SOW Responses become the property of HHSC after submission and will not be returned to Respondent. HHS System reserves the right to use any and all information or materials presented in response to this SOW.

DISQUALIFICATION OF A RESPONDENT'S SOW RESPONSE AND AWARD OF AN AGENCY CONTRACT TO A DIFFERENT RESPONDENT DOES NOT ELIMINATE THIS RIGHT.

14.9.3 Submission Checklist

The Response must be submitted using one of the approved submission methods identified in Section 14.9.4 - Response Submission Options. Responses submitted through any other method will not be accepted or considered for evaluation.

Below are the specifications required to be submitted with the Response. Where searchable PDF files are required, submission of non-searchable (image only) PDF files may result in disqualification from further consideration for Agency Contract award.

1. Business and Technical Proposal

a. Content Synopsis	(Section 12.1)	_____
b. Business Requirements	(Section 12.2)	_____
1) Company Information	(Section 12.2.1)	_____
2) Company Narrative	(Section 12.2.2)	_____
3) Company Profile	(Section 12.2.3)	_____
4) Past Performance	(Section 12.2.4)	_____
5) Litigation and Contract History	(Section 12.2.5)	_____
6) Conflicts of Interest	(Section 12.2.6)	_____
7) Major Subcontractor Information	(Section 12.2.7)	_____
8) Staff Capabilities	(Section 12.2.8)	_____
9) Project Work Plan	(Section 12.2.9)	_____
10) Potential Deliverables	(Section 12.2.10)	_____
c. Technical Requirements (if applicable)	(Section 12.3)	_____
d. Assumptions, if applicable	(Section 12.4)	_____
e. Exceptions, if applicable	(Section 12.5)	_____
f. Affirmations, Assurances, and Certifications	(Section 11.2.3, #2)	_____

2. Cost Proposal

a. Costs and Pricing	(Section 13)	_____
b. SOW Pricing	(Section 13.1)	_____

14.9.4 Response Submission Options

1. Submission Option #1: **Use this option only if the Proposal is less than 30 MB.** Respondent shall submit the following via e-mail to pcsbids@hhs.texas.gov. For SOW Responses sent to this PCS Bid Room mailbox, the PCS Bid Room Coordinator responds to the e-mail confirming receipt:

- a. **One (1)** file clearly labeled “Original Proposal” that contains the Respondent’s entire Business Proposal and Technical Proposal (if applicable) in searchable PDF;

-
- b. If the Business Proposal and Technical Proposal (if applicable) contains confidential information as defined in Section 11.1.6 - Public Information Act - Respondent Requirements Regarding Disclosure, **one (1)** file clearly labeled “Public Information Act Copy” that contains the Respondent’s redacted version of their Business Proposal and Technical Proposal (if applicable), including all exhibits and attachments, in a searchable PDF;
 - c. **One (1)** file clearly labeled “Cost Proposal” that contains the Respondent’s Cost Proposal in a format compatible with Microsoft Office 2016 products or later, such as Microsoft Word or Excel. If Excel is used, formulas must be active and observable;
 - d. If the Cost Proposal contains confidential information as defined in Section 11.1.6 - Public Information Act - Respondent Requirements Regarding Disclosure, **one (1)** file clearly labeled “Costs Proposal - Public Information Act Copy” that contains the Respondent’s redacted version of their Cost Proposal, in a searchable PDF; and
 - e. Include the following information in the e-mail SUBJECT line:
 - Procurement No., Vendor Name, Due Date and Time.
2. Submission Option #2: Respondent shall submit the following on **two (2)** USB flash drives – **one (1)** clearly labeled “Original Proposal” and **one (1)** clearly labeled “Copy”, containing the following documents:
- a. Each USB must contain **one (1)** file named “Original Proposal” that contains the Respondent’s entire Business Proposal and Technical Proposal (if applicable) in searchable portable document format (PDF), unless otherwise specified for a particular attachment or exhibit.
 - b. If the Business Proposal and Technical Proposal (if applicable) contains confidential information as defined in Section 11.1.6 - Public Information Act – Respondent Requirement Regarding Disclosure, each USB must contain **one (1)** file named “Public Information Act Copy” that contains the Respondent’s redacted version of their Business Proposal and Technical Proposal (if applicable), including all exhibits and attachments, in searchable PDF.
 - c. In accordance with Section 13 – Costs and Pricing, each USB must contain **one (1)** file named “Cost Proposal” that contains the Respondent’s cost proposal in a format compatible with Microsoft Office 2016 products or later, such as Microsoft Word or Excel. If Excel is used, formulas must be active and observable; and
 - d. If the Cost Proposal contains confidential information as defined in Section 11.1.6 - Public Information Act - Respondent Requirements Regarding Disclosure, the USB must contain **one (1)** file clearly labeled “Cost Proposal - Public Information Act Copy” that contains the Respondent’s redacted version of their Cost Proposal, in a searchable PDF.
3. Submission Option #3: Respondent will submit the following through the Online Bid Room utilizing the procedures in **Exhibit J, HHS Online Bid Room**:

- a. **One (1)** file named “Original Proposal” that contains the Respondent’s entire Business Proposal and Technical Proposal (if applicable) in searchable PDF;
- b. If Business Proposal and Technical Proposal (if applicable) contains confidential information as defined in Section 11.1.6 - Public Information Act – Respondent Requirements Regarding Disclosure, **one (1)** file clearly labeled “Public Information Act Copy” that contains the Respondent’s redacted version of their Business Proposal and Technical Proposal (if applicable), including all exhibits and attachments, in searchable PDF.
- c. In accordance with Section 13 – Costs and Pricing, each USB must contain **one (1)** file named “Cost Proposal” that contains the Respondent’s Cost Proposal in a format compatible with Microsoft Office 2016 products or later, such as Microsoft Word or Excel. If Excel is used, formulas must be active and observable; and
- d. If the Cost Proposal contains confidential information as defined in Section 11.1.6 - Public Information Act - Respondent Requirements Regarding Disclosure, each USB must contain **one (1)** file clearly labeled “Cost Proposal - Public Information Act Copy” that contains the Respondent’s redacted version of their Cost Proposal, in a searchable PDF.

14.9.5 Labeling and Delivery for USB Submission and Other Materials

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

Table 3 - Delivery Methods

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

BE ADVISED: all SOW 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 SOW Response to HHSC PCS by the specified date.

A U.S. Postal Service (USPS) postmark or round validation stamp; a mail receipt with the date of mailing, stamped by the USPS; a dated shipping label, invoice of receipt from a 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 SOW Response is submitted in accordance with all SOW 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 be responsible or liable for any delay or error in delivery. SOW Responses must be RECEIVED by HHSC PCS by the SOW Response Deadline identified in Section 14.1 - Schedule of Events.

SOW 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:

Table 4 - Labeling

PROCUREMENT NO:	HHS0012750
SOW NAME	HHSC IT Division IV&V
SOW RESPONSE DEADLINE	03/20/2023, due by 10:30 AM Central Time (CDST/CST)
PURCHASER NAME:	Delia Arellano, CTCM, CTCD
RESPONDENT NAME:	

It is the 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 SOW Responses will not be considered at HHSC's sole discretion.

HHSC will not be held responsible for any SOW Response that is mishandled prior to receipt by HHSC PCS. It is the Respondent's sole responsibility to mark appropriately and deliver the SOW 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 SOW Response.

14.9.6 Modifications and Withdrawals

Prior to the SOW Response submission deadline in Section 14.1 -Schedule of Events, Respondent may:

1. withdraw its SOW Response by submitting a written request to the Sole Point of Contact identified in Section 14.2 - Sole Point of Contact; or
2. modify its SOW Response by submitting a written amendment to the Sole Point of Contact identified in Section 14.2 - Sole Point of Contact. When modifying its SOW Response, Respondent must include in writing the section(s) of its submission that will be replaced or removed by the amendment.

14.9.7 Discrepancies

Discrepancies or disparities between the contents of original SOW Responses and copies will be interpreted in favor of HHSC. If the Respondent fails to designate an "Original Proposal," HHSC may reject the SOW Response or select a copy to be used as the original.

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15 SOW Response Evaluation

15.1 Conformance with State Law

1. SOW Responses will be evaluated in accordance with Tex. Admin. Code, Title 10, Subtitle D, including the applicable factors listed hereafter:
 - a. Tex. Gov't Code §§ 2155.074, 2155.144, 2156.007, 2157.068 and 2157.003 obligates HHSC to purchase products and Services based on Best Value, as applicable; and
 - b. Tex. Gov't Code § 2155.075, for meeting the requirement to specify value factors in request for bids or Proposals.
2. Pursuant to Title 1 of the Tex. Admin. Code, Part 15, Chapter 391, Subchapter A, Rule § 391.101(3), HHSC defines "Best Value" as the optimum combination of economy and quality that is the result of fair, efficient, and practical procurement decision-making and achieves HHS System procurement objectives; this SOW will not be awarded on low cost alone;
3. HHSC will not be obligated to accept the lowest priced SOW Response, but will make an award to the Respondent that provides the best value to the State; and
4. The evaluation of Proposals will be conducted using a formal evaluation process to select the successful Respondent, and will consider capabilities or advantages that are clearly described in this SOW.

15.2 Best Value Determination

15.2.1 Selection Methodology

SOW Responses that meet the minimum qualifications will be submitted to the HHSC evaluation team for review and scoring. Each member of the evaluation team will receive a copy of each responsive SOW Response. The evaluators will review the SOW Responses considering the criteria listed in Section 15.2.5 - Written Response Evaluation Criteria.

Evaluators individually score the SOW Responses. This procurement will utilize an aggregated individual evaluation as outlined by this section. Interviews may be used to clarify the written Responses. Oral presentations or site visits or demonstrations may also be used to make a selection for Agency Contract award, as outlined by this section. The following subsections describe the evaluation process, including any criteria for advancement to the various phases of evaluation, if applicable.

15.2.2 Minimum Qualifications

Respondents must meet the minimum qualifications listed below.

1. Respondents must have recently been in business for a minimum of **five (5)** years, or the principals/owners must have had recent ownership/executive management experience in a previous company that provided IV&V Services;
2. The Respondent or Subcontractor personnel to be assigned to perform the Services must meet the minimum certification and years of experience for their role as defined in Section 4.3.1 - Staffing Requirement;

3. Respondent or Subcontractor personnel assigned to perform the Services must be at least **eighteen (18)** years of age;
4. Respondents must be authorized to do business in the State of Texas;
5. Respondents have submitted the SOW Response in accordance with Section 14.9 - SOW Response Submission and Delivery, including all SOW Consideration and Award Consideration Documents (see Section 14.9.3 - Submission Checklist); and
6. Respondents who receive an overall score on the VPTS of less than a “C” may be disqualified from consideration for award.

15.2.3 Initial Compliance Screening

HHSC will review SOW Responses for compliance with Section 14.9.3 - Submission Checklist and for demonstrated ability to meet Section 15.2.2 - Minimum Qualifications required to advance to evaluations. Failure to meet Section 15.2.2 - Minimum Qualifications requirements will result in the disqualification of the SOW Response.

HHSC may contact past performance client contacts provided in response to this SOW. HHSC may contact Respondent’s clients, or solicit information from any available source, including the Comptroller’s VPTS and Reference Checks (see Section 15.2.8). 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.

15.2.4 Written SOW Response Evaluation

Each member of the evaluation team will read the SOW Responses in preparation for evaluation. The evaluation team will score all Responses that pass initial screening (Section -15.2.3 Initial Compliance Screening). Responses will be scored against the criteria in Section 15.2.5 - Written Response Evaluation Criteria.

Responses will be evaluated utilizing aggregated individual scoring. The individual evaluators’ scores will be aggregated and weighted, resulting in the Final Written Response Scores, unless Interviews or Best and Final Offers (BAFOs) are conducted.

15.2.5 Written Response Evaluation Criteria

SOW Responses shall be consistently evaluated and scored in accordance with the following criteria. See also, **Exhibit M, Evaluation Tool**.

Best Value Evaluation Criteria	Percent
Proposed Approach for Providing Services	30%
Experience and Qualifications of Respondent’s Staff Resumes	25%
Past Performance, Experience, and Qualifications	25%
Costs and Price Proposal	20%

15.2.6 Advancement Criteria

After the written SOW Response evaluation, Respondents may be selected for invitation to Interviews, Demonstrations, Oral Presentations and/or Site Visits using the Advancement Criteria specified by this section. Advancement to Interviews, Demonstrations, Oral Presentations, and/or Site Visits will be determined by the Competitive Range. HHSC will limit advancement to secondary evaluation activities, and further award consideration, to Respondents that meet the specified Advancement Criteria.

The Competitive Range will consist of the SOW Responses that receive the highest scores or most satisfactory ratings, based on the published evaluation criteria and procedures governing this procurement. Cutoff for the Competitive Range will be based on the “natural break” in scores and on reasoned judgment that Responses below the cutoff cannot be made successful through clarification and negotiation.

By way of example, in a scenario where initial evaluation scores are 97, 93, 82, 81, 79 and 68, the Competitive Range may include only the top two Respondents. HHSC is not obligated to enforce a natural break in scores and reserves the right to advance as many or as few Proposals as qualified under this criterion.

15.2.7 Interviews

At the sole discretion of HHSC, each Respondent submitting SOW Responses determined by HHSC to meet all minimum qualifications and submission requirements may be asked to participate in an Interview if they meet the Advancement Criteria specified in Section 15.2.6 - Advancement Criteria.

Interviews will be utilized to clarify the Respondent’s written SOW Response. Respondents attending Interviews will be asked questions related to the evaluation criteria and asked to provide additional clarifications regarding the Respondent’s specific offerings in its Response.

Following each Respondent Interview, the evaluation team will update the scores from the Respondent’s written SOW Response based on the clarifications provided by the Respondent in the Interview. Respondent scores and rankings may increase or decrease from the original written evaluation scores, based on the clarifications provided by the Respondents during the Interviews.

The Respondent’s score prior to the Interview will no longer be considered its Final Written Response Score, and instead the post-interview score will be considered the Final Written Response Score for purposes of determining whether a Respondent meets Section 15.2.6 - Advancement Criteria, or for the purposes of award determination if there are no further evaluation activities.

Respondents will be provided with advance notice of any such Interview and are responsible for providing their own equipment, if applicable. Advance notice will include an agenda for the Interview specifying the SOW Response information expected to be clarified in the Interview.

Failure to participate in the requested Interview will eliminate a Respondent from further consideration. HHSC is not responsible for any costs incurred by the Respondent in preparation for, attendance at, participation in, or otherwise related to any Interview. All costs incurred by Respondent are the responsibility of Respondent.

15.2.8 Reference Checks

1. HHSC may contact past performance client contacts provided in response to this SOW, contact the Respondent's clients, or solicit information from any available source, including the Comptroller's Vendor Performance Tracking System (VPTS), as described in Title 34 of the Tex. Admin. Code, Part 1, Chapter 20, Subchapter B, Rule § 20.115; and
2. HHSC may conduct Reference Checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System, HHSC may examine other sources of Respondent performance including:
 - a. Assessments of Liquidated Damages;
 - b. Audit Report;
 - c. Cure Notices;
 - d. Litigation;
 - e. Non-renewals of Contracts; and
 - f. Notices of Termination.

15.2.9 Competitive Range / Best and Final Offer (BAFO)

HHSC may determine that certain SOW Responses are within the Competitive Range and may use this range to award multiple Contracts or as a basis to request a Best and Final Offer (BAFO) from Respondents:

1. If HHSC elects to limit award consideration to a competitive range, the competitive range will consist of the SOW Responses that receive the highest or most satisfactory ratings, based on the published evaluation criteria and procedures governing this procurement;
2. HHSC, in the interest of administrative efficiency, may place reasonable limits on the number of SOW Responses that will be included in the Competitive Range;
3. HHSC may, at its discretion, request that any or all Respondents provide a BAFO;
4. 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 HHSC's Evaluation Committee;
5. A request for a BAFO from HHSC does not guarantee an award or further negotiations;
6. HHSC reserves the right to conduct more than one BAFO;
7. The award will be granted to the highest scoring Respondent;
8. A Respondent must provide its best offer in its original Proposal; and
9. Respondents must not expect or assume that HHSC will request a BAFO.

15.3 Questions or Requests for Clarification by HHSC

HHSC reserves the right to ask questions or request clarifications from any Respondent at any time during the SOW process - including during oral presentations, site visits, and/or during the BAFO process.

[* THIS SPACE INTENTIONALLY BLANK. *]

16 Authority and Award

16.1 HHS System Authority

1. HHSC is the state agency that administers and/or provides health and human services in the State of Texas, through HHS System;
2. As set forth in *Texas Government Code* Chapter 531, the HHS System refers to all HHSC offices and divisions and any other governmental entity (a “System Agency”), including the Texas Department of State Health Services (“DSHS”)⁸, that is under the administrative and operational control of the HHSC Executive Commissioner;
3. The agencies, offices, divisions, departments, sections, and units that receive procurement and contracting information, guidance, and services from HHSC are referred to as “Customer Organizations”. These Customer Organizations are agencies and/or areas of HHSC, DSHS, the Department of Family and Protective Services (“DFPS”), the Office of Inspector General (“OIG”), the Texas Civil Commitment Office (“TCCO”), and other governmental entities that the HHSC supports. HHSC provides specific procurement services to DFPS⁹ and TCCO¹⁰; and
4. HHS System Solicitation Authority:
 - a. HHSC is statutorily accountable for the oversight of all HHS System agencies. HHSC has the responsibility of overseeing and coordinating the planning and delivery of Health and Human Service Programs in the State of Texas, as established by Tex. Gov’t Code § 531.0055 (b)(2) and (k);
 - b. HHSC has the authority to solicit for goods and services in accordance with Tex. Gov’t Code Chapter 2155, authorized to enter into contracts thru Texas Health and Safety Code Chapter 1001; and
 - c. HHSC’s Chief Executive Officer is Cecile E. Young, Executive Commissioner.

16.2 HHS System Award

On behalf of the Customer Organization initiating this SOW:

1. HHSC executes awards in accordance with Title 1 of the Tex. Admin. Code, Part 15, Chapter 391;
2. HHSC may make no Agency Contract award if no offer received is acceptable to HHSC;
3. HHSC reserves the right to accept or reject all or any part of any Response, waiver minor technicalities and award to the Respondent who will best serve the State;
4. Agency Contract(s) for this SOW will be awarded only to direct-service providers and not to brokers or third-party representatives; and
5. For procurements greater than **Twenty-Five Thousand Dollars (\$25,000.00)**, awards will be posted on the ELECTRONIC STATE BUSINESS DAILY (ESBD) and the HHSC’s [Contracting with HHS | Contracts Awarded by HHS](#) website.

⁸ Reference: *Tex. Gov’t Code* §§ [531.001\(4\)\(B\)](#), [2155.144\(p\)](#).

⁹ Reference: *Tex. Hum. Res. Code* § [40.058\(i\)](#).

¹⁰ Reference: *Tex. Gov’t Code* § [420A.011](#).

Reference 1: Exhibits List

1. Exhibit A, HHS Uniform Terms and Conditions – Vendor (version 3.3)
2. Exhibit B: HHS Additional Provisions (version 1.0)
3. Exhibit C: HHS Solicitation Affirmations (version 2.3)
4. Exhibit D, HHS Data Use Agreement (version 8.5)
5. Exhibit D-1: DUA Attachment 1, Subcontractor Agreement Form
6. Exhibit D-2: DUA Attachment 2, HHS Security and Privacy Inquiry (SPI)
7. Exhibit E: Certification Regarding Lobbying
8. Exhibit F: Federal Assurances – Non-Construction Programs
9. Exhibit G: Federal Funding Accountability and Transparency Act (FFATA)
10. Exhibit H: Assumptions Form
11. Exhibit I: Exceptions Form
12. Exhibit J: HHS Online Bid Room
13. Exhibit K: HHSC Information Security Controls
14. Exhibit L: Insurance
15. Exhibit M: Evaluation Tool
16. Exhibit N: Past Performance Template
17. Exhibit O: Pricing Schedule
18. Exhibit P: Work Order Request
19. Exhibit Q: Invoice Submission
20. Exhibit R: Work Order Change Request Form
21. Exhibit S: SOW Questions Form



TEXAS

Health and Human Services

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

Effective: July 2022

Responsible Office: Chief Counsel

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ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 DEFINITIONS

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

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

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

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

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

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

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

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

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“Goods” means supplies, materials, or equipment.

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

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

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

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

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

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

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

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

“Project” means the goods or Services described in the Signature Document or a Work Order of this Contract.

“Scope of Work” means the description of Services and Deliverables specified in the Contract and as may be amended.

“Services” means the tasks, functions, and responsibilities assigned and delegated to Contractor under the Contract.

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

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

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

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

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

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

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

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

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

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

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

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

1.2 INTERPRETIVE PROVISIONS

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

ARTICLE II. PAYMENT PROVISIONS

2.1 PROMPT PAYMENT

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

2.2 ANCILLARY AND TRAVEL EXPENSES

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

2.3 NO QUANTITY GUARANTEES

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

2.4 TAXES

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

ARTICLE III. STATE AND FEDERAL FUNDING

3.1 EXCESS OBLIGATIONS PROHIBITED

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

3.2 NO DEBT AGAINST THE STATE

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

3.3 DEBT AND DELINQUENCIES

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

3.4 REFUNDS AND OVERPAYMENTS

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

ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES, AND CERTIFICATIONS

4.1 WARRANTY

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

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

4.2 GENERAL AFFIRMATIONS

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

4.3 FEDERAL ASSURANCES

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

4.4 FEDERAL CERTIFICATIONS

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

ARTICLE V. INTELLECTUAL PROPERTY

5.1 OWNERSHIP OF WORK PRODUCT

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

5.2 CONTRACTOR'S PRE-EXISTING WORKS

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

5.3 THIRD PARTY IP

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

5.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS

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

5.5 DELIVERY UPON TERMINATION OR EXPIRATION

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

5.6 SURVIVAL

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

5.7 SYSTEM AGENCY DATA

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

ARTICLE VI. PROPERTY

6.1 USE OF STATE PROPERTY

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

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

6.2 DAMAGE TO GOVERNMENT PROPERTY

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

6.3 PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT

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

ARTICLE VII. WORK ORDERS

7.1 WORK ORDERS

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

7.2 PROPOSALS

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

7.3 RESPONSIBILITY

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

7.4 TERMINATION

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

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

ARTICLE VIII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY

8.1 RECORD MAINTENANCE AND RETENTION

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

8.2 AGENCY'S RIGHT TO AUDIT

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

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

8.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS

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

8.4 STATE AUDITOR'S RIGHT TO AUDIT

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

8.5 CONFIDENTIALITY

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

ARTICLE IX. CONTRACT REMEDIES AND EARLY TERMINATION

9.1 CONTRACT REMEDIES

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

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

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

9.2 TERMINATION FOR CONVENIENCE

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

9.3 TERMINATION FOR CAUSE

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

i. **Material Breach**

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

ii. **Failure to Maintain Financial Viability**

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

9.4 CONTRACTOR RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS

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

ARTICLE X. INDEMNITY

10.1 GENERAL INDEMNITY

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

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

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

10.2 INTELLECTUAL PROPERTY

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

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

10.3 ADDITIONAL INDEMNITY PROVISIONS

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

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

ARTICLE XI. GENERAL PROVISIONS

11.1 AMENDMENT

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

11.2 INSURANCE

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

11.3 LIMITATION ON AUTHORITY

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

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

11.4 LEGAL OBLIGATIONS

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

11.5 CHANGE IN LAWS AND COMPLIANCE WITH LAWS

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

11.6 E-VERIFY PROGRAM

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

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

11.7 PERMITTING AND LICENSURE

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

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

11.8 SUBCONTRACTORS

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

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

11.9 INDEPENDENT CONTRACTOR

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

11.10 GOVERNING LAW AND VENUE

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

11.11 SEVERABILITY

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

11.12 SURVIVABILITY

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

11.13 FORCE MAJEURE

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

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

11.14 DISPUTE RESOLUTION

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

11.15 NO IMPLIED WAIVER OF PROVISIONS

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

11.16 MEDIA RELEASES

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

11.17 NO MARKETING ACTIVITIES

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

11.18 PROHIBITION ON NON-COMPETE RESTRICTIONS

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

11.19 SOVEREIGN IMMUNITY

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

11.20 ENTIRE CONTRACT AND MODIFICATION

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

11.21 COUNTERPARTS

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

11.22 CIVIL RIGHTS

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

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

11.23 ENTERPRISE INFORMATION MANAGEMENT STANDARDS

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

11.24 DISCLOSURE OF LITIGATION

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

11.25 NO THIRD-PARTY BENEFICIARIES

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

11.26 BINDING EFFECT

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



TEXAS

Health and Human Services

Health and Human Services (HHS)

Additional Provisions

Version 1.0

Effective: November 7, 2019

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ADDITIONAL PROVISIONS

The terms and conditions of these ADDITIONAL PROVISIONS are incorporated into and made a part of the Agency Contract. Capitalized items used in these ADDITIONAL PROVISIONS and not otherwise defined have the meanings assigned to them in the HHS0011016 IT-SSA DIR SOW and/or the HHSC Uniform Terms and Conditions – Vendor (Version 3.2):

1. HHSC APPROVAL OF STAFFING

The Awarded Vendor 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:

- A. The Awarded Vendor shall at all times employ sufficient labor to carry out functions and services in the manner and time prescribed by the Agency Contract;
- B. The Awarded Vendor shall be responsible to HHSC for the acts and omissions of the Awarded Vendor's employees, agents (including, but not limited to, lobbyists) and Subcontractors, and the Awarded Vendor shall enforce strict discipline among the Awarded Vendor's employees, agents (including, but not limited to, lobbyists) and Subcontractors performing the services under the Agency Contract; and
- C. Any person employed by the Awarded Vendor shall, at the written request of HHSC, and within HHSC's sole discretion, be removed immediately by the Awarded Vendor from work relating to the Agency Contract.

2. TURNOVER PLAN

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

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

3. TURNOVER ASSISTANCE

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

4. TRADEMARK OWNERSHIP

The Awarded Vendor acknowledges and agrees that the Trademarks remain the exclusive property of HHSC, that all right, title and interest in and to the trademarks is exclusively held by HHSC, and all goodwill associated with such Trademarks inures solely to HHSC.

5. DISCOUNTS

If the Awarded Vendor at any time during the term of the Agency Contract provides a discount on the final Agency Contract costs, the Awarded Vendor will notify HHSC in writing at least ten (10) business days prior to the effective date of the discount. HHSC will generate a Purchase Order Change Notice and send a revised Purchase Order to the Awarded Vendor.

6. NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS

A. The Awarded Vendor shall immediately report in writing to its assigned HHSC Contract Manager when the Awarded Vendor learns of or has any reason to believe it or any person with ownership or controlling interest in the Awarded Vendor, or their agent, employee, subcontractor or volunteer who is providing services under this Agency 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. The Awarded Vendor 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 HHSC.

7. NOTICE OF IRS OR TWC INSOLVENCY

The Awarded Vendor shall notify in writing its assigned HHSC Contract Manager of any insolvency, incapacity or outstanding unpaid obligations of the Awarded Vendor owed to the Internal Revenue Service (IRS) or the State of Texas (e.g., the Texas Workforce Commission [TWC]), or any agency or political subdivision of the State of Texas within five (5) business days of the date of the Awarded Vendor's becoming aware of such.

8. SOFTWARE AND OWNERSHIP RIGHTS

In accordance with 45 C.F.R. Part 95.617, all appropriate federal agencies will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to use for government purposes all Work, materials, Custom Software and modifications thereof, source code, associated documentation designed, developed, or installed with Federal Financial Participation under the Agency Contract, including but not limited to those materials covered by copyright.

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CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

* APPLICANT'S ORGANIZATION

[Redacted]

* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

Prefix: [] * First Name: [Redacted] Middle Name: []

* Last Name: [Redacted] Suffix: []

* Title: [Redacted]

* SIGNATURE: [Redacted]

* DATE: [Redacted]

ASSURANCES - NON-CONSTRUCTION PROGRAMS

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




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

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

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

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

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

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL 	TITLE 
APPLICANT ORGANIZATION 	DATE SUBMITTED 