



# TEXAS

## Health and Human Services

Charles Smith, Executive Commissioner

**Request for Proposals (RFP)**  
**for**  
**Texas Integrated Eligibility Redesign System (TIERS)**  
**Independent Verification and Validation (IV&V)**  
**Services**

**RFP No. 529-17-0089**

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# **ARTICLE I. EXECUTIVE SUMMARY, DEFINITIONS, AND AUTHORITY**

## **1.1 EXECUTIVE SUMMARY**

The State of Texas, by and through the Texas Health and Human Services Commission (HHSC), seeks a qualified Respondent to provide Independent Verification and Validation Services, for the HHSC Texas Integrated Eligibility Redesign System (TIERS) and related Eligibility Supporting Technologies (EST). These services will include third-party, independent assurance of the ongoing activities in the Discovery, Sprint, Release, and Maintenance areas related to enhancement and maintenance operations of existing applications, to include objective assessment of products, artifacts, and processes, identification of issues and risks, and proposed solutions, and if needed, escalation of those.

The HHSC Information Technology Applications Demand Management organization will provide oversight of the Contractor selected to perform the services contained in the Statement of Work included in this Request for Proposals (RFP).

To be considered for award, Respondents must execute **Exhibit A, Affirmations and Solicitation Acceptance; Exhibit A-1, Federal Assurances Non-Construction Programs; and Exhibit A-2, Federal Lobbying Certification** of this Solicitation and provide all other required information and documentation set forth in this Solicitation.

Information regarding the Health and Human Services Commission (HHSC) and its programs is available online and can currently be accessed at <https://hhs.texas.gov/>.

## **1.2 DEFINITIONS**

Refer to **Exhibit C, HHSC Uniform Terms and Conditions**, and **Exhibit D, HHSC's Special Conditions**, for additional definitions.

Additionally, as used in this Solicitation, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

**"Addendum"** means a written clarification or revision to this Solicitation issued by HHSC.

**"Contract Artifact"** refers to a Work Artifact produced by the Contractor as part of the completion of the RFP Statement of Work, and upon HHSC's acceptance of the Work Product, constitutes a payment point. Contract Artifact is an Agile-related term and is synonymous with "Deliverable," as defined in HHSC's Uniform Terms and Conditions v2.1.3, Section 1.01.

**"Contractor"** means the Vendor to whom a contract is awarded pursuant to this RFP.

**"ESBD"** means the Electronic State Business Daily, the electronic marketplace where State of Texas bid opportunities over \$25,000 are posted. The ESBD may currently be accessed at <http://esbd.cpa.state.tx.us/>.

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

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

"IV&V" means Independent Verification and Validation.

"Respondent" means an entity responding to this Solicitation.

"Solicitation" means this Request for Proposals including all Exhibits and Addenda.

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

"TIERS" means Texas Integrated Eligibility Redesign System, and refers to an integrated system that includes at least eight user-facing applications, including the main TIERS module.

"Work Artifacts" includes all documentation produced in association with work performed against the Contract Statement of Work.

### **1.3 AUTHORITY**

HHSC is soliciting the services listed herein under Title 10, Subtitle D of the Texas Government Code and Chapter 531 of the Government Code.

### **1.4 INTERPRETIVE TERMS**

"Must," "will," and "shall," as used in Article II each indicate that the activity or obligation they modify is mandatory, not permissive or discretionary.

## **ARTICLE II. SPECIFICATIONS**

### **2.1 STATEMENT OF WORK**

#### **2.1.1 Project Background**

Since 1991, the Texas Health and Human Services Commission (HHSC) has overseen and coordinated the planning and delivery of health and human service programs in Texas. HHSC is responsible for the oversight of all other Texas Health and Human Services System agencies (HHS Agencies).

The mission of the Health and Human Services Commission is to provide leadership, direction, and foster the spirit of innovation and collaboration needed to achieve an efficient and effective health and human services system for Texans.

HHSC operates from 300+ offices statewide and delivers services to more than 8 million needy citizens annually. HHSC manages TIERS, an integrated eligibility system comprised of a group of computer applications, to manage delivery of 64 types of assistance including food, cash, medical, and community care services to Texans in need. Each month, TIERS receives more than 400,000 applications for benefits, redeterminations, and changes submitted by clients using the TIERS self-service portal. TIERS includes at least eight user-facing applications, including the main TIERS module, and additionally, the YourTexasBenefits.com site, also known as the Self Service Portal (SSP), the Your Texas Benefits mobile application, Document Center, Call Center Inquiry (CCI), the Long Term Services and Supports (LTSS) applications, State Portal, and DataMart. Other TIERS-related applications are referred to as Eligibility Supporting Technologies (EST).

The HHSC Information Technology Social Services Applications organization, referred to as IT-SSA throughout the remainder of the document, is responsible for the TIERS software development and maintenance effort. The HHSC Information Technology Data Center Services organization is responsible for the TIERS Operations and Infrastructure effort.

Effective January 2017, IT-SSA, in close collaboration with TIERS Operations and the HHSC Business Areas (our IT customer) completed transition of TIERS software development from Waterfall to the Agile methodology. HHSC IT has been able to realize a greater quality product and substantially reduce project delivery times using Agile. Strong collaboration between our customers and IT has strengthened project prioritization and viability, as has "embracing change" within the Agile software development cycle.

### **2.1.2 TIERS Independent Verification and Validation Framework**

Independent Verification and Validation (IV&V) is a set of Verification and Validation activities performed by an organization (the Contractor, for purposes of this RFP), that is not under the control of the organization that is developing or maintaining the software development project.

Independent Verification and Validation (IV&V) is the process of confirming that a product, service, or system meets specifications and that it fulfills its intended purpose.

- The "Independent" in IV&V is to ensure the validation of TIERS and EST applications is performed by an impartial third party to both the organizations managing the development effort (IT-SSA) and the vendor(s) under contract with HHSC to perform software development and technical services. "Independence" refers to technical independence as well as managerial independence.
- "Verification" involves confirming the system is well engineered. This is sometimes expressed as "Are system enhancements, modifications, and maintenance being executed correctly?"
- "Validation" involves confirming software and processes meet the user's needs. The IV&V Contractor will review work products and processes on an ongoing basis, with a particular emphasis on the technical aspects of the products.

In order to satisfy State and Federal guidelines regarding oversight of large and complex information technology systems such as TIERS, HHSC has engaged and will continue to engage the services of an IV&V Contractor to oversee ongoing enhancement and operation of the system. For the purposes of this procurement, the Contractor will examine the organizational, management, and all aspects of Agile software development activities and artifacts associated with the TIERS applications and operational ecosystem. TIERS applications are fully developed, therefore, the IV&V Contractor will be responsible for continuing enhanced risk mitigation practices, issue tracking, and verification and validation activities including providing actionable recommendations of process enhancements and modifications and related impacts to infrastructure. Also, IV&V Contractor will monitor maintenance and operations of the large, complex, TIERS set of systems and ensure processes and methods are conducted in adherence to mature, best-in-class practices and industry standards.

The IV&V Contractor will be managed by the HHSC Information Technology Applications Demand Management organization.

The Agile tenet of IT working in tandem with Business and Operations more closely, and with more frequency to make business decisions has also transformed the traditional relationship IT-SSA has with IV&V. HHSC has received value in having IV&V be an integral part of TIERS process oversight. While retaining reporting independence, TIERS expects the IV&V Contractor to continue adding value with subject matter expertise in the processes, quality, and methodology in the ongoing Agile activities such as User Story Discovery, Sprint Planning, Release Management, and areas related to system enhancement and maintenance.

The IV&V Contractor will be engaged in day-to-day TIERS oversight, working alongside HHSC IT, other IT vendors, and the IT customers (Business Areas). This includes attending key meetings. While reporting in weekly and monthly status reports is required, in the spirit of Agile, greater value is placed on real-time escalation and discussion of issues and concerns, to move swiftly toward effective remediation. The Contractor IV&V Team will have access to the HHSC TIERS IT-SSA and Operations Directors, along with access to the HHSC TIERS IV&V Contract Manager, and the HHSC Contract Manager for the TIERS Software Development Vendor to escalate concerns immediately rather than with the lag time associated with written reports and subsequent meetings. The IV&V Contractor will retain independence in reporting, and must provide objective assessment of products, artifacts, and processes, and recommend process improvement and remediation based on industry best-in-class practices and guidelines. Please see Section 2.1.3.C for more information on tools and guidelines.

IV&V Services Contractor must become familiar with and conform to standard Agile terms and processes, and, be familiar with the IT-SSA defined processes, in order to conduct effective software development lifecycle (SDLC) validation. **Attachment F** includes the IT-SSA Agile Process Guide, for general reference on how the process works in our technical environment, including more on tools.

### 2.1.3 Scope of Work

#### A. TIERS Ecosystem

Contractor must provide IV&V services for Service Areas impacting the following applications that form part of the TIERS ecosystem:

- Texas Integrated Eligibility Redesign System (TIERS)
- YourTexasBenefits.com (also referred to as the Self Service Portal, or SSP)
- Your Texas Benefits Mobile Application
- Long-Term Services and Supports (LTSS) applications
- Eligibility Supporting Technologies (EST), including:
  - ◆ DataMart
  - ◆ Web Services
  - ◆ State Portal
  - ◆ Task List Manager (TLM)



- ◆ TIERS Enterprise Content Management (ECM)
- ◆ Document Center
- ◆ Call Center Inquiry (CCI)
- ◆ Scheduler
- ◆ Community Based Organization (CBO) Portal

Please see **Attachment A** for a detailed description of the referenced technologies, and **Attachment B** for a graphical representation of TIERS applications.

The Contractor must also provide IV&V services for infrastructure and operations that form part of the TIERS ecosystem. The technical aspect of the TIERS system consists of a collection of information systems spanning multiple platforms. With over 800 physical servers supporting more than 2,400 virtual servers, the TIERS system supports over 10,000 unique users a day. A redundant network designed to support a high volume of data has been implemented, along with complementary security components designed to protect the data. All network devices have redundant components for enhanced availability. This infrastructure supports the set of applications listed in **Attachment C**, which enable the TIERS system to meet its business needs. The hardware that directly supports TIERS resides in two secured data centers, located in Austin and San Angelo.

**B. IV&V Service Areas**

The Contractor will provide qualified resources to form an IV&V Team that will support monitoring of TIERS and EST for the following IV&V Service Areas: IV&V Project Management, Program and Processes, Application SDLC, Operations and Infrastructure, and Federal Requirements, each as described in greater detail in the Figure 2-1 below and in the remainder of this 2.13.B. Any changes in Contract Scope or IV&V Service Areas would be addressed in a Contract Change Request; see Section 2.4 for details. See Figure 2-1 for an overview of Service Areas.

IV&V Service Area	Service Area Activities
IV&V Project Management	<ul style="list-style-type: none"> <li>▪ Create and support execution of IV&amp;V Plan</li> <li>▪ Provide oversight for Contractor resources</li> <li>▪ Act as primary interface with HHSC Contract Manager and HHSC Project resources for this effort, and facilitate resolution of any Contract issues with HHSC counterparts</li> <li>▪ Provide subject matter expertise on issues, risks, and IV&amp;V-proposed solutions based on experience and industry best practices</li> <li>▪ Escalate issues to HHS management</li> <li>▪ Be responsible for content and quality of IV&amp;V Team-produced Weekly Status reports, Monthly Status Reports, including issue reporting, tracking, escalation, and resolution procedures, Ad-Hoc reports related to Special Projects, Transition Report, Turnover Report.</li> </ul>

IV&V Service Area	Service Area Activities
Program & Process	<ul style="list-style-type: none"> <li>▪ Support oversight of IT-SSA Agile Processes and Ceremonies, and integration with Operations</li> <li>▪ Process documentation review, validation</li> <li>▪ Conduct Risk Management and Quality Assurance</li> </ul>
Application SDLC	<ul style="list-style-type: none"> <li>▪ Provide oversight of development activities and affected areas related to TIERS Enhancement, Maintenance</li> <li>▪ Provide SME insight on key Discovery, Sprint, Release and Maintenance activities</li> <li>▪ Assess defects identified during Sprint, iTest, and post-production activities</li> <li>▪ Provide analysis on Help Desk Production Support Requests</li> <li>▪ Assess application-related training</li> <li>▪ Generate independent analytics, metrics</li> </ul>
Operations & Infrastructure	<ul style="list-style-type: none"> <li>▪ Provide oversight of TIERS Infrastructure and Operations supporting application development</li> <li>▪ Support Architecture and Procedure Review</li> <li>▪ Provide Operations/Applications Integration Analysis</li> <li>▪ Review Architecture alignment in Agile Discovery, Sprint activities</li> <li>▪ Conduct Environments Review</li> </ul>
Federal Requirements	<ul style="list-style-type: none"> <li>▪ Conduct MITA Maturity Review through IAPD objectives</li> <li>▪ Validate TIERS compliance with CMS 12 Standards and Conditions</li> <li>▪ Validate IAPD Checklist showing work completed against planned objectives</li> <li>▪ Validate HHSC TIERS meets CMS 7 Critical Success Factors</li> <li>▪ Review CMS testing</li> </ul>
Special Projects	<p>On an as-needed basis, HHSC Contract Manager may redirect resource effort from regular IV&amp;V Service Areas to focus on urgent TIERS needs for a brief period. This may include:</p> <ul style="list-style-type: none"> <li>▪ Root Cause Analysis of an issue</li> <li>▪ Transition support and monitoring for new TIERS software development vendor</li> <li>▪ Gap analysis and transition support for other major TIERS IT structural or application shifts</li> <li>▪ Facilitating “lessons learned” sessions on an as-needed basis related to issues</li> <li>▪ Providing Ad-Hoc reports related to activities in this area</li> </ul>

**Figure 2-1 IV&V Service Area Activities Overview**

The paragraphs that follow provide a more detailed description of IV&V Service Area activities.

## **IV&V Project Management**

- Create and support execution of IV&V Plan for Contract effort. The Plan will include the IV&V approach, team organization, resource allocation and responsibilities, tools that will be applied, activities to be performed, and work products generated as a result of IV&V work effort. It will define functional responsibilities and reporting authority within the HHSC project organization.
- Manage and lead IV&V Contractor Team in their execution of IV&V services for the Service Areas, including providing day-to-day management of the IV&V effort including overall performance and contract compliance, and be responsible for coordinating the availability of scheduled resources to the IV&V effort.
- Serve as the primary project liaison with HHSC Contract Manager and HHSC Project resources for this effort, and facilitate resolution of any Contract issues with HHSC and IV&V counterparts
- Facilitate communications with IV&V Contract Manager and HHSC Contract Manager to address any contract issues including those related to resource, schedule, and scope.
- Provide best-in-class subject matter expertise on issues, risks, and IV&V-proposed solutions based on experience and industry best practices.
- Escalate issues to HHS management through established protocols.
- Set up and lead recurring meetings twice a month and establish regular overall communications with HHSC TIERS IT to discuss IV&V Team work effort, including current issues or concerns.
- Responsible for ensuring IV&V Contractor Team services and work products provided meet or exceed quality standards, including the content and quality of IV&V Team-produced Weekly Status Reports, Monthly Status Reports, ad-hoc reports related to Special Projects, optional Transition Report, and optional Turnover Report (see Section 2.1.7 for Contract Artifacts details).

## **Program & Process**

- Support oversight of IT-SSA Agile Processes and Ceremonies in TIERS software development and infrastructure, and integration with Operations, and, at designated intersections with the Business Area (customer) to the extent they are involved in the Agile Discovery process (i.e., IV&V Team will not be engaged in Business Area Roadmap processes).
- Review and monitor development processes to ensure they are being documented, carried out, and analyzed for improvement.
- Support IV&V Team working in other Activity Areas with expertise in Risk Management and Quality Assurance.
  - ◆ Support IV&V Team with escalating risks with recommended mitigation and avoidance plans (real-time and in report).
  - ◆ Support IV&V Team with escalating issues with recommended resolutions (real-time and in report).
  - ◆ Assess current activities and provide process and quality improvement recommendations using supporting metrics.

- Support document review of project management and process documents, and provide recommendations.

## **Application SDLC**

Resources supporting this area will:

- Provide oversight of development activities and affected areas related to TIERS Enhancement, Maintenance.
- Provide SME insight on key Agile Discovery, Sprint, and Release activities.
  - ◆ Review and monitor Agile development processes and methods to ensure they adhere to IT-SSA Agile Process Guide, and industry standards, and recommend improvement, as needed.
  - ◆ Assess and analyze defects identified within Sprint activities, from iTest environment, and in post-production (escaped defects), including assessment to assure software testing is being performed adequately through review of test plans and in compliance with HHSC-TIERS test plans and tools, and through direct observation of testing where appropriate, including participation in and coordination of peer reviews, and recommend improvement, as needed.
  - ◆ Participate in readiness assessments of release deployments;
- Provide SME insight on key Agile Maintenance activities
  - ◆ Provide analysis on Help Desk Production Support Requests
  - ◆ Assess application-related training, including assessment to assure appropriate user and developer training is planned and carried out, and recommend improvement, as needed.
- Generate independent analytics, metrics to spot check software vendor-provided metrics, and ensure their validity, or to provide new value and insight into project productivity
- Perform review and independent assessment of TIERS software development (Vendor) and HHSC Work Products as they are updated for accuracy, completeness, and adherence to contractual and functional requirements.

## **Operations & Infrastructure**

As a component of TIERS software enhancement and modifications, and maintenance operations, the IV&V Contractor will:

- Provide oversight of TIERS Infrastructure and Operations supporting application development.
- Review system architecture for feasibility, consistency, and adherence to industry standards, and ensure alignment within the affected areas as changes are proposed
- Support Integration Operations/Applications Integration Analysis as the DevOps model is embraced as part of Agile adoption.
- Review Architecture alignment between Applications and Operations as part of Agile Discovery and Sprint activities. This may require attending Architecture Review Board meetings.

- Support Environments Review, and provide recommendations as needed
- As components of enhancements and continued operations:
  - ◆ Analyze impacts to application, network, hardware and software operating platform performance characteristics relative to anticipated results and industry standards.
  - ◆ Assess and recommend improvement, as needed, to assure maintenance of a data center, including data center input to the project regarding operational and maintenance performance of the application.
  - ◆ Review system hardware and software configuration and report on any compatibility and obsolescence issues.

### **Federal Requirements**

HHSC TIERS prepares an Operational Advance Planning Document (OAPD) annually and an Implementation Advance Planning Document (IAPD) as-needed annually to request Federal Financial Participation (FFP) for costs of the acquisition of Automated Data Processing (ADP) hardware, software, and services, as per current Federal regulations, 42 CFR Part 433. In order to be eligible for FFP, TIERS must continue to demonstrate meeting specific standards and conditions related to federal mandates for Eligibility and Enrollment Systems. TIERS has relied on an IV&V Contractor to provide independent assessment and even establish criteria to document that TIERS is meeting the federal objectives. HHSC requires the IV&V Contractor to continue to support this effort with key activities.

- To support HHSC TIERS IAPD objectives, as approved by federal partners, conduct an independent Medicaid Information Technology Architecture (MITA) Maturity Review and document assessment for TIERS.
- Provide independent assessment of HHSC TIERS' compliance with the 12 Standards and Conditions defined by Centers for Medicaid and Medicare Services (CMS) to establish state eligibility for enhanced federal funding participation.
- Provide independent assessment of HHSC TIERS progress against IAPD and Operational APD objectives showing work completed against planned objectives.
- Validate HHSC TIERS meets the seven (7) Critical Success Factors defined by CMS, and re-evaluate if federal standards change.
- Monitor and review TIERS testing plans to meet CMS requirements, and results, and provide recommendations as needed.

### **Special Projects**

On an as-needed basis, HHSC Contract Manager may, at HHSC's sole discretion, re-direct IV&V Team resource effort and expertise from regular activities to focus on critical TIERS project support for a brief period. This re-direction may include:

- Conducting root cause analysis of select TIERS and EST production defects, Production Support Requests (PSRs), or other major system issues that arise.
- Providing Transition support and monitoring for new TIERS software development vendor.

- Conducting gap analysis and recommendations for other TIERS IT structural shifts based on industry standards and experience.
- Facilitating “lessons learned” sessions on an as-needed basis related to issues.
- Providing ad-hoc Special Project reports related to activities in this area.

As no additional resources would be required to support this Service Area, a Change Request is not needed. The HHSC Contract Manager would provide written notification to the IV&V Contractor Project Manager to document the scope of the Special Project requirements.

### **C. Optional Services**

If HHSC elects to exercise optional services, Contractor will be required to perform them.

#### **Optional Initial Transition Services**

HHSC may elect to exercise the optional Initial Transition Services. The optional initial transition and planning period occurs within the first two (2) weeks following the IV&V services contract Effective Date. During this period, the incumbent resources and/or IT-SSA will provide knowledge transfer to the Contractor. This will involve the incumbent resources and/or IT-SSA’s participation in the Contractor's orientation to the current state of the processes in place to support IV&V services.

The Contractor is solely responsible for obtaining the knowledge necessary for the IV&V services to be competent and productive.

The Contractor will prepare a Transition Report documenting its efforts during this period, along with any identified transition issues and risks. The Transition Report will constitute a Contract Artifact. See Section 2.1.7 for details.

#### **Optional Completion Turnover Services**

If HHSC elects to exercise the optional Completion Turnover Services, the services begin two (2) weeks prior to the Contract Term End Date. The Contractor will be required to provide work products to HHSC or HHSC’s designated representative and accomplish knowledge transfer. The Contractor will prepare a Turnover Report to document their efforts during this period. The Turnover Report will include an inventory of artifacts, including process documents, their status, their location as a Work and/or Contract Artifact, and acknowledgment by both the Contractor and HHSC, that completion turnover activities are complete. The Turnover Report will constitute a Contract Artifact. See Section 2.1.7 for details.

### **D. IV&V Guidelines, Standards, Tools for TIERS**

TIERS utilizes and is supported by the following tools and guidelines, which the IV&V Team will need to take into account as it conducts its work. The IV&V Contractor must become familiar with these tools and guidelines, and be able to apply their knowledge as applicable to TIERS oversight. As TIERS fully embraces Agile software development methodology, it is re-evaluating toolsets that best accommodate the updated processes, and some tools may change over time. The IV&V Contractor would be expected to accommodate any changes, and, support HHSC in tools assessments if requested.

## **Agile**

Effective January 2017, IT-SSA completed transition of TIERS software development from Waterfall to the Agile methodology. IT-SSA uses an Agile process based on Scrum principles and the Agile Manifesto, but also incorporates best-in-industry methods that are suited to the TIERS technical environment. IV&V Services Contractor must become familiar with and conform to standard Agile terms and processes, and, be familiar with the IT-SSA defined processes, in order to conduct effective SDLC validation. **Attachment F** includes the IT-SSA Agile Process Guide, for general reference on how the process works in our technical environment.

## **HP PPM**

IT-SSA currently uses the HP Project and Portfolio Management (PPM) tool for time keeping, risk and issue tracking, and project management. The tool is utilized to:

- Manage the project work plans and track time against it
- Manage and track Work Artifacts, especially Contract Artifacts
- Monitor progress on all TIERS projects

The IV&V Team will track their time in this tool, and use it for validation efforts in support of the scope of this effort.

## **HP ALM**

IT-SSA currently uses the Hewlett-Packard (HP) Application Lifecycle Management (ALM) tool to track defects resulting from iTest and Release Readiness activities.

## **JIRA**

TIERS relies on the JIRA for Agile application to support management and tracking of Agile work artifacts, defects detected during Sprint testing activity, progress, and overall Sprint project effort.

## **IEEE**

The Institute for Electrical and Electronics Engineers (IEEE) Standard 1012-2012 for Software Verification and Validation describes software IV&V processes as generally determining if development products of a given activity conform to the requirements of that activity, and if the software satisfies the intended use and user needs. As defined in the IEEE standards, IV&V processes include activities such as assessment, analysis, evaluation, review, inspection, and testing of software products and processes. These IV&V processes further include assessing software in the context of the system, including the operational environment, hardware, interfacing software, operators and users. The IEEE standard seeks to assure that software IV&V is performed in parallel with software development, not at the conclusion of the software development.

## **NIST**

HHSC abides by National Institute of Standards and Technology (NIST) guidelines to protect information assets and identify IT risks.

## ITIL

HHSC-TIERS uses the Information Technology Infrastructure Library (ITIL), an IT services management framework that supports aligning IT Services with business needs.

### Architecture Guidelines

HHSC TIERS follow the Open Group Architecture Framework (TOGAF) to design and implement supporting system architecture. TIERS also aligns with federal Medicaid Information Technology Architecture (MITA), sponsored by the Center for Medicare and Medicaid Services (CMS). This is intended to foster integrated business and IT transformation across the Medicaid enterprise to improve the administration of the Medicaid program. TIERS has achieved MITA 2.0 maturity levels and is working toward meeting increased maturity with its Consumer self-service initiatives, electronic submissions, Operations modernization, service-oriented architecture and interoperability of external application systems.

#### 2.1.4 Resources: Roles, Responsibilities, and Qualifications

HHSC IT-SSA organization requires IV&V services from a Contractor that offers a qualified team to work in lockstep with the TIERS organization to add value to our initiatives for continual process improvement.

Contractor must provide all personnel necessary to complete timely the IV&V services in accordance with the Contract and the work plan. Contractor will maintain dedicated resources for the term of the Contract unless a team member leaves the project or a team member is replaced by mutual agreement between HHSC and the Contractor. Note that there is flexibility to share team members across IV&V Service Area activities, as long as the needed skillset to complete the required work is available.

HHSC expects that the staff specified in a Respondent's response to this RFP be the persons that are provided to perform the services of this RFP, and in the case of the role defined as Key Personnel, HHSC requires the proposed staff be the one provided.

Figure 2-2 below depicts the current composition of IV&V resources across IV&V Service Areas. In the past years, as activities and scope have fluctuated based on projects and need, the TIERS IV&V Team has supported a range of 5 to 9 full-time equivalents (FTEs).

IV&V Service Area	FTE(s)
IV&V Project Management	1
Program & Process	1
Application SDLC	3
Operations & Infrastructure	1
Federal Requirements	1

**Figure 2-2 IV&V Team Composition**

HHSC designates the IV&V Services Project Manager role as “Key Personnel.” The Key Personnel role is required to be dedicated 100% to the Contract awarded as a result of this RFP. Additionally, the Contractor must provide HHSC with written notice fourteen (14) calendar days prior to any planned changes in Key Personnel during the term of the contract



and any extension. If a replacement resource is needed for the Key Personnel role, the Contractor must provide the resume of a replacement resource for HHSC review and approval prior to the Contractor making an offer to a replacement candidate. The replacement resource must have equal or better credentials, training, and skills as the person he or she is replacing.

Additionally, all resumes specified in a Respondent's response to this RFP must be the resources that are provided for this project. The Contractor must not reduce the agreed-upon resource levels nor replace any proposed personnel without HHSC's prior written approval.

The Contractor must remove Key Personnel or any Contractor employee or subcontractor employee found unacceptable to HHSC immediately upon HHSC's request.

Subsequent to Contract Award, if a resource leaves the project for any reason, the Contractor must replace that resource within thirty (30) calendar days. The Contractor must provide a resume for the replacement resource for HHSC review prior to the project start date for that replacement resource. Any replacement resource must have equal or better credentials, training, and skills as the person he or she is replacing. All replacement personnel are subject to review by the HHSC IV&V Contract Manager.

The IV&V Services roles, responsibilities, and minimum Contractor qualifications for those roles are described in Figure 2-3.

Role	Responsibilities/ Minimum Qualifications
IV&V Contract Manager	<p>The Respondent's Contract Manager must ensure IV&amp;V Team's compliance with the complete Contract, as well as document any changes that may arise during the contract execution. The Contract Manager is responsible for systematically and efficiently managing the contract for the purpose of maximizing operational performance and minimizing risk to HHSC.</p> <p>Key responsibilities of the Contract Manager include but are not limited to:</p> <ul style="list-style-type: none"> <li>▪ Serve as Point of Contact for HHSC for all contractual issues.</li> <li>▪ Manage, review, and approve Contractor's invoices and deliverables for conformance with contract requirements.</li> <li>▪ Manage Contractor's project budget and cost tracking.</li> <li>▪ Work closely with IV&amp;V Project Manager to ensure Contract Artifacts quality and delivery based on RFP requirements are met.</li> </ul> <p><b><u>Key minimum mandatory qualifications include:</u></b></p> <ul style="list-style-type: none"> <li>▪ Three (3) years experience as contract manager for implementation projects</li> <li>▪ Public sector experience desirable</li> <li>▪ PMI-PMP, or PMI- ACP, or equivalent certification</li> </ul>

Role	Responsibilities/ Minimum Qualifications
IV&V Project Manager	<p>The IV&amp;V Project Manager must lead the Contractor’s project team. As a designated “Key Personnel” role, the Respondent’s Project Manager must be committed to the project, full-time from the contract origination date through the term of the contract, including optional extensions.</p> <p>Key responsibilities include but are not limited to:</p> <ul style="list-style-type: none"> <li>▪ Create and support execution of IV&amp;V Plan.</li> <li>▪ Provide oversight for Contractor resources, including providing day-to-day management of the IV&amp;V effort including overall performance and contract compliance.</li> <li>▪ Act as the primary interface with HHSC Contract Manager for this effort, and facilitate resolution of any Contract issues with HHSC and IV&amp;V counterparts.</li> <li>▪ Provide subject matter expertise on issues, risks, and IV&amp;V-proposed solutions based on experience and industry best practices.</li> <li>▪ Escalate issues to HHS management through established protocols.</li> <li>▪ Establish and maintain regular communications with the HHSC project team.</li> <li>▪ Be responsible for content and quality of IV&amp;V Team-produced Weekly Status reports, Monthly Status Reports, including issue reporting, tracking, escalation, and resolution procedures, Ad-Hoc reports related to Special Projects, Transition Report, Turnover Report.</li> </ul> <p><b><u>Key minimum mandatory qualifications include:</u></b></p> <ul style="list-style-type: none"> <li>▪ PMI-PMP, or PMI- ACP, or equivalent certification</li> <li>▪ Lead project manager for IV&amp;V or system development project with a total cost of ten million dollars or more</li> <li>▪ Three (3) years experience as lead project/contract manager for technical implementation projects</li> <li>▪ Technical Lead or Project Manager for IV&amp;V or IT development project</li> </ul> <p><b><u>Key preferred qualifications include:</u></b></p> <ul style="list-style-type: none"> <li>▪ Two (2) years experience working with Agile IT processes</li> </ul>
IV&V Team Members (Vendors shall identify Functional Team members based on their proposed project team structure, and provide resumes)	<p>The Respondent’s Team members must:</p> <ul style="list-style-type: none"> <li>▪ Perform all IV&amp;V activities in this Statement of Work, including IV&amp;V of software development activities impacting TIERS and Eligibility Supporting Technologies;</li> <li>▪ Deliver Contract Artifacts required in Section 2.1.7; and</li> <li>▪ Include team members with proficient skills to execute the Statement of Work as described in the Service Areas.</li> </ul> <p><b><u>Key minimum mandatory qualifications include:</u></b></p> <ul style="list-style-type: none"> <li>▪ Three (3) years experience in the proposed role</li> </ul> <p><b><u>Key preferred qualifications include:</u></b></p> <ul style="list-style-type: none"> <li>▪ Two (2) years experience working on a project using Agile</li> </ul>

**Figure 2-3 IV&V Services Resource Roles, Responsibilities, and Qualifications**

### 2.1.5 Contractor Responsibilities

The Contractor shall provide IV&V services for the IT-SSA TIERS and EST applications adhering to, at a minimum, the following principles:

- IV&V Services Contractor must review and comply with the HHS Enterprise Information Security Policy (EIS-Policy). The current EIS-Policy is presented in **Attachment G**.
- IV&V Services Contractor must review, and as part of its IV&V service delivery to the TIERS, support State and Vendor compliance with the HHS Uniform Electronics and Information Resources (EIR) Accessibility policy. The current EIR Accessibility Policy is presented in **Exhibit D: HHSC Special Conditions**.
- IV&V Services will adhere to IT-SSA Agile methodology as a basis for SDLC Software Development Life Cycle verification.
- Outside of the HHSC-provided office space and tools, Contractor will provide office space and computer equipment if additional space is needed for IV&V Contractor team to conduct the Statement of Work.
- A standard work week of 40 hours, Mondays through Fridays, except on closed holidays determined by the State of Texas is assumed for full-time Contractor resources.
- Contractor resources are expected to perform validation work, including attending meetings and meeting with project personnel onsite at HHSC, and should be available by phone and email during normal working hours.
- All Contractor resources will maintain a record of hours expended on the Services activities in the IT-SSA system of record, PPM, or another project-approved tool, and provide this information to HHSC with each Monthly Status Report.
- The Contractor will designate the IV&V Project Manager role as a "Key Personnel" resource.
- Contractor will meet Service Level Agreements described in Section 2.1.9.

### 2.1.6 HHSC Responsibilities

- HHSC will provide up to five (5) dedicated office spaces for Contractor IV&V Team to use when onsite, located within a 5 mile radius of HHSC TIERS worksite, which is currently located at 1609 Centre Creek Dr., Austin, Texas 78754.
- HHSC will provide all members of Contractor's IV&V Team facility parking, access to HHSC facilities to attend TIERS meetings, and access to conference rooms to set up recurring twice-monthly meetings required under the Contract, or other meetings for the Contractor's staff.
- HHSC will provide up to five (5) members of Contractor IV&V Team with computer equipment configured with basic office tools.
- HHSC will provide all members of the Contractor IV&V Team with access to HHSC TIERS systems and tools required to support the contract Statement of Work.
- HHSC will provide a Contract Manager as the Customer representative for the IV&V Contractor. The HHSC Contract Manager will:

- ◆ Coordinate with the IT-SSA Project Manager, HHSC Legal and Procurement staff, administrative staff, and Security staff, as needed, to resolve contractual issues.
- ◆ Receive, review, and coordinate the approval of any contract change requests.
- ◆ In coordination with the IT-SSA Director, receive, and review the Monthly Status Report and accept it as a pre-requisite for invoice approval and payment for monthly services.
- ◆ Receive, review, approve and pay all approved invoices.

### 2.1.7 Contractor Work Products

The Contract awarded the Contractor will require two types of work products:

Work Artifacts. This includes all documentation produced in association with work performed against the Contract Statement of Work.

Contract Artifacts. These artifacts may be produced as a byproduct of completing work requirements in the Statement of Work, but these artifacts, upon acceptance by HHSC, constitute payment triggers.

All Contractor Work Products must be submitted to the IT-SSA Contract Manager in a format approved by HHSC, adhere to Contract terms, and be provided by the dates specified. Any changes to the delivery date must have prior written approval by HHSC.

HHSC intends for Work Products to be published in a manner that facilitates visibility, collaboration on documents, and ease of capturing and responding to formal Contract Artifact comments.

The Contractor must:

- Make all work products available electronically.
- Utilize the HHSC-provided solution for HHSC and the Contractor to propose changes to documentation deliverables throughout the life of the engagement.

HHSC owns all Work Products produced under the Contract.

HHSC will review Contract Artifacts, and will notify the Contractor in written format within ten (10) business days of its receipt of a Contract Artifact of its acceptance, conditional acceptance, or rejection, with the reason(s) for rejection and what the Contractor must do so that the Contract Artifact will be acceptable. Contractor has five (5) business days, or as otherwise agreed to by HHSC, to correct the Contract Artifact and resubmit it for HHSC review.

HHSC will provide final acceptance of the deliverable, at which time, the associated invoice can be approved for payment.

While Work Artifacts under the Contract do not require a formal HHSC review and approval process, they should adhere to stated quality, content, and timeliness criteria included in this RFP.

See below for Work Products Artifacts resulting from IV&V Services activities described in Section 2.1.3.

The IV&V Plan, described in Figure 2-4, will be prepared by the IV&V Project Manager to document the Project Work Plan.

<b>IV&amp;V Plan Work Artifacts</b>	
<b>Required Delivery</b>	First delivery required at the completion of the transition period, or within 10 working days of the effective date of the contract, whichever occurs first.
<b>Frequency</b>	After initial IV&V Plan acceptance, up to two updates (at mutually-agreed upon intervals/dates) a year are required to be delivered for HHSC review and acceptance, but do not constitute payment triggers.
<b>Description</b>	<ul style="list-style-type: none"> <li>▪ Describes the details of how the proposer will conduct IV&amp;V activities required in this RFP, as aligned with Service Areas, and required Work and Contract Artifacts.</li> <li>▪ Specifies the metrics and measures to be used by the IV&amp;V Contractor to monitor and report on the activities and work products in this Statement of Work.</li> <li>▪ Documents approach to IV&amp;V services and activities required in RFP Section 2.1 including standards/guidelines applied.</li> <li>▪ Defines schedule, team organization, team roles and responsibilities, and resource plan.</li> </ul>

**Figure 2-4 IV&V Plan Contract Artifact**

<b>Weekly Status Report Work Artifact</b>	
<b>Required Delivery</b>	First delivery required after first non-transition calendar week completed.
<b>Frequency</b>	Weekly. The Weekly Status Report is required to be delivered to HHSC no later than the close of business on the Monday immediately following each reporting period.
<b>Description</b>	<ul style="list-style-type: none"> <li>▪ Weekly metrics</li> <li>▪ Noted Observations, Issues, Risks, and Action Items along with recommendations, and items that have been escalated real-time. Note that many of the observations are expected to result from the IV&amp;V vendor’s participation in various HHSC meetings.</li> </ul>

**Figure 2-5 Weekly Status Report Work Artifact**

The Monthly Status Report will be prepared by the IV&V Project Manager to report on status of the entire body of IV&V Contractor activities and results.

<b>Monthly Status Report Contract Artifact</b>	
<b>Required Delivery</b>	First delivery required after first non-transition calendar month completed.

<b>Monthly Status Report Contract Artifact</b>	
<b>Frequency</b>	Monthly. The Monthly Status Report (MSR) is required to be delivered to HHSC no later than the close of business on the fifth working day of each month immediately following each reporting period.
<b>Description</b>	<ul style="list-style-type: none"> <li>▪ Provide dashboard of IV&amp;V Team status related to activities performed under IV&amp;V Service Areas.</li> <li>▪ Document any Observations, Issues, Risks, and Action Items the IV&amp;V Team has encountered, including real-time escalation, and IV&amp;V Team recommendations.</li> <li>▪ Track status of Issues and Risks over time (document progress).</li> <li>▪ Report on IV&amp;V Team resource PPM timekeeping for the period.</li> <li>▪ The MSR will serve as invoice backup documentation.</li> </ul>

**Figure 2-6 Monthly Status Report Contract Artifact**

<b>Transition Report Contract Artifact</b>	
<b>Delivery</b>	Within one (1) week of completion of the 2-week Transition period, which begins upon Contract Effective Date, if optional Transition Services exercised.
<b>Frequency</b>	One-time
<b>Description</b>	<ul style="list-style-type: none"> <li>▪ If HHSC elects to exercise the optional Transition Services, upon Contract commencement, Contractor will carry out initial transition activities; including receiving work products from the incumbent IV&amp;V Contractor, and performing receipt of knowledge transfer.</li> <li>▪ Transition period is two (2) weeks in duration.</li> <li>▪ The Transition Report will document completion of knowledge transfer sessions, along with any identified transition issues and risks.</li> <li>▪ As a component of the Transition Report, the Contractor will also prepare the Initial IV&amp;V Plan for delivery during this period.</li> </ul>

**Figure 2-7 Transition Report Contract Artifact**

<b>Turnover Report Contract Artifact</b>	
<b>Delivery</b>	Prior to completion of the Contract Term End Date, if optional Turnover Services exercised.
<b>Frequency</b>	One-time
<b>Description</b>	<ul style="list-style-type: none"> <li>▪ If HHSC elects to execute the optional Turnover Services, two (2) weeks prior to Contract Term End Date, Contractor will perform completion Turnover Services including providing Work Products and knowledge transfer to HHSC and/or HHSC-designated resources.</li> <li>▪ Turnover lasts two (2) weeks.</li> <li>▪ The Turnover Report is an inventory of Turnover artifacts, their status and location, and acknowledgment by both the Contractor and HHSC that Turnover is complete.</li> </ul>

**Figure 2-8 Turnover Report Contract Artifact**

### 2.1.8 Invoicing

Contractor will submit an invoice to HHSC on a monthly basis. The invoice must be based on HHSC-accepted Contract Artifacts for work completed during the preceding performance period, and on the agreed-upon price for Contract Artifacts as executed in the Cost Schedule.

Each invoice submitted must identify the Purchase Order number and Contract number, and the time period that the invoiced work was performed. Payment shall be in accordance with the Texas Prompt Payment Act, Texas Govt. Code, Section 2251.

Invoices shall be sent to:

Health and Human Services Commission  
Attn: Invoice-HHSC Accounting  
Health and Human Services Commission  
4900 North Lamar Blvd.  
Austin, TX 78751  
Phone: 512-424-6518  
Fax: 512-424-6901  
Email: [HHSC\\_AP@hhsc.state.tx.us](mailto:HHSC_AP@hhsc.state.tx.us)

Prior to any payment being made, HHSC must verify that the services being invoiced have been received and accepted by HHSC. If HHSC has only received and accepted a portion of the services for which it has been invoiced, it will only be obligated to pay the invoiced amount less the cost of the services that have not been received and accepted.

### 2.1.9 Service Level Agreements (SLAs)

HHSC contracts for results. A successful result may be defined as the generation of discrete, defined, measurable, and beneficial outcomes that support HHSC Statement of Work goals, service delivery agreements, and product specifications.

HHSC will monitor the performance of the contract issued under this RFP. All services and work products under the Contract shall be provided at an acceptable quality level and in a manner consistent with acceptable industry standard, custom, and practice.

Conformance to work product submission dates as agreed to with HHSC will be monitored.

Liquidated damages for not meeting SLAs are specified in Figure 2-9.

SLA	SLA Name	Performance Evaluated	Non-Conformance	Frequency of Measurement
SLA 1	Contract Artifact Timeliness	100% of all Contract Artifacts identified in Section 2.1.7 must be submitted by the date specified in the HHSC-accepted IV&V Plan	Liquidated Damages in the amount of \$250 for each day of non-conformance, not to exceed \$5,000 in any given month.	Monthly

**Figure 2-9 Service Level Agreements**

## **2.2 CONTRACT AWARD AND TERM**

### **2.2.1 Contract Award and Execution**

HHSC intends to award one (1) fixed price Contract Artifact-based contract as a result of this Solicitation. Any award is contingent upon approval of the Executive Commissioner or his designee.

If, for any reason, an executed final contract is not received from a Respondent selected for award within three (3) days of HHSC's determination to seek to contract with that Respondent, HHSC may, in its sole discretion, negotiate a contract with the next highest scoring Respondent or may withdraw, or modify this Contract to be made pursuant to this Solicitation. Final execution by HHSC will remain contingent on all required approvals of the Contract by the federal Centers for Medicare and Medicaid Services (CMS) and the U.S. Department of Food and Nutrition Services (FNS).

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

### **2.2.2 Contract Term**

HHSC anticipates that the initial duration of any contract resulting from this Solicitation shall be for a period of two (2) years. HHSC, at its sole option, may extend any contract awarded pursuant to this Solicitation with two, two (2)-year options for up to four (4) additional years.

At present, HHSC is planning a Contract award with Effective Date May 1, 2017, and Contract End Date of initial term on April 30, 2019.

Following the base term and any allowable extensions, HHSC may extend any resulting Contract for the purpose of completing the objectives of this procurement and to avoid interruption in HHSC services.

## **2.3 DATA USE AGREEMENT**

By entering into a Contract as a result of this Solicitation, Contractor will be required to execute the HHS Data Use Agreement attached as **Exhibit E**. According to terms specified in the HHS Enterprise Information Security Data Classification Standard, the IV&V Contractor would be bound to a "Confidential" data classification level based on their access to confidential information in the course of their work. All Contractors are also required to complete the HHS Enterprise Data Use Agreement Security and Privacy Initial Inquiry (SPI) Form, included as **Exhibit F**.

## **2.4 CHANGE REQUEST PROCESS**

In the event there is a reason to change the project Statement of Work, HHSC will initiate a Change Request. The Change Request must provide information regarding the change comparable to the detail originally included in the Statement of Work documentation.

The HHSC and Contractor will endeavor to agree upon appropriate and mutually agreeable changes in cost, schedule, or other terms associated with the Change Request. While such changes are under review, Contractor must continue to perform under the Statement of



Work so long as such continued performance does not cause Contractor to incur a material cost or other undue hardship in relation to the Change Request. A decision to discontinue performance due to a Change Request must be made only by mutual written agreement of both parties.

No Change Request shall be implemented unless set forth in writing and approved and signed by an authorized representative of each party. Contractor agrees to make a good faith effort with regard to price and schedule terms if required for any proposed change. All Contractor cost changes must be based on **Attachment D: IV&V Services Rate Schedule**.

## **ARTICLE III. SOLICITATION ADMINISTRATIVE INFORMATION**

### **3.1 SCHEDULE OF EVENTS**

<b>EVENT</b>	<b>DATE/TIME</b>
Solicitation Release Date	April 3, 2017
Deadline for Submitting Questions	April 10, 2017 @ 2:00 PM Central Time
Questions and Answers posted to EDBD	April 17, 2017
<b>Deadline for submission of Solicitation Responses [NOTE: Responses must be <u>RECEIVED</u> by HHSC by the deadline.]</b>	<b>May 15, 2017 AT 2:00 PM Central Time</b>
Anticipated Contract Start Date	October 16, 2017

**Note: These dates are a tentative schedule of events. HHSC reserves the right to modify these dates at any time upon notice posted to the ESBD. Any dates listed after the Solicitation Response deadline will occur at the discretion of HHSC and may occur earlier or later than scheduled without notification on the ESBD.**

### **3.2 CHANGES, AMENDMENT, OR MODIFICATION TO SOLICITATION**

HHSC reserves the right to change, amend or modify any provision of this Solicitation, or to withdraw this Solicitation, at any time prior to award, if it is in the best interest of HHSC and will post such on the ESBD. It is the responsibility of Respondent to periodically check the ESBD to ensure full compliance with the requirements of this Solicitation.

### **3.3 IRREGULARITIES**

Any irregularities or lack of clarity in this Solicitation should be brought to the attention of the Point of Contact listed in Section 3.5.1 as soon as possible so corrective addenda may be furnished to prospective Respondents.

## 3.4 INFORMALITIES

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

## 3.5 INQUIRIES

### 3.5.1 Point of Contact

Except as provided in Section 3.5.3, all requests, questions or other communication about this Solicitation shall be made in writing to HHSC's Purchasing Department, addressed to the Point of Contact listed below. All communications between Respondents and other HHSC staff members concerning the Solicitation are strictly prohibited. **Failure to comply with these requirements may result in disqualification of Respondent's Solicitation Response.**

Point of Contact: John Stewart, Certified Texas Procurement Manager (CTPM)  
Title: Procurement Project Manager  
Address: 1100 W. 49<sup>th</sup> Street, Austin Texas 78756  
Phone: (512) 406-2539  
Fax: (512) 406-2691  
Email: john.stewart@hhsc.state.tx.us

### 3.5.2 Prohibited Communication

On issuance of this Solicitation, except for the written questions and requests for clarification described in Section 3.5.4, HHSC, its representative(s), or partners will not answer any questions or otherwise discuss the contents of this Solicitation with any potential Respondent or their representative(s). Attempts to ask questions by phone or in person will not be allowed or recognized as valid. Respondent shall rely only on written statements issued by or through HHSC's designated staff as provided in this Solicitation. This restriction does not preclude discussions between affected parties for the purposes of conducting business unrelated to this Solicitation. **Failure to comply with these requirements may result in disqualification of Respondent's Solicitation Response.**

### 3.5.3 Exception to the Communication Protocol

The only exception to the single point of contact is the HUB Coordinator. Should Respondents have questions regarding proper completion of the HUB Subcontracting Plan, the HUB Coordinator may be contacted at [Cheryl.Bradley@hhsc.state.tx.us](mailto:Cheryl.Bradley@hhsc.state.tx.us) with a copy to the Point of Contact listed in Section 3.5.1.

### 3.5.4 Questions

HHSC will allow written questions and requests for clarification of this Solicitation. Questions must be submitted in writing and sent by U.S. First class mail or email to the Point of Contact listed in Section 3.5.1 above. Respondents' names will be removed from

questions in any responses released. Questions shall be submitted in the following format. Submissions that deviate from this format may not be accepted:

- a) Identifying Solicitation number
- b) Section Number
- c) Paragraph Number
- d) Page Number
- e) Text of passage being questioned
- f) Question

**Note: Questions or other written requests for clarification must be received by the Point of Contact by the deadline set forth in Section 3.1 above. However, HHSC, at its sole discretion, may respond to questions or other written requests received after the deadline. Please provide company name, address, phone number; fax number, e-mail address, and name of contact person when submitting questions.**

### **3.5.5 Clarification**

Respondents must notify the Point of Contact of any ambiguity, conflict, discrepancy, exclusionary specifications, omission or other error in the Solicitation in the manner and by the deadline for submitting questions. If a Respondent fails to properly and timely notify the Point of Contact of such issues, the Respondent submits its Solicitation at its own risk, and if awarded a Contract: (1) shall have waived any claim of error or ambiguity in the Solicitation and any resulting Contract, (2) shall not contest the interpretation by HHSC of such provision(s), and (3) shall not be entitled to additional compensation, relief, or time by reason of ambiguity, error, or later correction.

### **3.5.6 Responses**

Responses to questions or other written requests for clarification may be posted on the ESBD. HHSC reserves the right to amend answers prior to the deadline of Solicitation Responses. Amended answers may be posted on the ESBD. It is Respondent's responsibility to check the ESBD or contact the Point of Contact for updated responses. HHSC also reserves the right to decline to answer any question or questions or to provide a single consolidated response of all questions they choose to answer in any manner at HHSC's sole discretion.

## **3.6 SOLICITATION RESPONSE COMPOSITION**

### **3.6.1 General**

Respondent shall submit an original Narrative Proposal and Respondent Information, an original Cost Proposal, and an original HUB Subcontracting Plan, each marked "Original," on paper, in hard-copy format. Respondent shall additionally submit two (2) paper copies and four (4) digital copies of the Narrative Proposal and Vendor Information documents in searchable portable document format (.pdf) on USB flash drives. Respondent must also submit two (2) electronic copies of the Cost Proposal in Excel format with active formulas on a USB flash drive. Respondent must also submit one (1) electronic copy of the HUB Subcontracting Plan on a USB flash drive.

The Original hard copies must include all required documents. Failure to submit all required documents in required format(s) may result in disqualification of the Solicitation Response without further consideration. A Respondent shall prepare a Solicitation Response that clearly and concisely represents its qualifications and capabilities under this Solicitation. Expensive bindings, colored displays, promotional materials, etc. are not necessary or desired. Respondent should focus on the instructions and requirements of the Solicitation.

HHSC, in its discretion, may reject any and all proposals or portions thereof.

### **3.6.2 Submission in Separate Parts**

Solicitation Responses must be submitted in separate parts:

- Narrative Proposal and Respondent Information
- Cost Proposal; and
- HUB Subcontracting Plan

Paper documents (i.e., the original and all hard copies) must be separated by binding or separate packaging. Electronic submissions must be separated by electronic medium used for submission (i.e., USB flash drive).

The entire Solicitation Response – including the paper documents and electronic copies – must then be submitted in one (1) package to HHSC at the address listed in Section 3.7.3.

### **3.6.3 Page Limit and Supporting Documentation**

The Narrative Proposal should not exceed seventy-five (75) pages in length, not including appendices or attachments, and should be formatted as follows: 8 ½" x 11" paper, 12 pitch font size, and single-sided. If complete responses cannot be provided without referencing supporting documentation, such documentation must be provided with the Solicitation Response, with specific reference made to the tab, page, section, and/or paragraph where the supporting information can be found.

### **3.6.4 Discrepancies**

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

### **3.6.5 Exceptions to the RFP**

HHSC will more favorably evaluate responses that offer no or few exceptions, reservations, or limitations to the terms and conditions of the Solicitation.

Respondents are highly encouraged, in lieu of including exceptions in their Solicitation Responses, to address all issues that might be advanced by way of exception by submitting such issues pursuant to Section 3.5.4. Any exception included in a Solicitation Response may result in a Respondent not being awarded a contract. If a Respondent includes exceptions in its Solicitation Response, Respondent is required to use the Exceptions and Assumptions Form included as **Exhibit G** to this Solicitation and provide all information

requested on the form (Solicitation Section Number, Solicitation Section Title, Language to which Exception is Taken, Proposed Language, and Statement as to whether or not, by indicating only "yes" or "no," Respondent still wants to be considered for a contract award if the exception is denied). Any exception that does not provide all required information without qualification in the format set forth in **Exhibit G** may be rejected without consideration.

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

A Solicitation Response should be responsive to the Solicitation as worded, not with any assumption that any or all terms, conditions, or provisions of the Solicitation will be negotiated. Furthermore, all Solicitation Responses constitute binding offers. **Any Solicitation Response to this Solicitation that includes any type of disclaimer or other statement indicating that the response does not constitute a binding offer may be disqualified.**

### **3.6.6 Assumptions**

Respondent must identify on the Exceptions and Assumptions Form included as **Exhibit G** any business, economic, legal, programmatic, or practical assumptions that underlie the Respondent's response to the Solicitation. Note that responses for Narrative Proposal and Cost Proposal must be submitted on two, separate forms, adhering to instructions in Section 3.6.2. HHSC reserves the right to accept or reject any assumptions. All assumptions not expressly identified and incorporated into any Contract resulting from this RFP are deemed rejected by HHSC.

## **3.7 SOLICITATION RESPONSE SUBMISSION AND DELIVERY**

### **3.7.1 Delivery Deadline**

Solicitation Responses must be received at the delivery address in Section 3.7.3 time-stamped by HHSC no later than the date and time specified in Section 3.1.

### **3.7.2 Labeling**

Solicitation Responses shall be placed in a sealed box and clearly labeled as follows:

RFP No.: 529-17-0089  
RFP Name: TIERS IV&V Services  
RFP Due Date: May 15, 2017  
FOR: IV&V Services

HHSC will not be held responsible for any Solicitation Response that is mishandled prior to receipt by HHSC. It is Respondent's responsibility to mark appropriately and deliver the Solicitation Response to HHSC by the specified date and time.

### 3.7.3 Delivery Address

Respondent must deliver Solicitation Responses by one of the methods below. Solicitation Responses submitted by any other method (e.g. facsimile, telephone, email) will NOT be considered.

U.S. Postal Service	Overnight/Express Mail	Hand Delivery
HHSC Procurement and Contracting Services (PCS) Bid Room Attn: John Stewart, CTPM, Project Manager 1100 W 49 <sup>th</sup> St., Mail Code: 2020 Service Building (Building S) Austin, TX 78756		

**Note:** All Solicitation Responses become the property of HHSC after submission and will not be returned to Respondent.

### 3.7.4 Alterations, Modifications, and Withdrawals

Prior to the Solicitation submission deadline, a Respondent may: (1) withdraw its Solicitation Response by submitting a written request to the Point of Contact identified in Section 3.5.1; or (2) modify its Solicitation Response by submitting a written amendment to the Point of Contact identified in Section 3.5.1. HHSC may request Solicitation Response Modifications at any time.

## **ARTICLE IV. SOLICITATION RESPONSE EVALUATION AND AWARD PROCESS**

### 4.1 EVALUATION CRITERIA

#### 4.1.1 Conformance with State Law

Solicitation Responses shall be evaluated in accordance with applicable federal and state law. HHSC shall not be obligated to accept the lowest priced Solicitation Response, but shall make an award to the Respondent that provides the best value to the State of Texas.

#### 4.1.2 Minimum Qualifications

Respondents must meet the minimum qualifications listed below. Furthermore, Solicitation Responses that appear unrealistic in terms of technical commitment, that show a lack of technical competence, or that indicate a failure to comprehend the risk and complexity of a potential contract may be rejected, in the sole discretion of HHSC.

#### **Pass/Fail Criteria**

HHSC will review the following criteria on a Pass/Fail basis as follows:

- DUNS Number and report is a Pass/Fail review conducted by HHS Finance (See Section 6.7.1)

- Compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions:
  - ◆ A score of less than 90% in the Texas Comptroller of Public Account's (CPA)'s Vendor Performance System;
  - ◆ Currently under a Corrective Action Plan through the CPA, having repeated negative Vendor Performance Reports,
  - ◆ Having purchase orders that have been cancelled in the previous 12 months for non-performance (including but not limited to late delivery, etc.).
- Compliance with completion and signing of HUB Subcontracting Plan, if applicable, is a Pass/Fail review conducted by the HUB office (See Section 6.8).

#### **4.1.3 Weighted Evaluation Criteria**

The criteria and weight to be used in determining the best value for the State of Texas for the Respondent IV&V Services is as follows:

- Service Provider Experience 25%: The Respondent's corporate background as it relates to similar IV&V projects for IT in a State or corporate environment, with an eye for experience demonstrating comparable size, complexity and industry
- Qualifications 30%: The Respondent's understanding of the goals and objectives for this RFP; and proposed resource compliance with the Respondent Minimum Qualifications for each role
- Acceptance of Requirements, Terms, and Conditions of the Solicitation 15%
- Cost 30%: The reasonableness of Respondent's proposed pricing

#### **4.1.4 Other Information**

HHSC may contact references provided in response to this Solicitation, contact Respondent's clients, or solicit information from any available source, including the Comptroller's Vendor Performance Tracking System.

## **4.2 INITIAL COMPLIANCE SCREENING**

HHSC will perform an initial screening of all Solicitation Responses received. Unsigned Solicitation Responses, and Solicitation Responses that do not meet Section 4.1.2 above and/or do not include all required forms and information may be subject to rejection without further evaluation.

## **4.3 COMPETITIVE RANGE AND BEST AND FINAL OFFER**

HHSC may determine that certain Solicitation 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 in the competitive range. If HHSC elects to limit award consideration to a competitive range, the competitive range will consist of the Solicitation Responses that receive the highest or most satisfactory ratings, based on the published evaluation criteria and procedures governing this procurement. HHSC, in the interest of administrative efficiency, may place reasonable limits on the number of Solicitation Responses that will be included in the competitive range.



HHSC may, at its discretion request that all Respondent(s) in the competitive range provide a BAFO. A request for a BAFO from HHSC does not guarantee an award or further negotiations.

#### **4.4 ORAL PRESENTATIONS AND SITE VISITS**

Upon determination, if any, of a competitive range, HHSC may require an oral presentation from all Respondents in that range. Respondents in the competitive range will be provided with advance notice of any such oral presentation and are responsible for their own presentation equipment. Failure to participate in the requested presentation may eliminate a Respondent from further consideration. HHSC is not responsible for any costs incurred by the Respondent in preparation for any oral presentation.

HHSC may require site visits from all Respondents in the competitive range. HHSC will notify selected Respondents of the time and location of site visits. Failure to permit or participate in the requested site visit may eliminate a Respondent from further consideration. HHSC is not responsible for any costs incurred by the Respondent in preparation for any site visit.

#### **4.5 QUESTIONS OR REQUESTS FOR CLARIFICATION BY HHSC**

HHSC reserves the right to ask questions or request clarification from any Respondent at any time during the Solicitation process, including during Oral Presentations, or during the BAFO process.

### **ARTICLE V. NARRATIVE PROPOSAL**

#### **5.1 NARRATIVE PROPOSAL**

##### **5.1.1 Executive Summary**

Provide a high-level overview of the Respondent's approach to meeting the RFP's business activities and requirements. The summary must demonstrate an understanding of HHSC's goals and objectives for this procurement.

##### **5.1.2 Project Work Plan**

Respondent must provide a proposed Project Work Plan to describe their proposed processes and methodologies for providing all components of the Statement of Work described in Section 2.1, including the Respondent's approach to meeting the Project Schedule defined by the Contract Artifacts requested and Contract Term. The proposed Project Work Plan should fully address areas requested for the IV&V Plan in Section 2.1.7.

The Work Plan should begin with the Contract target commencement date and cover the initial Contract Term, and Option years, and Optional Services. It should include:

- A detailed project schedule, which addresses the proposed project resources to support the Service Areas in Section 2.1.3.B.
- Proposed IV&V Team structure, which identifies the proposed project resources by Role/Service Area they will support, and FTE(s) planned to support each Service Area, and a description of each resource's qualifications and relevant experience for the identified service.



- Start and stop dates for each activity.
- Submission of Work and Contract Artifacts identified in the RFP.
- Date assumptions (e.g., contract start date).

### 5.1.3 Value-Added Benefits

Describe any service, methods, measures, or work products that are not required by this Solicitation that the Respondent proposes to provide at no additional cost to HHSC. Respondents are not required to propose value-added benefits, but inclusion of such benefits may result in a more favorable evaluation.

### 5.1.4 Staffing Profile

Respondent must provide a staffing profile and resumes for all staff that will be responsible for the performance of the services requested under this Solicitation. The proposed staff should be aligned with the IV&V Service Areas described in Section 2.1.3.B, and should also include the IV&V Contract Manager. NOTE: If a resource is to provide services in multiple Service Areas, Respondent does not have to provide multiple resumes for that resource, but, must identify each proposed Service Area they would support.

HHSC expects that the staff specified in a Respondent's response to this RFP be the persons that are provided to perform the services of this RFP, and in the case of the role defined as Key Personnel, HHSC requires the proposed staff be the one provided.

Respondent must provide the resumes of each person assigned to the effort. Each resume must include:

- Professional employment history, with dates
- Education (degrees received and major studies)
- Knowledge of and expertise with the subject matter of the Statement of Work in this RFP (IV&V and IT)
- Relevant experience in IV&V projects, software development, Agile environment, toolsets, Project Management, and other areas specific to their role
- Relevant state government experience
- Past performances
- Professional certifications

## **ARTICLE VI. REQUIRED RESPONDENT INFORMATION**

### **6.1 COMPANY INFORMATION**

Respondent must provide satisfactory evidence of its ability to manage and coordinate the types of activities described in this Solicitation and to produce the specified goods or services on time. As a part of the Solicitation Response requested in Article III, Respondent must provide the following information:

### 6.1.1 Company Narrative

Provide a detailed narrative explaining why Respondent is qualified to provide the services enumerated in Article II, focusing on its company's key strengths and competitive advantages.

### 6.1.2 Company Profile

Provide a company profile to include:

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

Note: If Respondent is an out-of-state company, a Certificate of Authority from the Secretary of State to do business in Texas must be provided as well.

## 6.2 REFERENCES

Respondent shall provide a minimum of one (1) reference each for at least three (3) contracts or projects in which services similar to those described in the RFP were performed. HHSC prefers references to projects or contracts that were performed for state and/or local government, within the last five (5) years. Respondent must verify current contracts. Information provided shall include:

- Client name;
- Contract/Project Description;
- Total Dollar amount of contract/project;
- Personnel assigned to the referenced contract/project that will be designated for work under this Solicitation; and

- A statement as to whether Respondent's role was as primary or sub-contractor;
- Client contract/project manager name, telephone number, and email address.

### 6.3 MAJOR SUBCONTRACTOR INFORMATION

Respondent must identify any major subcontractors whom Respondent intends to utilize in performing fifteen percent (15%) or more of any Contract. Respondent must indicate whether or not Respondent holds any financial interest in any major subcontractor. 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 contract awarded pursuant to this Solicitation.

### 6.4 LITIGATION AND CONTRACT HISTORY

Respondent must include in its Solicitation Response a complete disclosure of any alleged or significant contractual failures. In addition, Respondent must disclose any civil or criminal litigation or investigation pending over the last five (5) years that involves Respondent or in which Respondent has been judged guilty or liable. Failure to comply with the terms of this provision may disqualify Respondent. Solicitation 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.

### 6.5 CONFLICTS

Respondent must certify that it does not have any personal or business interests that present a conflict of interest with respect to the RFP and any resulting contract. Additionally, if applicable, the Respondent must disclose all potential conflicts of interest. The Respondent must 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. HHSC will determine to what extent, if any, a potential conflict of interest can be mitigated and managed during the term of the contract. Failure to identify actual and potential conflicts of interest may result in disqualification of a Solicitation Response or termination of a contract.

Please include any activities of affiliated or parent organizations and individuals who may be assigned to this Contract, if any.

**Note: Respondents currently performing any other services associated with the TIERS Program, including providing resources under a DIR ITSAC agreement, are ineligible for award of IV&V services described in this solicitation.**

### 6.6 AFFIRMATIONS AND CERTIFICATIONS

Respondent must complete and return all of the following listed forms:

- **Exhibit A**, Affirmations and Solicitation Acceptance
- **Exhibit A-1**, Federal Assurances - Non-Construction Programs
- **Exhibit A-2**, Federal Lobbying Certification

## 6.7 FINANCIAL REPORT

Respondents with a Dun and Bradstreet number must include a Comprehensive Insight Plus Report, Business Information Report or Credit eValuator Report with their Solicitation Response.

## 6.8 HUB SUBCONTRACTING PLAN

Submit one (1) original hard copy of the HUB Subcontracting Plan (HSP), in accordance with the RFP Sections 3.6.1 and 3.6.2, and labeled: "HUB Subcontracting Plan (HSP)," and include all supporting documentation in accordance with **Exhibit H** and the HSP.

# **ARTICLE VII. COST PROPOSAL**

## 7.1 COST PROPOSAL

As noted above, cost information must not be included with the Respondent Information and Narrative proposal, or HUB Subcontracting Plan. Respondent must submit a cost proposal for the services listed in Article II, Statement of Work, by completing the IV&V Services Rate Schedule (RFP **Attachment D**) and the IV&V Contract Artifact Cost Schedule (RFP **Attachment E**). Except for hardware, software, tools, supplies and other personnel or support to be provided by HHSC under Section 2.1.5, all Contractor costs must be included in the IV&V Contract Artifact Cost Schedule and RFP IV&V Services Rate Schedule.

The RFP Cost Proposal should corroborate the Respondent's response to the RFP Narrative Proposal, and describe how the Respondent plans to complete the work requested. Respondent's Cost Proposal will include a Base Contract cost, Option Year costs, and Optional Services costs, as well as a roll up of total planned costs for the Term of the Contract. Recall that the Term is two (2) years for the Base services, and up to two (2), two-year Options.

For the IV&V Contract Artifact Cost Schedule, Respondent must provide Contract Artifact pricing for the proposed IV&V Team that would support IV&V activities as defined in Section 2.1.3 Services Areas, along with Contract Artifact prices for the Optional Services.

Respondent's IV&V Services Rate Schedule must, where applicable, conform to the current Category and Level identified with the Texas Department of Information Resources (DIR), IT Services Contract (ITSAC), Not-To-Exceed Pricing Final document for similar or substantially similar services. It can be found here: <http://dir.texas.gov/> using the search feature for "ITSAC Not to Exceed."

Cost Proposal must include any business, economic, legal, programmatic, or practical assumptions that underlie the Cost Proposal offered using the Exemptions and Assumptions form provided as **Exhibit G**, and provided separate from the form submitted related to the Narrative proposal response to the RFP. HHSC reserves the right to accept or reject any assumptions. All assumptions not expressly identified and incorporated into the contract resulting from this RFP are deemed rejected by HHSC.

Respondent must submit the Cost Proposal response in a separate, sealed package, labeled as per Section 3.7.2, and additionally labeled, "Cost Proposal."

## **ARTICLE VIII. GENERAL RFP TERMS**

### **8.1 GENERAL RFP TERMS**

#### **8.1.1 Addenda**

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

#### **8.1.2 Offer Period**

Solicitation Responses shall be binding for a period of sixty (60) days after the due date for submission of Solicitation Responses. Each Respondent may extend the time for which its Solicitation Response will be honored. Upon Contract execution, prices agreed upon by the Respondent(s) are an irrevocable offer for the term of the contract and any contract renewals or extension(s). No other costs, rates, or fees shall be payable to the Respondent unless expressly agreed upon in writing by HHSC.

#### **8.1.3 Costs Incurred**

Respondents understand that issuance of this Solicitation in no way constitutes a commitment by HHSC to award a contract or to pay any costs incurred by a Respondent in the preparation of a response to this Solicitation. HHSC is not liable for any costs incurred by a Respondent prior to issuance of or entering into a formal agreement, contract, or purchase order. Costs of developing Solicitation Responses, preparing for or participating in oral presentations and site visits, or any other similar expenses incurred by a Respondent are entirely the responsibility of the Respondent, and will not be reimbursed in any manner by the State of Texas.

#### **8.1.4 Contract Responsibility**

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

#### **8.1.5 Public Information Act**

Solicitation Responses are subject to the Texas Public Information Act (PIA), Texas Government Code Chapter 552, and may be disclosed to the public upon request. Subject to the PIA, certain information may be protected from public release. Respondents who wish to protect portions of the Solicitation Response from public disclosure should familiarize themselves with this law. Information pertaining to the Solicitation will be withheld or released only in accordance with the PIA.

### **8.2 PROTEST**

If a Respondent wishes to file a protest they may do so in accordance with the rules published by HHSC in the Texas Administrative Code.

## ARTICLE IX. SUBMISSION CHECKLIST

This checklist is provided for Respondent's convenience only and identifies documents that must be submitted with this Solicitation in order to be considered responsive. Any Solicitation Response received without these requisite documents may be deemed nonresponsive and may not be considered for contract award.

### **Original Solicitation Response Package**

The Solicitation Package must include the "Original" Solicitation Response in hard-copy consisting of three parts described in detail below, each under separate cover but packaged together and clearly labeled "Original" on each.

#### **1. Proposal and Respondent Information(Reference)**

- |   |  |       |
|---|--|-------|
| a. Narrative Proposal   | (Section 5.1)                          | _____ |
| b. Company Information  | (Section 6.1)                          | _____ |
| c. References   | (Section 6.2)                          | _____ |
| d. Major Subcontractor Information                                    | (Section 6.3)                          | _____ |
| e. Litigation and Contract History                                    | (Section 6.4)                          | _____ |
| f. Conflicts  | (Section 6.5)                          | _____ |
| g. Affirmations, and Solicitation Acceptance                          | (Section 6.6, Exhibit A)               | _____ |
| h. Federal Assurances - Non-Construction Programs                     | (Section 6.6, Exhibit A-1)             | _____ |
| i. Federal Lobbying Certification                                     | (Section 6.6, Exhibit A-2)             | _____ |
| j. Exceptions and Assumptions   | (Sections 3.6.5, 3.6.6, and Exhibit G) | _____ |
| k. Dun and Bradstreet Reports   | (Section 6.7)                          | _____ |
| l. HHS Enterprise DUA Security and Privacy Initial Inquiry (SPI) Form | (Section 2.3, Exhibit F)               | _____ |
| <b>2. Cost Proposal</b>   | (Section 7)                            | _____ |
| <b>3. HUB Subcontracting Plan</b>                                     | (Section 6.8, Exhibit H)               | _____ |

#### **Copies to be provided (all clearly labeled as "copy")**

  2 & 4   2 Paper copies and 4 Electronic copies of **Narrative Proposal and Respondent Information** in searchable .pdf format on individual USB Drives.

  2   Electronic copies of **Cost Proposal** in Excel Format with active formulas on a USB Drive

  1   Electronic copy **HUB Subcontracting Plan** on a USB Drive

**NOTE:** Exhibits B through E are included in the RFP for Respondent review and consideration, but are not required as part of the Proposal Response. They will be required, if HHSC elects, as part of Contract execution.

**ATTACHMENT A: TIERS, EST APPLICATIONS AND BUSINESS FUNCTIONS**

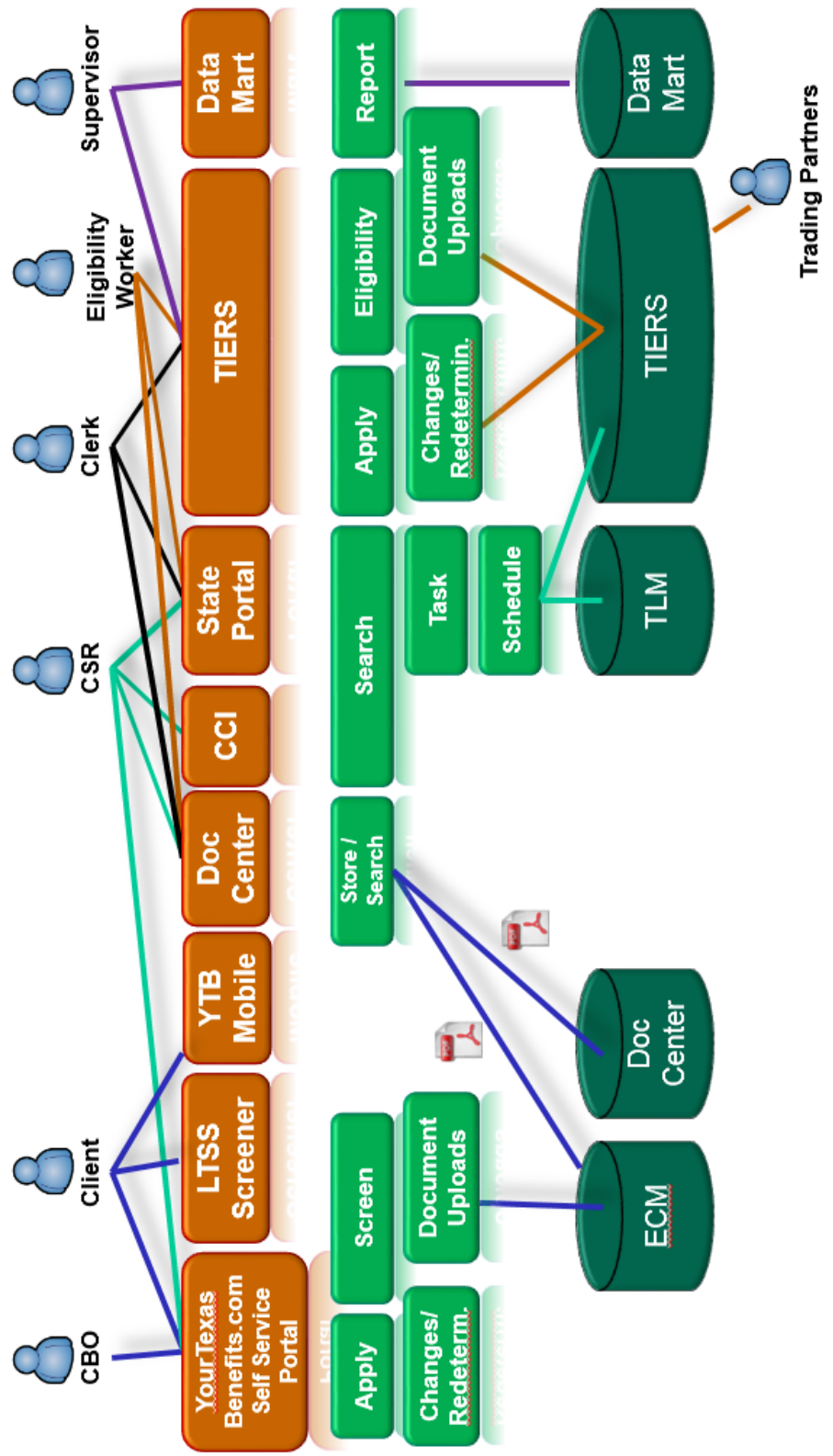
Name	Acronym	Business Function
Texas Integrated Eligibility Redesign Systems	TIERS	The TIERS Core component (comprising TIERS Online, TIERS Batch, LUW Web Services, and TIERS database) includes a central data repository to collect eligibility information, a web interface, interfaces with other systems, decision table logic to process information and determine eligibility, and client notice generation.
Your Texas Benefits (Self Service Portal)	YourTexas-Benefits.com (SSP)	The Your Texas Benefits online portal is available to clients 24 hours a day, 7 days a week. Applicants can use this website to check the status of documents submitted to HHSC, submit applications, submit redeterminations, report changes, check the status of their benefits, and check future appointments.
Your Texas Benefits Mobile Application	Mobile App	A mobile application for people in Texas who have applied for or get SNAP food benefits, health-care benefits such as Medicaid and CHIP, or TANF. The mobile applications are available on the iOS and Android platforms. The application supports many functions including: create a new account, upload supporting documents, view notices and reminders, submit change requests, locate nearby HHSC offices, check the status and amount of benefits, and receive renewal notifications.
Long-Term Services and Supports	LTSS Apps	Includes two applications, a pre-screener and referral app that supports Texans with determining if they qualify for support services and should complete a full application, and referral based on the screener app outcome.
State Portal/ Service Delivery Center	STP/ SDC	A single sign-on application where HHSC staff initiate tasks or work assignments, launch TIERS, view images and schedules, record complaints/ requests for fair hearings and perform other activities related to eligibility determination.
Scheduler		A State Portal application that schedules and reschedules appointments for application, expedite, or redetermination interviews.
Task List Manager	TLM	A State Portal application that manages task workflow for state and vendor eligibility workers. Staff select tasks based on workload availability or assignment. The TLM Global Queue and TLM Personal Queue are



Name	Acronym	Business Function
		used to receive and monitor activities and due dates. The user role determines the tasks staff can view.
Call Center Inquiry	CCI	The Call Center Inquiry application assists customer service representatives in rapidly collecting TIERS information on a specific client or case.
Document Center	Doc Center	Document Center is an HHSC-owned application developed to support the vendor staff involved in pre-processing of documents received through channels: Mail, Fax, SSP, and Call Center. Pre-processing of documents includes but not limited to: classification, association to a TIERS case, and routing of a document to state staff for further processing
DataMart Reports	DataMart	DataMart is a reporting system that pulls data from TIERS, TLM, STP and SSP. It then presents a set of operational reports to let TIERS users and management know the status of various activities in the system.
Enterprise Content Manager	ECM	The TIERS Enterprise Content Manager provides the content and document management system for TIERS. All images of case and client related documents including incoming mail, incoming fax, and outgoing correspondence, notices and forms from all eligibility systems are stored and managed in a single system of record.
Community Based Organizations Portal	CBO Portal	<p>In an effort to make it easier and more efficient for Texans to apply for and manage their state benefits, the Texas Health and Human Services Commission (HHSC) is partnering with community-based organizations to help people learn how they can get the most out of the HHSC's benefits application and management website, YourTexasBenefits.com. The organizations that become Community Partners represent a wide range of social services, including public entities, non-profit organizations, and faith-based groups.</p> <p>The CBO Portal is an enhanced version of the Self Service Portal that provides additional functionality for CBO staff. This enhanced functionality is enabled based on CBO login to the Self Service Portal (SSP), also known as YourTexasBenefits.com.</p>



**ATTACHMENT B: TIERS APPLICATIONS, BUSINESS PROCESSES**



## ATTACHMENT C: TIERS SYSTEM ENVIRONMENT

System Environment	Description																		
<b>System Owner</b>	<ul style="list-style-type: none"> <li>▪ The TIERS information system is owned by the State of Texas</li> </ul>																		
<b>System Operation</b>	<ul style="list-style-type: none"> <li>▪ TIERS is operated by a combination of state employees and contractors.</li> </ul>																		
<b>System Support Services</b>	<ul style="list-style-type: none"> <li>▪ Winters Data Center Operations – currently operated by Northrup Grumman (NG)</li> <li>▪ San Angelo Data Center Operations – currently operated by Atos, Northrup Grumman (NG)</li> <li>▪ Network – currently operated by Insight Networking</li> <li>▪ TIERS System Applications – currently operated by HHSC and Deloitte</li> <li>▪ Call Centers – currently operated by MAXIMUS</li> <li>▪ Public Benefits Offices – operated by HHSC</li> </ul>																		
<b>User Accounts, Account Organizations Active Users</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">User Account Type</th> <th style="text-align: center;">Organizations</th> <th style="text-align: center;">Est. Active Users</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">TIERS</td> <td style="text-align: center;">HHSC</td> <td style="text-align: center;">19,000</td> </tr> <tr> <td style="text-align: center;">State Portal</td> <td style="text-align: center;">HHSC</td> <td style="text-align: center;">16,000</td> </tr> <tr> <td style="text-align: center;">DataMart</td> <td style="text-align: center;">Deloitte, HHSC</td> <td style="text-align: center;">9,000</td> </tr> <tr> <td style="text-align: center;">CCI (Call Center Inquiry)</td> <td style="text-align: center;">MAXIMUS</td> <td style="text-align: center;">1,600</td> </tr> <tr> <td style="text-align: center;">Self-Service Portal</td> <td style="text-align: center;">Clients</td> <td style="text-align: center;">4,700,000</td> </tr> </tbody> </table>	User Account Type	Organizations	Est. Active Users	TIERS	HHSC	19,000	State Portal	HHSC	16,000	DataMart	Deloitte, HHSC	9,000	CCI (Call Center Inquiry)	MAXIMUS	1,600	Self-Service Portal	Clients	4,700,000
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Self-Service Portal	Clients	4,700,000																	
<b>Critical Processing Periods</b>	<ul style="list-style-type: none"> <li>▪ Critical processing periods vary depending on the component, but most notably for the user facing web interfaces occurs between 10:00 A.M. and 2:00 P.M.</li> <li>▪ The critical processing period for the batch process is scheduled to occur overnight from 8:30 P.M. to 7:00 A.M.</li> </ul>																		
<b>Offsite User Organizations and Types</b>	<ul style="list-style-type: none"> <li>▪ Community Based Organizations (CBO) operate at the local level to provide services and assistance to community members in need. They also assist applicants filing for benefits and authorized contracted CBOs may perform SNAP interviews. These organizations are also called Community Partners.</li> <li>▪ Call Centers provide incoming phone support for clients and interact with the information system on their behalf. The call centers are currently operated by MAXIMUS.</li> <li>▪ Public Benefits offices are located throughout the State of Texas and staffed by state employees. These offices support face-to-face interaction with clients.</li> </ul>																		

## **ATTACHMENT D: IV&V SERVICES RATE SCHEDULE**

**INSTRUCTIONS:**

Except for hardware, software, tools, supplies and other personnel or support to be provided by HHSC under Section 2.1.6, all Contractor costs must be included in the rates.

Add more rows as needed.

1 FTE: List named resource, one per line for Full Time Equivalent (FTE). FTE can be partial.

2 RFP IV&V Service Areas: IV&V Project Management, Program & Process, Application SDLC, Operations & Infrastructure, Federal Requirements. Add additional rows if more than one or partial FTE proposed per a Service Area.

3 DIR Category and Level in the Rate Schedule must, where applicable, conform to the Category and Level identified in the Texas Department of Information Resources (DIR) IT Services Contract (ITSAC), Not-To-Exceed Pricing Final document for similar or substantially similar services. It can be found here: <http://dir.texas.gov/> using the search feature for "ITSAC Not to Exceed."

Named Resource/FTE <sup>1</sup>	RFP IV&V Service Area Supported <sup>2</sup>	DIR Category/ Level <sup>3</sup>	Hourly Rate
	IV&V Project Management		
	Program & Process		
	Application SDLC		
	Operations & Infrastructure		
	Federal Requirements		

## **ATTACHMENT E: IV&V CONTRACT ARTIFACT COST SCHEDULE**

**INSTRUCTIONS:**

The YYYYMM in the Monthly Status Report Contract Artifact reflects the period of performance for the IV&V services and will be updated upon Contract execution. Respondent, please enter a Price for each Payment Item and include Contract Term/Service Total Costs. Optional Service Costs should be included in the designated table.

**TABLE 1: CONTRACT INITIAL TERM, YEARS 1 and 2**

Payment Item #	Contract Artifact ID	Price
1	Initial TIERS IV&V Plan	
2	TIERS IV&V Monthly Status Report – <YYYYMM>	
3	TIERS IV&V Monthly Status Report – <YYYYMM>	
4	TIERS IV&V Monthly Status Report – <YYYYMM>	
5	TIERS IV&V Monthly Status Report – <YYYYMM>	
6	TIERS IV&V Monthly Status Report – <YYYYMM>	
7	TIERS IV&V Monthly Status Report – <YYYYMM>	
8	TIERS IV&V Monthly Status Report – <YYYYMM>	
9	TIERS IV&V Monthly Status Report – <YYYYMM>	
10	TIERS IV&V Monthly Status Report – <YYYYMM>	
11	TIERS IV&V Monthly Status Report – <YYYYMM>	
12	TIERS IV&V Monthly Status Report – <YYYYMM>	
13	TIERS IV&V Monthly Status Report – <YYYYMM>	
14	TIERS IV&V Monthly Status Report – <YYYYMM>	
15	TIERS IV&V Monthly Status Report – <YYYYMM>	
16	TIERS IV&V Monthly Status Report – <YYYYMM>	
17	TIERS IV&V Monthly Status Report – <YYYYMM>	
18	TIERS IV&V Monthly Status Report – <YYYYMM>	
19	TIERS IV&V Monthly Status Report – <YYYYMM>	
20	TIERS IV&V Monthly Status Report – <YYYYMM>	
21	TIERS IV&V Monthly Status Report – <YYYYMM>	
22	TIERS IV&V Monthly Status Report – <YYYYMM>	
23	TIERS IV&V Monthly Status Report – <YYYYMM>	
24	TIERS IV&V Monthly Status Report – <YYYYMM>	
25	TIERS IV&V Monthly Status Report – <YYYYMM>	
<b>CONTRACT TERM TOTAL COST</b>		

**TABLE 2: CONTRACT OPTION 1, YEARS 3 and 4**

<b>Payment Item #</b>	<b>Contract Artifact ID</b>	<b>Price</b>
26	TIERS IV&V Monthly Status Report - <YYYYMM>	
27	TIERS IV&V Monthly Status Report - <YYYYMM>	
28	TIERS IV&V Monthly Status Report - <YYYYMM>	
29	TIERS IV&V Monthly Status Report - <YYYYMM>	
30	TIERS IV&V Monthly Status Report - <YYYYMM>	
31	TIERS IV&V Monthly Status Report - <YYYYMM>	
32	TIERS IV&V Monthly Status Report - <YYYYMM>	
33	TIERS IV&V Monthly Status Report - <YYYYMM>	
34	TIERS IV&V Monthly Status Report - <YYYYMM>	
35	TIERS IV&V Monthly Status Report - <YYYYMM>	
36	TIERS IV&V Monthly Status Report - <YYYYMM>	
37	TIERS IV&V Monthly Status Report - <YYYYMM>	
38	TIERS IV&V Monthly Status Report - <YYYYMM>	
39	TIERS IV&V Monthly Status Report - <YYYYMM>	
40	TIERS IV&V Monthly Status Report - <YYYYMM>	
41	TIERS IV&V Monthly Status Report - <YYYYMM>	
42	TIERS IV&V Monthly Status Report - <YYYYMM>	
43	TIERS IV&V Monthly Status Report - <YYYYMM>	
44	TIERS IV&V Monthly Status Report - <YYYYMM>	
45	TIERS IV&V Monthly Status Report - <YYYYMM>	
46	TIERS IV&V Monthly Status Report - <YYYYMM>	
47	TIERS IV&V Monthly Status Report - <YYYYMM>	
48	TIERS IV&V Monthly Status Report - <YYYYMM>	
49	TIERS IV&V Monthly Status Report - <YYYYMM>	
<b>CONTRACT TERM TOTAL COST</b>		

**TABLE 3: CONTRACT OPTION 2, YEARS 5 and 6**

<b>Payment Item #</b>	<b>Contract Artifact ID</b>	<b>Price</b>
50	TIERS IV&V Monthly Status Report - <YYYYMM>	
51	TIERS IV&V Monthly Status Report - <YYYYMM>	
52	TIERS IV&V Monthly Status Report - <YYYYMM>	
53	TIERS IV&V Monthly Status Report - <YYYYMM>	
54	TIERS IV&V Monthly Status Report - <YYYYMM>	
55	TIERS IV&V Monthly Status Report - <YYYYMM>	
56	TIERS IV&V Monthly Status Report - <YYYYMM>	

Payment Item #	Contract Artifact ID	Price
57	TIERS IV&V Monthly Status Report - <YYYYMM>	
58	TIERS IV&V Monthly Status Report - <YYYYMM>	
59	TIERS IV&V Monthly Status Report - <YYYYMM>	
60	TIERS IV&V Monthly Status Report - <YYYYMM>	
61	TIERS IV&V Monthly Status Report - <YYYYMM>	
62	TIERS IV&V Monthly Status Report - <YYYYMM>	
63	TIERS IV&V Monthly Status Report - <YYYYMM>	
64	TIERS IV&V Monthly Status Report - <YYYYMM>	
65	TIERS IV&V Monthly Status Report - <YYYYMM>	
66	TIERS IV&V Monthly Status Report - <YYYYMM>	
67	TIERS IV&V Monthly Status Report - <YYYYMM>	
68	TIERS IV&V Monthly Status Report - <YYYYMM>	
69	TIERS IV&V Monthly Status Report - <YYYYMM>	
70	TIERS IV&V Monthly Status Report - <YYYYMM>	
71	TIERS IV&V Monthly Status Report - <YYYYMM>	
72	TIERS IV&V Monthly Status Report - <YYYYMM>	
73	TIERS IV&V Monthly Status Report - <YYYYMM>	
<b>CONTRACT TERM TOTAL COST</b>		

**TABLE 4: CONTRACT OPTIONAL SERVICES**

Payment Item #	Contract Artifact ID	Price
74	Transition Report	
75	Turnover Report	
<b>OPTIONAL SERVICES TOTAL COST</b>		

**TABLE 5: PLANNED TOTAL CONTRACT COST**

RFP Term/Service	Total Cost
Initial Term: Years 1 & 2	
Option 1: Years 3 & 4	
Option 2: Years 5 & 6	
Optional Transition Services	
Optional Turnover Services	
<b>CONTRACT TERM TOTAL COST</b>	

## **ATTACHMENT F: IT-SSA AGILE PROCESS GUIDE FOR VENDORS**

Document will be on the ESD as a separate bid packet.

## **ATTACHMENT G: HHS EIS INFORMATION SECURITY POLICY**

### **Includes:**

- HHS Enterprise Information Security Acceptable Use Policy (EIS-AUP) v1, revised September 24, 2015
- HHS Acceptable Use Agreement (AUA)
- HHS Enterprise Information Security Policy (EIS-Policy) revised August 11, 2015

**Document will be on the ESBD as a separate bid packet.**



## **EXHIBIT A: AFFIRMATIONS AND SOLICITATION ACCEPTANCE**

### **AFFIRMATIONS AND SOLICITATION ACCEPTANCE**

Respondent affirms, without exception, as follows:

1. Respondent represents and warrants that all certifications, representations, warranties, and other provisions in this Affirmations and Solicitation Acceptance apply to Respondent and all of Respondent's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Solicitation or any contract resulting from this Solicitation.
2. Respondent represents and warrants that all statements and information provided to HHSC are current, complete, and accurate. This includes all statements and information in this Solicitation Response.
3. Respondent acknowledges that its Solicitation Response and subsequent documents submitted are subject to the Texas Public Information Act.
4. Respondent acknowledges its obligation to specifically identify information it contends to be confidential or proprietary and, if Respondent designated substantial portions of its Solicitation Response or its entire Solicitation Response as confidential or proprietary, the Solicitation Response is subject to being disqualified.
5. Respondent's Solicitation Response will remain a firm and binding offer for 240 days from the date the Solicitation Response is due.
6. Respondent accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation. Respondent agrees that all exceptions to the Solicitation are rejected unless expressly accepted by HHSC.
7. Respondent agrees that HHSC has the right to use, produce, and distribute copies of and to disclose to HHSC employees, agents, and contractors and other governmental entities all or part of Respondent's Solicitation Response as HHSC deems necessary to complete the procurement process or comply with state or federal laws.
8. Respondent generally releases from liability and waives all claims against any party providing information about the Respondent at the request of HHSC.
9. Respondent acknowledges all addenda and amendments to the Solicitation.
10. Respondent represents and warrants that if a Texas address is shown as the address of Respondent, Respondent qualifies as a Texas Bidder as defined by 34 Texas Administrative Code §20.32(68).
11. Respondent represents and warrants that it qualifies for all preferences claimed under 34 Texas Administrative Code §20.38 or Chapter 2155, Subchapter H of the Texas Government Code as indicated below (check applicable boxes):
  - Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
  - Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran

- Agricultural products grown in Texas
- Agricultural products offered by a Texas bidder
- Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
- Texas Vegetation Native to the Region
- USA produced supplies, materials or equipment
- Products of persons with mental or physical disabilities
- Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- Energy Efficient Products
- Rubberized asphalt paving material
- Recycled motor oil and lubricants
- Products produced at facilities located on formerly contaminated property
- Products and services from economically depressed or blighted areas
- Vendors that meet or exceed air quality standards
- Recycled or Reused Computer Equipment of Other Manufacturers
- Foods of Higher Nutritional Value
- Commercial production company or advertising agency located in Texas

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

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

14. Under Section 2155.006, Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

15. Under Section 2261.053, Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

16. Pursuant to Section 231.006(c), Texas Family Code (relating to delinquent child support), identify below the name and social security number (SSN) of each individual, sole proprietor, partner, shareholder, and owner with an ownership interest of at least 25 percent (25%) of the business entity submitting this Solicitation Response:

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

**FEDERAL PRIVACY ACT NOTICE:** Disclosure of requested Social Security Numbers (SSNs) is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSNs will be used to identify persons that may owe child support. The SSNs will be kept confidential to the fullest extent permitted by law. Failure by a Respondent to provide the required SSNs may result in disqualification of the Respondent's Solicitation Response.

17. Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
18. Respondent certifies that: (a) the entity executing this Solicitation Response; (b) its principals; (c) its subcontractors; and (d) any personnel designated to perform services related to any contract resulting from this Solicitation are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal Department or Agency. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's Subcontracts if payment in whole or in part is from federal funds.
19. Respondent certifies that it, its principals, its subcontractors, and any personnel designated to perform services related to any contract resulting from this Solicitation are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity.
20. Respondent certifies it is in compliance with all State of Texas statutes and rules relating to procurement; and that (a) the entity executing this Solicitation Response; (b) its principals; (c) its subcontractors; and (d) any personnel designated to perform services related to any contract resulting from this Solicitation are not listed on the federal government's terrorism watch list described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov/portal/public/SAM/>, which Respondent may review in making this certification.
21. In accordance with Texas Government Code Section 669.003 (relating to contracting with the executive head of a state agency), Respondent certifies that it (1) is not the executive head any HHS Agency; (2) was not at any time during the past four years the executive head of any HHS Agency; and (3) does not employ a current or former executive head of any HHS Agency.
22. Respondent represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
23. Respondent represents and warrants that payments to Respondent and Respondent's receipt of appropriated or other funds under any contract resulting from this Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of

- the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).
24. Respondent represents and warrants that it will comply with Texas Government Code Section 2155.4441, relating to the purchase of products produced in the State of Texas under service contracts.
  25. Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), Respondent will not allow any former employee of an HHS Agency to perform services under any contract resulting from this Solicitation during the twelve (12) month period immediately following the employee's last date of employment an HHS Agency.
  26. Respondent acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of an HHS Agency who during the period of state service or employment participated on behalf of an HHS Agency in a procurement or contract negotiation involving Respondent may not accept employment from respondent before the second anniversary of the date the officer's or employee's service or employment with an HHS Agency ceased.
  27. Respondent represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to HHSC under this Solicitation and any resulting contract and that Respondent's provision of the requested goods and/or services under this Solicitation and any resulting contract would not reasonably create an appearance of impropriety
  28. Respondent understands that HHSC does not tolerate any type of fraud. The agencies' policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Respondent agrees to comply with all applicable laws, rules, regulations, and HHSC policies regarding fraud including, but not limited to, HHS Circular C-027.
  29. Respondent represents and warrants that it has not violated state or federal antitrust laws and has not communicated its Solicitation response directly or indirectly to any competitor or any other person engaged in such line of business. Respondent hereby assigns to HHSC any claims for overcharges associated with any contract resulting from this Solicitation under 15 U.S.C. § 1, et seq., and Texas Business and Commerce Code § 15.01, et seq.
  30. Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Respondent or any of the individuals or entities included numbered paragraph 1 of this Affirmations and Solicitation Acceptance within the five (5) calendar years immediately preceding the submission of this Solicitation response that would or could impair Respondent's performance under any contract resulting from this Solicitation, relate to the contracted or similar goods or services, or otherwise be relevant to HHSCs consideration of entering into a

contract. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has provided to HHSC a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Respondent's performance under a contract awarded as a result of this solicitation, relate to the contracted or similar goods or services, or otherwise be relevant to the HHSCs consideration of entering into a contract. In addition, Respondent represents and warrants that, if awarded a contract as a result of this Solicitation, Respondent shall notify HHSC in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update HHSC shall constitute breach of contract and may result in immediate contract termination.

31. Respondent understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Respondent is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of any contract resulting from this Solicitation.
32. Respondent represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statues, codes, and other laws that pertain to any contract resulting from this Solicitation.
33. Respondent represents and warrants that the individual signing this Solicitation response is authorized to sign on behalf of Respondent and to bind Respondent.

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

Legal Name of Respondent: \_\_\_\_\_

_____ Signature of Authorized Representative	_____ Date Signed
_____ Printed Name and Title of Authorized Representative	_____ Phone Number
_____ Federal Employer Identification Number	_____ Fax Number
_____ DUNS Number	_____ Email Address
_____ Physical Street Address	_____ City, State, Zip Code
_____ Mailing Address, if different	_____ City, State, Zip Code

## EXHIBIT A-1: FEDERAL ASSURANCES

### FEDERAL ASSURANCES - NONCONSTRUCTION PROGRAMS OMB Approval No. 0348-0040

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.

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.

<b>SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL</b>	<b>TITLE</b>
<b>APPLICANT ORGANIZATION</b>	<b>DATE SUBMITTED</b>



## **EXHIBIT A-2: FEDERAL CERTIFICATION**

### **FEDERAL 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**

**PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE**

**Prefix:**

**First Name:**

**Middle Name:**

**Last Name:**

**Suffix:**

**Title:**

**SIGNATURE:**

**DATE:**

## **EXHIBIT B: PROPOSED SIGNATURE DOCUMENT**

### **SAMPLE**

SIGNATURE DOCUMENT FOR

[SYSTEM AGENCY] CONTRACT NO. \_\_\_\_\_

**(THIS DOCUMENT REPRESENTS A SAMPLE SIGNATURE DOCUMENT WITH PROPOSED ATTACHMENTS, EXHIBITS FOR RFP BIDDER INFORMATION, HOWEVER, ACTUAL CONTENT, INCLUDING ATTACHMENTS, WILL BE DETERMINED AND FINALIZED UPON CONTRACT AWARD.)**

### **I. PURPOSE**

The Health and Human Services Commission (“System Agency” or "HHSC"), an administrative agency of the State of Texas and having its principal office at 4900 N. Lamar Blvd, and \_\_\_\_\_ (“Contractor”), having its principal office at \_\_\_\_\_ (each a “Party” and collectively “the Parties”) enter into the following contract for Kofax Product Solutions Support and Services (the “Contract”).

### **II. LEGAL AUTHORITY**

This Contract is authorized by and in compliance with the provisions of [Insert specific legal authority].

### **III. DURATION**

The Contract is effective on [Month spelled out xx, xxxx or the signature date of the latter of the Parties to sign this agreement] and terminates on Month spelled out/xx/xxxx, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. System Agency, at its own discretion, may extend this Contract for \*\*\* (\*), subject to terms and conditions mutually agreeable to the Parties.

### **IV. BUDGET**

The total amount of this Contract will not exceed [Total contract amount (\$ 00.00)], unless the parties agree to an Amendment increasing the not to exceed amount stated. All expenditures under the Contract will be in accordance with **Exhibit B, Rate Schedule and Cost Schedule**.

**V. CONTRACT REPRESENTATIVES**

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

**System Agency**

Health and Human Services Commission  
4900 N. Lamar Blvd  
Austin, TX 78751  
Attention:\*

**Contractor**

\*Contractor Name\*  
\*Address\*  
\*City, State ZIP\*  
Attention: \*

**VI. LEGAL NOTICES**

Any legal notice required under this Contract shall be deemed delivered when deposited by the System Agency either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

**System Agency**

Health and Human Services Commission  
4900 N. Lamar Blvd Austin, TX 78751  
Attention:\*

With a copy to:

Health and Human Services Commission  
4900 N. Lamar Blvd  
Austin, TX 78751  
Attention: Karen Ray, Chief Counsel

**Contractor**

\*Contractor Name\*  
\*Address\*  
\*City, State ZIP\*  
Attention: \*

Legal notice given by Contractor shall be deemed effective when received by the System Agency. Either Party may change its address for notice by written notice to the other Party.

**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR SYSTEM AGENCY CONTRACT NO. \*\*\***

**TEXAS HEALTH AND  
HUMAN SERVICES**

**CONTRACTOR\*\*\***

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE OF EXECUTION

\_\_\_\_\_  
DATE OF EXECUTION

**THE FOLLOWING \*SAMPLE\* EXHIBITS TO HHSC CONTRACT NO. \*\*\* ARE  
HEREBY ATTACHED AND INCORPORATED BY REFERENCE:**

- EXHIBIT A – Statement of Work, including all attachments referred to therein**
- EXHIBIT B – Rate Schedule and Cost Schedule**
- EXHIBIT C – HHSC Special Conditions**
- EXHIBIT D – HHSC Uniform Terms and Conditions**
- EXHIBIT E – General Affirmations**
- EXHIBIT F – Federal Affirmations, Assurance, and Certification**
- EXHIBIT G – HHS Data Use Agreement**
- EXHIBIT H – Contractor's Solicitation Response**

**EXHIBIT C: HHSC UNIFORM TERMS & CONDITIONS**



**TEXAS**  
**Health and Human  
Services**

**Health and Human Services Commission  
HHSC Uniform Terms and Conditions - Vendor  
Version 2.13**

Published and Effective November 15, 2016

Responsible Office: Chief Counsel

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## ARTICLE I. DEFINITIONS AND INTERPRETATIONS

### 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 hereto, which documents changes to the Contract other than those permitted by Work Orders or Technical Guidance Letters, as herein defined.

“Attachment” means documents, terms, conditions, or additional information physically added to this Contract following the Signature Document or included by reference, as if physically, within the body of this Contract.

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

“Contractor” means the Party selected to provide the goods or services under this Contract, if any.

“Deliverable” means a work product 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.

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

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

“Intellectual Property” means patents, rights to apply for patents, trademarks, trade names, service marks, domain names, copyrights and all applications and worldwide registration of such, schematics, industrial models, inventions, know-how, trade secrets, computer software programs, and other intangible proprietary information.

“Mentor Protégé” means the Comptroller of Public Accounts’ leadership program found at: <http://www.window.state.tx.us/procurement/prog/hub/mentorprotege/>.

“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.

“[Public Information Act](#)” or “[PIA](#)” means Chapter 552 of the Texas Government Code.

“[Statement of Work](#)” means the description of Services and Deliverables specified in the Contract 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 under which the goods or services provided under the Contract were initially requested, which is incorporated herein by reference for all purposes in its entirety, including all Amendments and Attachments.

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

“[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 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, and designees of those agencies. These agencies include: the Department of Aging and Disability Services, the Department of Family and Protective Services, and the Department of State Health Services.

“[Technical Guidance Letter](#)” or “[TGL](#)” means an instruction, clarification, or interpretation of the requirements of the Contract, issued by the System Agency to the Contractor.

“[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.

## **1.2 INTERPRETIVE PROVISIONS**

- a. The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- 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 thereto, 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 within this Contract, 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. CONSIDERATION**

### **2.1 PROMPT PAYMENT**

The System Agency will pay Contractor in accordance with the Prompt Payment Act, Texas Government Code, Chapter 2251.

### **2.2 EXPENSES**

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.

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.

## **2.3 WORK ORDERS**

To the extent the Contract is for indefinite quantities of services, as specified in the Signature Document, all Work will be performed in accordance with Work Orders.

- a. Upon identification of a Project, the System Agency will request that Contractor submit a proposal, including pricing and a project plan, to System Agency.
- b. If Contractor is selected to carry out an individual Project, a Work Order will be issued. 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 such other information or special conditions as may be necessary for the work assigned.
- c. Nothing in this Contract expresses or guarantees that the System Agency will issue Work Orders to Contractor for any of the tasks set forth in the Signature Document. All work requested under this Contract will be required on an irregular and as needed basis throughout the Contract term, and the System Agency makes no guarantee of volume or usage under this Contract.

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

### **3.1 FUNDING**

This Contract is contingent upon the availability of sufficient and adequate funds. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the Texas General Appropriations Act, agency consolidation, or any other disruptions of current funding for this Contract, the System Agency may restrict, reduce, or terminate funding under this Contract. This Contract is also subject to immediate cancellation or termination, without penalty to the System Agency, if sufficient and adequate funds are not available. Contractor will have no right of action against the System Agency if the System Agency cannot perform its obligations under this Contract as a result of lack of funding for any activities or functions contained within the scope of this Contract. In the event of cancellation or termination under this Section, the System Agency will not be required to give notice and will not be liable for any damages or losses caused or associated with such termination or cancellation.

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

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

### **3.3 DEBT TO STATE**

If a payment law prohibits the Texas Comptroller of Public Accounts from making a payment, the Contractor acknowledges the System Agency's payments under the Contract will be applied toward eliminating the debt or delinquency. This requirement specifically applies to any debt or delinquency, regardless of when it arises.

### 3.4 RECAPTURE OF FUNDS

The System Agency may withhold all or part of any payments to Contractor to offset overpayments made to the Contractor. 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 will 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 will be completed in a manner consistent with standards under the terms of this Contract, in the applicable trade, profession, or industry; will conform to or exceed the specifications set forth in the Contract; and will be fit for ordinary use, of good quality, and with no material defects. If Contractor fails 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:

- a. Repair or replace all defective or damaged Work;
- b. Refund any payment received for all defective or damaged Work and, in conjunction therewith, require Contractor to accept the return of such Work; and
- c. Take necessary action to ensure that future performance and Work conform to the Contract requirements.

### 4.2 GENERAL AFFIRMATIONS

Contractor further certifies that, to the extent General Affirmations are incorporated into the Contract under the Signature Document, the General Affirmations have been reviewed and that Contractor is in compliance with each of the requirements reflected therein.

### 4.3 FEDERAL ASSURANCES

Contractor further certifies that, to the extent Federal Assurances are incorporated into the Contract under the Signature Document, the Federal Assurances have been reviewed and that Contractor is in compliance with each of the requirements reflected therein.

### 4.4 FEDERAL CERTIFICATIONS

Contractor further certifies, to the extent Federal Certifications are incorporated into the Contract under the Signature Document, that the Federal Certifications have been reviewed, and that Contractor is in compliance with each of the requirements reflected therein. **In addition, Contractor certifies that it is in compliance with all applicable federal laws, rules, or regulations, as they may pertain to this Contract.**

## **ARTICLE V. OWNERSHIP AND INTELLECTUAL PROPERTY**

### **5.1 OWNERSHIP**

The System Agency will own, and Contractor hereby assigns to the System Agency, all right, title, and interest in all Work.

### **5.2 INTELLECTUAL PROPERTY**

- a. To the extent any Work results in the creation of Intellectual Property, all right, title, and interest in and to such Intellectual Property will vest in the System Agency upon creation and will be deemed to be a “work made for hire” and made in the course of the services rendered pursuant to this Contract.
- b. To the extent that title to any such Intellectual Property may not by law vest in the System Agency, or such Intellectual Property may not be considered a “work made for hire,” all rights, title, and interest therein are hereby irrevocably assigned to the System Agency. The System Agency will have the right to obtain and to hold in its name any and all patents, copyrights, trademarks, service marks, registrations, or such other protection as may be appropriate to the subject matter, including extensions and renewals thereof.
- c. Contractor must give the System Agency and the State of Texas, as well as any person designated by the System Agency or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond the stated amount payable to Contractor for the services authorized under this Contract.

## **ARTICLE VI. RECORDS, AUDIT, AND DISCLOSURE**

### **6.1 BOOKS AND RECORDS**

Contractor will 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. Unless otherwise specified in this Contract, Contractor will maintain legible copies of this Contract and all related documents for a minimum of seven (7) years after the termination of the contract period or seven (7) years after the completion of any litigation or dispute involving the Contract, whichever is later.

### **6.2 ACCESS TO RECORDS, BOOKS, AND DOCUMENTS**

In addition to any right of access arising by operation of law, Contractor and any of Contractor’s affiliate or subsidiary organizations, or Subcontractors will 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 will 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 will 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. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor will produce original documents related to this Contract. The System Agency and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Contractor will include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

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

- a. Contractor must act to ensure its and its Subcontractor's 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 goods or services provided hereunder. Any such correction will be at Contractor or its Subcontractor's sole expense. Whether Contractor's action corrects the noncompliance will be solely the decision of the System Agency.
- b. As part of the Services, Contractor must provide to HHSC 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.

### **6.4 SAO AUDIT**

Contractor understands that 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's Office (SAO), or any successor agency, 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 SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Contractor agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Contractor and the requirement to cooperate is included in any Subcontract it awards.

### **6.5 CONFIDENTIALITY**

Any specific confidentiality agreement between the Parties takes precedent over the terms of this section. To the extent permitted by law, Contractor agrees to keep all information confidential, in whatever form produced, prepared, observed, or received by Contractor. The provisions of this section remain in full force and effect following termination or cessation of the services performed under this Contract.

### **6.6 PUBLIC INFORMATION ACT**

Information related to the performance of this Contract may be subject to the PIA and will be withheld from public disclosure or released only in accordance therewith. Contractor must

make all information not otherwise excepted from disclosure under the PIA available in portable document file (".pdf") format or any other format agreed between the Parties.

## ARTICLE VII. CONTRACT MANAGEMENT AND EARLY TERMINATION

### 7.1 CONTRACT MANAGEMENT

To ensure full performance of the Contract and compliance with applicable law, the System Agency may take actions including:

- a. Suspending all or part of the Contract;
- b. Requiring the Contractor to take specific corrective actions in order to remain in compliance with term of the Contract;
- c. Recouping payments made to the Contractor found to be in error;
- d. Suspending, limiting, or placing conditions on the continued performance of Work;
- e. Imposing any other remedies authorized under this Contract; and
- f. Imposing any other remedies, sanctions or penalties permitted by federal or state statute, law, regulation, or rule.

### 7.2 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 HHSC's notice of termination.

### 7.3 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:

- a. **Material Breach** – The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, at 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 Excluded Parties List System (EPLS) will also constitute a material breach of the Contract.
- b. **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 Services and Deliverables, or otherwise fully perform its responsibilities under the Contract.

### 7.4 CONTRACTOR RESPONSIBILITY FOR ASSOCIATED COSTS

If the System Agency terminates the Contract for Cause, the Contractor will 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 that is reasonably attributable to Contractor's failure to perform any Work in accordance with the terms of the Contract.

## **7.5 EQUITABLE SETTLEMENT**

Any early termination under this Article will be subject to the equitable settlement of the respective interests of the Parties up to the date of termination.

# **ARTICLE VIII. MISCELLANEOUS PROVISIONS**

## **8.1 AMENDMENT**

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

## **8.2 INSURANCE**

Unless otherwise specified in this Contract, Contractor will 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 will 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 will 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.

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.

## **8.3 DELEGATION OF AUTHORITY**

Whenever, by any provision of the Contract, any right, power or duty is imposed or conferred on HHSC, the right power or duty so imposed or conferred is possessed and exercised by the System Agencies Executive Commissioner unless such is delegated to duly appointed agents or employees. The Executive Commissioner of the System Agency will reduce any delegation of authority to writing and provide a copy to Contractor on request. The authority delegated to Contractor by the System Agency is limited to the terms of the Contract. Contractor may not rely upon implied authority and is not delegated authority under the Contract to:

- a. Make public policy;
- b. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of System Agency program; or
- c. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the System Agency regarding the System Agency programs or

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

#### **8.4 LEGAL OBLIGATIONS**

Contractor will 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 will be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them. In addition to any other act or omission that may constitute a material breach of the Contract, failure to comply with this Section may also be a material breach of the Contract.

#### **8.5 E-VERIFY**

By entering into this Contract, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's e-Verify system to determine the eligibility of:

- a. All persons employed during the contract term to perform duties within Texas; and
- b. All persons (including subcontractors) assigned by the contractor to perform Work pursuant to the Contract.

#### **8.6 PERMITTING AND LICENSURE**

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

#### **8.7 INDEMNITY**

TO THE EXTENT ALLOWED BY LAW, CONTRACTOR WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND ITS OFFICERS AND EMPLOYEES, AND THE SYSTEM AGENCY AND ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING ATTORNEYS' FEES AND COURT COSTS ARISING OUT OF, OR CONNECTED WITH, OR RESULTING FROM:

- CONTRACTOR'S PERFORMANCE OF THE CONTRACT, INCLUDING ANY NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR, OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF CONTRACTOR, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR
- ANY BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, RULE, OR BREACH OF

CONTRACT BY CONTRACTOR, ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF CONTRACTOR, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR

- EMPLOYMENT OR ALLEGED EMPLOYMENT, INCLUDING CLAIMS OF DISCRIMINATION AGAINST CONTRACTOR, ITS OFFICERS, OR ITS AGENTS; OR
- WORK UNDER THIS CONTRACT THAT INFRINGES OR MISAPPROPRIATES ANY RIGHT OF ANY THIRD PERSON OR ENTITY BASED ON COPYRIGHT, PATENT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS.

CONTRACTOR WILL COORDINATE ITS DEFENSE WITH THE SYSTEM AGENCY AND ITS COUNSEL. 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 SOLELY FROM THE GROSS NEGLIGENCE OF THE SYSTEM AGENCY OR ITS EMPLOYEES. THE PROVISIONS OF THIS SECTION WILL SURVIVE TERMINATION OF THIS CONTRACT.

## 8.8 ASSIGNMENTS

Contractor may not assign all or any portion of its rights under, interests in, or duties required under this Contract without prior written consent of the System Agency, which may be withheld or granted at the sole discretion of the System Agency. Except where otherwise agreed in writing by the System Agency, assignment will not release Contractor from its obligations under the Contract.

Contractor understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. This assignment will only be made to another State agency or a non-state agency that is contracted to perform agency support.

## 8.9 SUBCONTRACTS

Contractor will be responsible to the System Agency for any Subcontractor's performance under this Contract. Nothing in this Contract will be construed to relieve Contractor of the responsibility for ensuring that the goods delivered or services rendered by Contractor or any of its Subcontractors comply with all the terms and provisions of this Contract. Contractor will provide written notification to the System Agency of any Subcontractor receiving compensation of **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)** or more of the Work under this Contract, including the name and taxpayer identification number of Subcontractor, the task(s) being performed, and the number of Subcontractor employees expected to perform Services. The System Agency reserves the right to:

- a. Reject the Subcontract or require changes to any provisions that do not comply with the requirements, duties, or responsibilities of the Contract or that create significant barriers for the System Agency to monitor compliance with the Contract;
- b. Object to the selection of the Subcontractor; or
- c. Object to the subcontracting of the Work proposed to be subcontracted.

## **8.10 HUB/MENTOR PROTÉGÉ**

In accordance with State law, it is the System Agency's policy to assist HUBs whenever possible in providing goods and services to the System Agency. The System Agency encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting Subcontractors to assist in fulfilling their obligations with the System Agency. In addition to information required by this Contract, the contracting Party will provide the procurement department of the System Agency with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder.

The System Agency encourages the Parties it contracts with to partner with certified HUBs that participate in the Texas Comptroller of Public Accounts' Mentor Protégé Program.

## **8.11 RELATIONSHIP OF THE PARTIES**

Contractor is, and will be, an independent contractor and, subject only to the terms of this Contract, will have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract will be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create for the System Agency any liability whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other Party.

Contractor will be solely responsible for, and the System Agency will have no obligation with respect to:

- a. Payment of Contractor's employees for all Services performed;
- b. Ensuring each of its employees, agents, or Subcontractors who provide Services or Deliverables under the Contract are properly licensed, certified, or have proper permits to perform any activity related to the Work;
- c. Withholding of income taxes, FICA, or any other taxes or fees;
- d. Industrial or workers' compensation insurance coverage;
- e. Participation in any group insurance plans available to employees of the State of Texas;
- f. Participation or contributions by the State to the State Employees Retirement System;
- g. Accumulation of vacation leave or sick leave; or
- h. Unemployment compensation coverage provided by the State.

## **8.12 TECHNICAL GUIDANCE LETTERS**

In the sole discretion of the System Agency, and in conformance with federal and state law, the System Agency may issue instructions, clarifications, or interpretations as may be required during Work performance in the form of a Technical Guidance Letter. A TGL must be in writing, and may be delivered by regular mail, electronic mail, or facsimile transmission. Any TGL issued by the System Agency will be incorporated into the Contract by reference herein for all purposes when it is issued.

### **8.13 GOVERNING LAW AND VENUE**

This Contract and the rights and obligations of the Parties hereto will be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract will be in a court of competent jurisdiction in Travis County, Texas unless otherwise elected by the System Agency. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto.

### **8.14 SEVERABILITY**

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract will be construed as if such provision did not exist and the non-enforceability of such provision will not be held to render any other provision or provisions of this Contract unenforceable.

### **8.15 SURVIVABILITY**

Termination or expiration of this Contract or a Contract for any reason will not release either party from any liabilities or obligations in this Contract that the parties have expressly agreed will survive any such termination or expiration, remain to be performed, or by their nature would be intended to be applicable following any such termination or expiration, including maintaining confidentiality of information and records retention.

### **8.16 FORCE MAJEURE**

Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a “Force Majeure”), then, while so prevented, the affected Party’s obligation to comply with such covenant will be suspended, and the affected Party will not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure will promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice will set forth the extent and duration thereof.

### **8.17 DISPUTE RESOLUTION**

If a contract dispute arises that cannot be resolved to the satisfaction of the Parties, either Party may notify the other Party in writing of the dispute. If the Parties are unable to satisfactorily resolve the dispute within fourteen (14) days of the written notification, the Parties must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve the dispute. This provision will not apply to any matter with respect to which either Party may make a decision within its respective sole discretion.

## **8.18 NO WAIVER OF PROVISIONS**

Neither failure to enforce any provision of this Contract nor payment for services provided under it constitute waiver of any provision of the Contract.

## **8.19 PUBLICITY**

Except as provided in the paragraph below, Contractor must not use the name of, or directly or indirectly refer to, the System Agency, the State of Texas, or any other State agency in any media release, public announcement, or public disclosure relating to the Contract or its subject matter, including in any promotional or marketing materials, customer lists, or business presentations.

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.

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

Contractor will 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.

## **8.21 NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing in the Contract will be construed as a waiver of sovereign immunity by the System Agency.

## **8.22 ENTIRE CONTRACT AND MODIFICATION**

The 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 by the System Agency.

## **8.23 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.

## **8.24 PROPER AUTHORITY**

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

## **8.25 CIVIL RIGHTS**

- a. Contractor agrees to comply with state and federal anti-discrimination laws, including:
  - (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.);



- (2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
- (3) Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);
- (4) Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
- (5) Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
- (6) Food and Nutrition Act of 2008 (7 U.S.C. §2011 et seq.); and

The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.

- b. Contractor agrees to comply with all amendments to these laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any service or other benefit provided by Federal or State funding, or otherwise be subjected to discrimination.
- c. 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. 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 and electronically, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- d. 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: [http://www.hhsc.state.tx.us/about\\_hhsc/civil-rights/brochures-posters.shtml](http://www.hhsc.state.tx.us/about_hhsc/civil-rights/brochures-posters.shtml)
- e. Contractor agrees to comply with Executive Orders 13279 and 13559, and their 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. Contractor must provide written notice to beneficiaries of their rights.
- f. Upon request, Contractor will provide HHSC 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 civil rights complaints received relating to its performance under this Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. This notice must be directed to:

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

Phone: (512) 438-4313  
TTY Toll Free: (877) 432-7232  
Fax: (512) 438-5885

## **8.26 ENTERPRISE INFORMATION MANAGEMENT STANDARDS**

Contractor agrees that it will conform to HHSC standards for data management as described by the policies of the HHSC Office of the Chief Data Officer (OCDO). 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 the HHSC for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of HHS System data assets.

## **8.27 NOTICE OF LEGAL MATTER OR LITIGATION**

Contractor shall notify the contract manager assigned to this Contract of any litigation or legal matter related to or affecting this Contract within seven calendar days of becoming aware of the litigation or legal matter.

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**EXHIBIT D: HHSC SPECIAL CONDITIONS**



**HEALTH AND HUMAN  
SERVICES COMMISSION  
SPECIAL CONDITIONS  
Version 1.0**

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## **HHSC SPECIAL CONDITIONS**

The terms and conditions of these Special Conditions are incorporated into and made a part of the Contract. Capitalized items used in these Special Conditions and not otherwise defined have the meanings assigned to them in HHSC Uniform Terms and Conditions – Vendor, Version 2.13.

### **ARTICLE I. SPECIAL DEFINITIONS**

“**Conflict of Interest**” means a set of facts or circumstances, a relationship, or other situation under which Contractor, a Subcontractor, or individual has past, present, or currently planned personal or financial activities or interests that either directly or indirectly: (1) impairs or diminishes the Contractor’s, or Subcontractor’s ability to render impartial or objective assistance or advice to the HHSC; or (2) provides the Contractor or Subcontractor an unfair competitive advantage in future HHSC procurements.

“**Contractor Agents**” means Contractor’s representatives, employees, officers, Subcontractors, as well as their employees, contractors, officers, and agents.

“**Custom Software**” means Software developed as a Deliverable or in connection with the Agreement.

“**Data Use Agreement**” means the agreement incorporated into the Contract to facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information.

“**Federal Financial Participation**” is a program that allows states to receive partial reimbursement for activities that meet certain objectives of the federal government. It is also commonly referred to as the Federal Medical Assistance Percentage (FMAP).

“**Item of Noncompliance**” means Contractor’s acts or omissions that: (1) violate a provision of the Contract; (2) fail to ensure adequate performance of the Work; (3) represent a failure of Contractor to be responsive to a request of HHSC relating to the Work under the Contract.

“**Minor Administrative Change**” refers to a change to the Contract that does not increase the fees or term and done in accordance with Section 6.02 of these Special Conditions.

“**Other Confidential Information**” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to Contractor; or that Contractor may create, receive, maintain, use, disclose or have access to on behalf of HHSC or through performance of the Work, which is not designated as Confidential Information in the Data Use Agreement.

“**Outside the United States**” means any location that is not within the territorial boundaries comprising the republic of the United States of America, including any of the 48 coterminous states in North America, the states of Alaska and Hawaii, and the District of Columbia.

“**Software**” means all operating system and applications software used or created by Contractor to perform the Work under the Contract.

“**State**” means the State of Texas and, unless otherwise indicated or appropriate, will be interpreted to mean HHSC and other agencies of the State of Texas that may participate in the administration of HHSC Programs; provided, however, that no provision will be interpreted to include any entity other than HHSC as the contracting agency.

“**Third Party Software**” refers to software programs or plug-ins developed by companies or individuals other than Contractor which are used in performance of the Work. It does not include items which are ancillary to the performance of the Work, such as internal systems of Contractor which were deployed by Contractor prior to the Contract and not procured to perform the Work.

“**Turnover**” means the effort necessary to enable HHSC, or its designee, to effectively close out the Contract and move the Work to another vendor or to perform the Work by itself.

“**Turnover Plan**” means the written plan developed by Contractor, approved by HHSC, and to be employed when the Work described in the Contract transfers to HHSC, or its designee, from the Contractor.

“**VUTC**” means HHSC’s Uniform Terms and Conditions – Vendor, Version 2.13

“**WSD**” means the Work, Services, or Deliverables to be performed or provided under the Contract.

## **ARTICLE II. GENERAL PROVISIONS**

### **2.01 CONTROLLING ORDER**

Unless otherwise agreed, in the event of any conflict or contradiction between or among the provisions of the Contract, the provisions in the documents will control in the following order:

- a. The Signature Document;
- b. These Special Conditions;
- c. HHSC Uniform Terms and Conditions – Vendor;
- d. The Solicitation and any addendums, corrections, and clarifications; then
- e. Contractor’s Solicitation Response and any agreed to modifications.

### **2.02 INDUCEMENTS**

In awarding the Contract, the HHSC relies on Contractor’s assurances of the following:

- a. Contractor and its Subcontractors are established providers of the WSD described in the Solicitation and required under the Contract;
- b. Contractor and its Subcontractors have the skills, qualifications, expertise, financial resources, and experience necessary to perform the WSD in an efficient, cost-effective manner, with a high degree of quality and responsiveness.
- c. Contractor has performed similar WSD for other public or private entities;
- d. Contractor has thoroughly reviewed, analyzed, and understood the Solicitation, has timely raised all questions or objections to the Solicitation or WSD, and has had the opportunity to review and fully understand HHSC’s current program and operating

- environment for the activities that are the subject of the Contract and the needs and requirements of the State during the Contract term;
- e. Contractor has had the opportunity to review and understand the State’s stated objectives in entering into the Contract and, based on such review and understanding, Contractor currently has the capability to perform the WSD in accordance with the terms and conditions of the Contract; and
  - f. Contractor fully understands the risks associated with public health and human service programs administered by HHSC as described in the Solicitation, including the risk of non-appropriation of funds.

### **2.03 DELEGATION OF AUTHORITY**

Whenever, by any provision of the Contract, any right, power, or duty is imposed or conferred on HHSC, the right, power, or duty so imposed or conferred is possessed and exercised by HHSC’s Executive Commissioner unless such is delegated to duly appointed agents or employees of HHSC. HHSC’s Executive Commissioner will reduce any delegation of authority to writing and provide a copy to Contractor on request. The authority delegated to Contractor by HHSC is limited to the terms of the Contract. Contractor may not rely upon implied authority and is not delegated authority under the Contract to:

- a. Make public policy;
- b. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of HHSC Programs; or
- c. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the HHSC regarding HHSC Programs or the Contract. However, upon request and reasonable notice to the Contractor, Contractor will assist HHSC in communications and negotiations regarding the WSD under the Contract with state and federal governments.

### **2.04 OTHER SYSTEM AGENCIES PARTICIPATION IN THE CONTRACT**

In addition to providing the WSD specified for HHSC, Contractor agrees to allow other System Agencies the option to participate in the Contract under the same terms and conditions. Each System Agency that elects to obtain WSD under this section will issue a purchase or work order to Contractor, referring to, and incorporating by reference, the terms and conditions specified in the Contract.

System Agencies have no authority to modify the terms of the Contract. However, additional System Agency terms and conditions that do not conflict with the Contract, and are acceptable to the Contractor, may be added in a purchase or work order and given effect. No additional term or condition added in a purchase or work order issued by a System Agency can conflict with or diminish a term or condition of the Contract. In the event of a conflict between a System Agency’s purchase or work order and the Contract, the Contract terms control.

## **2.05 MOST FAVORED CUSTOMER**

Contractor agrees that if during the term of the Contract, Contractor enters into any agreement with any other governmental customer, or any non-affiliated commercial customer by which it agrees to provide equivalent services at lower prices, or additional services at comparable prices, Contractor will notify HHSC within (10) business days from the date Contractor executes any such agreement. Contractor agrees, at HHSC's option, to amend the Contract to accord equivalent advantage to HHSC.

## **2.06 ASSUMPTION AFTER ASSIGNMENT**

As authorized in the VUTC, each party to whom an assignment is made must assume all or any part of Contractor's interests in the Contract, the WSD, and any documents executed with respect to the Contract, including, without limitation, the assignor's obligation for all or any portion of the purchase payments, in whole or in part.

## **2.07 COOPERATION WITH HHSC VENDORS**

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

## **2.08 RENEGOTIATION AND REPROCUREMENT RIGHTS**

Notwithstanding anything in the Contract to the contrary, HHSC may at any time during the term of the Contract exercise the option to notify Contractor that HHSC has elected to renegotiate certain terms of the Contract. Upon Contractor's receipt of any notice under this section, Contractor and HHSC will undertake good faith negotiations of the subject terms of the Contract.

HHSC may at any time issue solicitation instruments to other potential contractors for performance of any portion of the WSD covered by the Contract, including services similar or comparable to the WSD, performed by Contractor under the Contract. If HHSC elects to procure the WSD, or any portion thereof, from another vendor in accordance with this section, HHSC will have the termination rights set forth in the VUTC.

## **2.09 SOLICITATION ERRORS**

Contractor will not take advantage of any errors or omissions in the Solicitation or the resulting Contract. Contractor must promptly notify HHSC of any errors or omissions that are discovered. Failure to notify HHSC of any errors will constitute a waiver of those errors.



## **ARTICLE III. PROHIBITION AGAINST PERFORMANCE OUTSIDE OF THE UNITED STATES**

### **3.01 AUTHORITY**

HHSC is responsible for the development and implementation of Software and hardware to support HHSC programs, which are paid for in whole or in part with State and federal funds. Accordingly, such Software and hardware may be subject to statutory restrictions on the export of technology to foreign nations, including but not limited to the Export Administration Regulations contained in 15 C.F.R. Parts 730-774.

### **3.02 PROHIBITION**

Contractor agrees that, unless specifically authorized in writing by HHSC:

- (1) All WSD under this Contract, including that of Subcontracts, will be performed exclusively within the United States. This obligation includes, but is not limited to, information technology services, processing, transmission, storage, archiving, data center services, disaster recovery sites and services, customer support, medical, dental, laboratory and clinical services, services related to Custom Software, and all modifications of Custom Software, Third Party Software, or vendor proprietary software;
- (2) All information obtained by Contractor or a Subcontractor under this Contract shall be maintained within the United States; and shall not leave the United States by any means (physical or electronic) at any time; and
- (3) Contractor shall not permit any person or entity at a location Outside The United States to have remote access to any of the WSD under the Contract without HHSC's written approval.

### **3.03 EXCEPTION**

The prohibition against WSD Outside the United States does not preclude the acquisition or use of commercial off-the-shelf (COTS) software that is developed Outside the United States or hardware that is generically configured Outside the United States. The prohibition against WSD Outside the United States does not preclude Contractor from acquiring or using products or supplies that are manufactured Outside the United States, provided such products or supplies are commercially available within the United States for acquisition.

### **3.04 REMEDY**

Contractor's violation of this section will constitute a material breach of the Contract. Contractor will be liable to HHSC for all damages in accordance with the Contract.

## **ARTICLE IV. CONTRACTOR PERSONNEL AND SUBCONTRACTORS**

### **4.01 QUALIFICATIONS**

Contractor agrees to maintain the organizational and administrative capacity and capabilities proposed in its response to the Solicitation, as modified, to carry out all duties and responsibilities under the Contract. Contractor Agents assigned to perform the duties and

responsibilities under the Contract must be and remain properly trained and qualified for the functions they are to perform. Notwithstanding the transfer or turnover of personnel, Contractor remains obligated to perform all duties and responsibilities under the Contract without degradation and in strict accordance with the terms of the Contract.

#### **4.02 CONDUCT AND REMOVAL**

While performing the WSD under the Contract, Contractor Agents must comply with applicable Contract terms, State and federal rules, regulations, HHSC's policies, and HHSC's requests regarding personal and professional conduct; and otherwise conduct themselves in a businesslike and professional manner.

If HHSC determines in good faith that a particular Contractor Agent is not conducting himself or herself in accordance with the terms of the Contract, HHSC may provide Contractor with notice and documentation regarding its concerns. Upon receipt of such notice, Contractor must promptly investigate the matter and, at HHSC's election, take appropriate action that may include removing the Contractor Agent from performing any WSD under the Contract and replacing the Contractor Agent with a similarly qualified individual acceptable to HHSC as soon as reasonably practicable or as otherwise agreed to by HHSC.

#### **4.03 NO AUTHORITY**

Contractor Agents are not employees of HHSC or the State of Texas and are considered Contractor's employees for all purposes. Except as provided in the Contract, neither Contractor nor any of Contractor Agents may act in any sense as agents or representatives of HHSC or the State of Texas.

#### **4.04 E-VERIFY**

By entering into this Contract, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- (1) All persons employed to WSD within the State of Texas, during the term of the Contract; and
- (2) All Contractor Agents assigned by Contractor to perform WSD pursuant to the Contract, within the United States of America.

#### **4.05 SUBCONTRACTORS NOT IDENTIFIED IN THE SOLICITATION RESPONSE**

Prior to entering into a Subcontract, Contractor must identify any Subcontractor that is a newly-formed subsidiary or entity, whether or not an affiliate of Contractor, substantiate the proposed Subcontractor's ability to perform the subcontracted WSD, and certify to HHSC that no loss of WSD will occur as a result of the performance of such Subcontractor.

At HHSC's request, prior to executing a Subcontract with a value greater than \$100,000.00, Contractor must submit a copy of the Subcontract to HHSC for review and approval. HHSC reserves the right to:

- (1) Reject the Subcontract or require changes to any provisions that do not comply with the requirements, duties, or responsibilities of the Contract or that create significant barriers for HHSC to monitor compliance with the Contract;
- (2) Object to the selection of the Subcontractor; or
- (3) Object to the subcontracting of the WSD proposed to be subcontracted.

## **ARTICLE V. PERFORMANCE**

### **5.01 MEASUREMENT**

Satisfactory performance of the Contract, unless otherwise specified in the Contract, will be measured by:

- (1) Compliance with Contract requirements, including all representations and warranties;
- (2) Compliance with the WSD requested in the Solicitation and WSD proposed by Contractor in its response to the Solicitation and approved by HHSC;
- (3) Delivery of WSD in accordance with the service levels proposed by Contractor in the Solicitation Response as accepted by HHSC;
- (4) Results of audits, inspections, or quality checks performed by the HHSC or its designee;
- (5) Timeliness, completeness, and accuracy of WSD; and
- (6) Achievement of specific performance measures and incentives as applicable.

## **ARTICLE VI. AMENDMENTS AND MODIFICATIONS**

### **6.01 FORMAL PROCEDURE**

No different or additional WSD or contractual obligations will be authorized or performed unless contemplated within the Statement of Work and memorialized in an amendment or modification of the Contract that is executed in compliance with this Article. No waiver of any term, covenant, or condition of the Contract will be valid unless executed in compliance with this Article. Contractor will not be entitled to payment for WSD that is not authorized by a properly executed Contract amendment or modification, or through the express written authorization of HHSC.

Any changes to the Contract that results in a change to either the term, fees, or significantly impacting the obligations of the parties to the Contract must be effectuated by a formal Amendment to the Contract. Such Amendment must be signed by the appropriate and duly authorized representative of each party in order to have any effect.

### **6.02 MINOR ADMINISTRATIVE CHANGES**

HHSC's designee, referred to as the Contract Manager, Project Sponsor, or other equivalent, in the Contract, is authorized to provide written approval of mutually agreed upon Minor Administrative Changes to the WSD or the Contract that do not increase the fees or term. Changes that increase the fees or term must be accomplished through the formal amendment procedure, as set forth in Section 6.01 of these Special Conditions. Upon approval of a Minor Administrative Change, HHSC and Contractor will maintain written notice that the change has been accepted in their Contract files.

### **6.03 TECHNICAL GUIDANCE LETTERS**

Notwithstanding anything to the contrary in the Contract, Technical Guidance Letters (“TGL”) as provided by the VUTC will not act as an Amendment or modification to the Contract to the extent such affect price or term of the Contract. Such TGLs are interpretive and instructional only and are not authorized to extend the term, modify the fees or other payment arrangements, increase the Contract total value, or materially change the substance of the WSD.

## **ARTICLE VII. AUDITS AND RECORDS**

### **7.01 RECORD RETENTION**

Contractor will comply with the records retention schedule approved by the Texas State Library and Archives Commission, unless a longer period is specified in the Contract. Contractor acknowledges that such schedule may be amended or modified from time to time and agrees to give any such modification or amendment full effect. The current approved schedule is published at: <https://www.tsl.texas.gov/sites/default/files/public/tslac/slrn/state/schedules/529.PDF>. It is Contractor’s responsibility to monitor the Texas State Library and Archives Commission’s approval of HHSC’s record retention schedules.

### **7.02 ACCESS AND ACCOMMODATION**

In providing the access required by the VUTC for records and audits, Contractor will provide access to records, books, and documents in reasonable comfort and will provide any furnishings, equipment, or other conveniences necessary to enable complete and unfettered access to records, books, and documents to HHSC and any of its duly authorized representatives, as well as duly authorized federal, state or local authorities. Contractor will require Contractor Agents to provide comparable accommodations. Upon request, Contractor will provide copies of records, books, and documents free of charge to HHSC and any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, including those the entities described in the VUTC.

The access and accommodations set forth in this section will also be provided for Software and equipment used in the performance of the WSD. Contractor will provide reasonable assistance that this section requires to auditors and/or inspectors to complete any audits or inspections related to the WSD.

Contractor will include this section concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

### **7.03 RESPONSE TO AUDITS OR INSPECTION FINDINGS**

Contractor will take all action to ensure it, or a Contractor Agent, complies with any finding of noncompliance relating to the WSD or any other deficiency contained in any audit, review, or inspection conducted under the Contract. Contractor will bear the expense of compliance with any finding of noncompliance under the Contract that is:

- (1) Required by a Texas or federal law, regulation, rule or other audit requirement relating to Contractor’s business;

- (2) Performed by Contractor as part of the WSD; or
- (3) Necessary due to Contractor's noncompliance with any law, regulation, rule or audit requirement imposed on Contractor.

## **ARTICLE VIII. PAYMENT**

### **8.01 DUTY TO MAKE PAYMENT**

HHSC will be relieved of its obligation to make any payments to Contractor until such time as any and all set-off amounts have been credited to HHSC. If HHSC disputes payment of all or any portion of an invoice from Contractor, HHSC will notify the Contractor of the dispute and both Parties will attempt in good faith to resolve the dispute in accordance with these Special Conditions. HHSC will not be required to pay any disputed portion of a Contractor invoice unless, and until, the dispute is resolved. Notwithstanding any such dispute, Contractor will continue to perform the WSD in compliance with the terms of the Contract pending resolution of such dispute so long as all undisputed amounts continue to be paid to Contractor.

## **ARTICLE IX. CONFIDENTIALITY**

### **9.01 REQUESTS FOR PUBLIC INFORMATION**

HHSC will, as permitted by law and as practicable considering HHSC's resources, notify Contractor of a request for disclosure of public information related to the Contract filed in accordance with the Texas Public Information Act, Texas Government Code Chapter 552 ("PIA"). In the event Contractor believes the requested information should be protected under the PIA, Contractor will comply with PIA requirements pertaining to that information and will provide HHSC with copies of all such documentation required to support its request for nondisclosure. Contractor must make public information not otherwise excepted from disclosure under the PIA available to HHSC at no additional charge to HHSC.

To the extent authorized under the PIA, HHSC will safeguard from disclosure information received from Contractor that Contractor believes to be confidential. Contractor must clearly mark each page of such information as "Contractor Confidential Information" and provide written notice to HHSC that it considers the information confidential in accordance with the PIA. Contractor's designation or marking of information in this manner does not act, and should not be construed, as an agreement or other consent by HHSC that such information is actually confidential pursuant to the PIA.

### **9.02 CONSULTANT DISCLOSURE**

Contractor agrees that any consultant reports received by HHSC in connection with the Contract may be distributed by HHSC, in its discretion, to any other state agency and the Texas legislature. Any distribution may include posting on HHSC's website or the website of a standing committee of the Texas Legislature.

### **9.03 OTHER CONFIDENTIAL INFORMATION**

HHSC prohibits the unauthorized disclosure of Other Confidential Information. Contractor and all Contractor Agents will not disclose or use any Other Confidential Information in any

manner except as is necessary for the WSD or the proper discharge of obligations and securing of rights under the Contract. Contractor will have a system in effect to protect Other Confidential Information. Any disclosure or transfer of Other Confidential Information by Contractor, including information requested to do so by HHSC, will be in accordance with the Contract. If Contractor receives a request for Other Confidential Information, Contractor will immediately notify HHSC of the request, and will make reasonable efforts to protect the Other Confidential Information from disclosure until further instructed by the HHSC.

Contractor will notify HHSC promptly of any unauthorized possession, use, knowledge, or attempt thereof, of any Other Confidential Information by any person or entity that may become known to Contractor. Contractor will furnish to HHSC all known details of the unauthorized possession, use, or knowledge, or attempt thereof, and use reasonable efforts to assist HHSC in investigating or preventing the reoccurrence of any unauthorized possession, use, or knowledge, or attempt thereof, of Other Confidential Information.

HHSC will have the right to recover from Contractor all damages and liabilities caused by or arising from Contractor or Contractor Agents' failure to protect HHSC's Confidential Information as required by this section.

IN COORDINATION WITH THE INDEMNITY PROVISIONS CONTAINED IN THE VUTC, CONTRACTOR WILL INDEMNIFY AND HOLD HARMLESS HHSC FROM ALL DAMAGES, COSTS, LIABILITIES, AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND COSTS) CAUSED BY OR ARISING FROM CONTRACTOR OR CONTRACTOR AGENTS FAILURE TO PROTECT OTHER CONFIDENTIAL INFORMATION. CONTRACTOR WILL FULFILL THIS PROVISION WITH COUNSEL APPROVED BY HHSC.

## **ARTICLE X. DISPUTES AND REMEDIES**

### **10.01 AGREEMENT OF THE PARTIES**

The Parties agree that the interests of fairness, efficiency, and good business practices are best served when the Parties employ all reasonable and informal means to resolve any dispute under the Contract before resorting to formal dispute resolution processes otherwise provided in the Contract. The Parties will use all reasonable and informal means of resolving disputes prior to invoking a remedy provided elsewhere in the Contract, unless HHSC immediately terminates the Contract in accordance with the terms and conditions of the Contract.

Any dispute, that in the judgment of any Party to the Agreement, may materially affect the performance of any Party will be reduced to writing and delivered to the other Party within 10 business days after the dispute arises. The Parties must then negotiate in good faith and use every reasonable effort to resolve the dispute at the managerial or executive levels prior to initiating formal proceedings pursuant to the VUTC and Texas Government Code §2260, unless a Party has reasonably determined that a negotiated resolution is not possible and has so notified the other Party. The resolution of any dispute disposed of by agreement between the Parties will be reduced to writing and delivered to all Parties within 10 business days of such resolution.



## **10.02 OPERATIONAL REMEDIES**

The remedies described in this section may be used or pursued by HHSC in the context of the routine operation of the Contract and are directed to Contractor's timely and responsive performance of the WSD as well as the creation of a flexible and responsive relationship between the Parties. Contractor agrees that HHSC may pursue operational remedies for Items of Noncompliance with the Contract. At any time, and at its sole discretion, HHSC may impose or pursue one or more said remedies for each Item of Noncompliance. HHSC will determine operational remedies on a case-by-case basis which include, but are not, limited to:

- (1) Requesting a detailed Corrective Action Plan, subject to HHSC approval, to correct and resolve a deficiency or breach of the Contract;
- (2) Require additional or different corrective action(s) of HHSC's choice;
- (3) Suspension of all or part of the Contract or WSD;
- (4) Prohibit Contractor from incurring additional obligations under the Contract;
- (5) Issue stop Work Orders;
- (6) Assessment of liquidated damages as provided in the Contract;
- (7) Accelerated or additional monitoring;
- (8) Withholding of payments; and
- (9) Additional and more detailed programmatic and financial reporting.

HHSC's pursuit or non-pursuit of an operational remedy does not constitute a waiver of any other remedy that HHSC may have at law or equity; excuse Contractor's prior substandard performance, relieve Contractor of its duty to comply with performance standards, or prohibit HHSC from assessing additional operational remedies or pursuing other appropriate remedies for continued substandard performance.

HHSC will provide notice to Contractor of the imposition of an operational remedy in accordance with this section, with the exception of accelerated monitoring, which may be unannounced. HHSC may require Contractor to file a written response as part of the operational remedy approach.

## **10.03 EQUITABLE REMEDIES**

Contractor acknowledges that if, Contractor breaches, attempts, or threatens to breach, any obligation under the Contract, the State will be irreparably harmed. In such a circumstance, the State may proceed directly to court notwithstanding any other provision of the Contract. If a court of competent jurisdiction finds that Contractor breached, attempted, or threatened to breach any such obligations, Contractor will not oppose the entry of an order compelling performance by Contractor and restraining it from any further breaches, attempts, or threats of breach without a further finding of irreparable injury or other conditions to injunctive relief.

## **10.04 CONTINUING DUTY TO PERFORM**

Neither the occurrence of an event constituting an alleged breach of contract, the pending status of any claim for breach of contract, nor the application of an operational remedy, is grounds for the suspension of performance, in whole or in part, by Contractor of the WSD or any duty or obligation with respect to the Contract.

## **ARTICLE XI. DAMAGES**

### **11.01 AVAILABILITY AND ASSESSMENT**

HHSC will be entitled to actual, direct, indirect, incidental, special, and consequential damages resulting from Contractor's failure to comply with any of the terms of the Contract. In some cases, the actual damage to HHSC as a result of Contractor's failure to meet the responsibilities or performance standards of the Contract are difficult or impossible to determine with precise accuracy. Therefore, if provided in the Contract, liquidated damages may be assessed against Contractor for failure to meet any aspect of the WSD or responsibilities of the Contractor. HHSC may elect to collect liquidated damages:

- (1) Through direct assessment and demand for payment to Contractor; or
- (2) By deducting the amounts assessed as liquidated damages against payments owed to Contractor for Work performed. In its sole discretion, HHSC may deduct amounts assessed as liquidated damages as a single lump sum payment or as multiple payments until the full amount payable by the Contractor is received by the HHSC.

### **11.02 SPECIFIC ITEMS OF LIABILITY**

Contractor bears all risk of loss or damage due to defects in the WSD, unfitness or obsolescence of the WSD, or the negligence or intentional misconduct of Contractor or Contractor Agents. Contractor will ship all equipment and Software purchased and Third Party Software licensed under the Contract, freight prepaid, FOB HHSC's destination. The method of shipment will be consistent with the nature of the items shipped and applicable hazards of transportation to such items. Regardless of FOB point, Contractor bears all risks of loss, damage, or destruction of the WSD, in whole or in part, under the Contract that occurs prior to acceptance by HHSC. After acceptance by HHSC, the risk of loss or damage will be borne by HHSC; however, Contractor remains liable for loss or damage attributable to Contractor's fault or negligence.

Contractor will protect HHSC's real and personal property from damage arising from Contractor or Contractor Agents performance of the Contract, and Contractor will be responsible for any loss, destruction, or damage to HHSC's property that results from or is caused by Contractor or Contractor Agents' negligent or wrongful acts or omissions. Upon the loss of, destruction of, or damage to any property of HHSC, Contractor will notify HHSC thereof and, subject to direction from HHSC or its designee, will take all reasonable steps to protect that property from further damage. Contractor agrees, and will require Contractor Agents, to observe safety measures and proper operating procedures at HHSC sites at all times. Contractor will immediately report to the HHSC any special defect or an unsafe condition it encounters or otherwise learns about.

**IN COORDINATION WITH THE INDEMNITY PROVISIONS CONTAINED IN THE VUTC, CONTRACTOR WILL BE SOLELY RESPONSIBLE FOR ALL COSTS INCURRED THAT ARE ASSOCIATED WITH INDEMNIFYING THE STATE OF TEXAS OR HHSC WITH RESPECT TO INTELLECTUAL, REAL AND PERSONAL PROPERTY. ADDITIONALLY, HHSC RESERVES THE RIGHT TO APPROVE COUNSEL SELECTED BY CONTRACTOR TO DEFEND HHSC OR THE STATE OF TEXAS AS REQUIRED UNDER THIS SECTION.**



## **ARTICLE XII. TURNOVER**

### **12.01 TURNOVER PLAN**

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

- (1) The least disruption in the delivery of the WSD during Turnover to HHSC or its designee; and
- (2) Full cooperation with HHSC or its designee in transferring the WSD and the obligations of the Contract.

### **12.02 TURNOVER ASSISTANCE**

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

## **ARTICLE XIII. ADDITIONAL LICENSE AND OWNERSHIP PROVISIONS**

### **13.01 HHSC ADDITIONAL RIGHTS**

HHSC will have ownership and unlimited rights to use, disclose, duplicate, or publish all information and data developed, derived, documented, or furnished by Contractor under or resulting from the Contract. Such data will include all results, technical information, and materials developed for or obtained by HHSC from Contractor in the performance of the WSD. If applicable, Contractor will reproduce and include HHSC's copyright, proprietary notice, or any product identifications provided by Contractor.

### **13.02 THIRD PARTY SOFTWARE**

Contractor grants HHSC a non-exclusive, perpetual, license for HHSC to use Third Party Software and its associated documentation for its internal business purposes. HHSC will be entitled to use Third Party Software on the equipment or any replacement equipment used by HHSC, and with any replacement Third Party Software chosen by HHSC, without additional expense.

Terms in any licenses for Third Party Software will be consistent with the requirements of this section. Prior to utilizing any Third Party Software product not identified in the Solicitation Response, Contractor will provide HHSC copies of the license agreement from the licensor of the Third Party Software to allow HHSC to, in its discretion, object to the license agreement that must, at a minimum, provide HHSC with necessary rights consistent with the short and long-term goals of the Contract. Contractor will assign to HHSC all licenses for the Third Party Software as necessary to carry out the intent of this section.

Contractor will, during the Contract, maintain any and all Third Party Software at their most current version or no more than one version back from the most current version. However, Contractor will not maintain any Third Party Software versions, including one version back, if notified by HHSC that any such version would prevent HHSC from using any functions, in whole or in part, of HHSC systems or would cause deficiencies in HHSC systems.

### **13.03 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 WSD, materials, Custom Software and modifications thereof, source code, associated documentation designed, developed, or installed with Federal Financial Participation under the Contract, including but not limited to those materials covered by copyright.

## **ARTICLE XIV. MISCELLANEOUS PROVISIONS**

### **14.01 ABILITY TO PERFORM**

In conjunction with the Permitting and Licensure requirements contained in the VUTC, Contractor must remain in good standing with all regulatory agencies throughout the term of the Contract. Failure to remain in good standing with all regulatory agencies constitutes a material breach of Contract. Contractor must maintain the financial resources to fund the capital expenditures required under the Contract without advances by HHSC or assignment of any payments by the HHSC to a financing source.

### **14.02 CONTINUING DUTY TO DISCLOSE**

Contractor acknowledges its continuing obligation to comply with the requirements of any affirmation or certification contained in the Contract, and will immediately notify HHSC of any changes in circumstances affecting those certifications.

### **14.03 CONFLICTS OF INTEREST**

Contractor warrants to the best of its knowledge and belief, except to the extent already disclosed to HHSC, there are no facts or circumstances that could give rise to a Conflict of Interest and further that Contractor or Contractor Agents have no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with their performance under the Contract. Contractor will, and require Contractor Agents, to establish safeguards to prohibit Contract Agents from using their positions for a purpose that constitutes or presents the appearance of personal or organizational Conflict of Interest, or for personal gain. Contractor and Contractor Agents will operate with complete independence and objectivity without actual, potential or apparent Conflict of Interest with respect to the activities conducted under the Contract.

Contractor agrees that, if after Contractor's execution of the Contract, Contractor discovers or is made aware of a Conflict of Interest, Contractor will immediately and fully disclose such interest in writing to HHSC. In addition, Contractor will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Contractor or by HHSC as a potential conflict. HHSC reserves the right to make a final

determination regarding the existence of Conflicts of Interest, and Contractor agrees to abide by HHSC's decision.

If HHSC determines that Contractor was aware of a Conflict of Interest and did not disclose the conflict to HHSC, such nondisclosure will be considered a material breach of the Contract. Furthermore, such breach may be submitted to the Office of the Attorney General, Texas Ethics Commission, or appropriate State or federal law enforcement officials for further action.

#### **14.04 FLOW DOWN PROVISIONS**

Contractor must include any applicable provisions of the Contract in all subcontracts based on the scope and magnitude of work to be performed by such Subcontractor. Any necessary terms will be modified appropriately to preserve the State's rights under the Contract.

#### **14.05 RECRUITMENT PROHIBITION**

Contractor will not retain, without HHSC written consent, any person or entity utilized by HHSC in the development of the Solicitation or who participated in the selection of the Contractor for the Contract. Contractor will not recruit or employ any HHSC personnel who have worked on projects relating to the subject matter of the Contract, or who have had any influence on decisions affecting the subject matter of the Contract, for two (2) years following the completion of the Contract.

#### **14.06 MANUFACTURER'S WARRANTIES**

Contractor assigns to HHSC all of the manufacturers' warranties and indemnities relating to the WSD, including without limitation, Third Party Software, to the extent Contractor is permitted by the manufacturers to make such assignments to HHSC.

#### **14.07 COOPERATION WITH HHSC DESIGNEES**

Contractor will cooperate with and work with State and federal agencies, other State contractors, subcontractors and third-party representatives as required by the WSD or requested by HHSC. Contractor personnel will cooperate at no charge to HHSC for purposes relating to the WSD. This cooperation specifically includes, but is not limited to:

- (1) The investigation and prosecution of fraud, abuse, and waste in the HHSC programs;
- (2) Audit, inspection, or other investigative purposes; and
- (3) Testimony in judicial or quasi-judicial proceedings relating to the Contract or other delivery of information requested by the HHSC or other agencies' investigators or legal staff.

#### **14.08 NOTICE OF LITIGATION OR CONTRACT ACTION**

Contractor will notify HHSC of any litigation or legal matter related to or affecting the Contract within seven calendar days of becoming aware of the litigation or legal matter. Contractor will also notify HHSC if Contractor has had any contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within seven calendar days of such event. The notification required under this section will contain information sufficient for HHSC to independently confirm the action and to take appropriate actions.

## ARTICLE XV. UNIFORM ICT ACCESSIBILITY CLAUSE

### 15.01 APPLICABILITY

This section applies if the contract requires the CONTRACTOR to procure or develop Information and Communication Technology (ICT) for HHSC, or to change any of HHSC's ICT. This section also applies if the contract requires the CONTRACTOR to perform a service or supply goods that include ICT that: (i) HHSC employees are required or permitted to access; or (ii) members of the public are required or permitted to access.

This Article does not apply to incidental uses of ICT in the performance of a contract, unless the parties agree that the ICT will become property of the state or will be used by the HHS agency's Client/Recipient after completion of the contract.

Nothing in this section is intended to prescribe the use of particular designs or technologies or to prevent the use of alternative technologies, provided they result in substantially equivalent or greater access to and use of a product / service.

### 15.02 DEFINITIONS

The legacy term "Electronic and Information Resources" (EIR) and the term "Information and Communication Technology" (ICT) are considered equivalent in meaning for the purpose of applicability of HHS uniform terms and conditions, policies, accessibility checklists, style guides, contract specifications, and other contract management documents.

"Accessibility Standards" refers to the Information and Communication Technology Accessibility Standards and the Web Accessibility Standards/Specifications under the Web Content Accessibility Guidelines version 2.0 Level AA, (WCAG 2.0).

"Information and Communication Technology (ICT)" is any information technology, equipment, or interconnected system or subsystem of equipment for which the principal function is the creation, conversion, duplication, automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, reception, or broadcast of data or information. Examples of ICT are electronic content, telecommunications products, computers and ancillary equipment, software, information kiosks and transaction machines, videos, IT services, and multifunction office machines which copy, scan, and fax documents.

"Information and Communication Technology Accessibility Standards" refers to the accessibility standards for information and communication technology contained in the Web Content Accessibility Guidelines version 2.0 Level AA.

"Web Accessibility Standards/Specifications" refers to the web standards contained in WCAG 2.0 Level AA.

"Products" means information resources technologies that are, or are related to, ICT.

"Service" means the act of delivering information or performing a task for employees, clients, or members of the public through a method of access or delivery that uses ICT.

### **15.03 ACCESSIBILITY REQUIREMENTS**

Under Texas Government Code Chapter 2054, Subchapter M, and implementing rules of the Texas Department of Information Resources, HHSC must procure Products or Services that comply with the Accessibility Standards when such Products or Services are available in the commercial marketplace or when such Products or Services are developed in response to a procurement solicitation. Accordingly, CONTRACTOR must provide ICT and associated Product and/or Service documentation and technical support that comply with the Accessibility Standards.

### **15.04 EVALUATION, TESTING AND MONITORING**

HHSC may review, test, evaluate and monitor CONTRACTOR's Products, Services and associated documentation and technical support for compliance with the Accessibility Standards. Review, testing, evaluation and monitoring may be conducted before and after the award of a contract. Testing and monitoring may include user acceptance testing.

- (1) Neither (1) the review, testing (including acceptance testing), evaluation or monitoring of any Product or Service, nor (2) the absence of such review, testing, evaluation or monitoring, will result in a waiver of the State's right to contest the CONTRACTOR'S assertion of compliance with the Accessibility Standards.
- (2) CONTRACTOR agrees to cooperate fully and provide HHSC and its representatives' timely access to Products, Services, documentation, and other items and information needed to conduct such review, evaluation, testing and monitoring.

### **15.05 REPRESENTATIONS AND WARRANTIES**

- (1) CONTRACTOR represents and warrants that: (i) as of the effective date of the contract, the Products, Services and associated documentation and technical support comply with the Accessibility Standards as they exist at the time of entering the contract, unless and to the extent the Parties otherwise expressly agree in writing; and (ii) if the Products will be in the custody of the state or an HHS agency's client or recipient after the contract expiration or termination, the Products will continue to comply with such Accessibility Standards after the expiration or termination of the contract term, unless HHSC and/or Client/Recipient, as applicable] uses the Products in a manner that renders it noncompliant.
- (2) In the event CONTRACTOR should have known, becomes aware, or is notified that the Product and associated documentation and technical support do not comply with the Accessibility Standards, CONTRACTOR represents and warrants that it will, in a timely manner and at no cost to HHSC, perform all necessary steps to satisfy the Accessibility Standards, including but not limited to remediation, repair, replacement, and upgrading of the Product, or providing a suitable substitute.
- (3) CONTRACTOR acknowledges and agrees that these representations and warranties are essential inducements on which HHSC relies in awarding this contract.
- (4) CONTRACTOR's representations and warranties under this subsection will survive the termination or expiration of the contract and will remain in full force and effect throughout the useful life of the Product.

## **15.06 REMEDIES**

- (1) Pursuant to Texas Government Code Sec. 2054.465, neither CONTRACTOR nor any other person has cause of action against HHSC for a claim of a failure to comply with Texas Government Code Chapter 2054, Subchapter M, and rules of the Department of Information Resources.
- (2) In the event of a breach of CONTRACTOR's representations and warranties, CONTRACTOR will be liable for direct and consequential damages and any other remedies to which HHSC may be entitled. This remedy is cumulative of any and all other remedies to which HHSC may be entitled under this contract and other applicable law.

## **ARTICLE XVI. COMPLIANCE WITH FEDERAL LAWS**

### **16.01 COMPLIANCE REQUIRED**

CONTRACTOR is required to comply with all applicable federal laws, including all those specifically referenced in this Contract and all regulations implementing them, as those laws and regulations may from time to time be or have been amended.

### **16.02 ADDITIONAL FEDERAL LAWS**

In addition to all other federal laws that may be referenced in the Contract, CONTRACTOR is a required to comply, to the extent applicable, with the following laws:

- (1) The Federal Water Pollution Control Act (33 U.S.C. 1251-1387, as amended, Violations must be reported by CONTRACTOR to HHSC for notification to the awarding federal agency and the Regional Office of the Environmental Protection Agency;
- (2) The Federal drug-free workplace requirements embodied in 41 U.S.C. §8103;
- (3) The Americans with Disabilities Act, as amended (42 U.S.C. 12101 et seq.); and
- (4) Executive Order 11246, as amended, and its implementing regulations at 41 CFR, Part 60.

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## **EXHIBIT E: HHS DATA USE AGREEMENT**

### **DATA USE AGREEMENT**

#### **BETWEEN THE**

**TEXAS HEALTH AND HUMAN SERVICES ENTERPRISE**

**AND**

\_\_\_\_\_ (**“CONTRACTOR”**)

This Data Use Agreement (“DUA”), effective as of the date signed below (“Effective Date”), is entered into by and between the Texas Health and Human Services Enterprise agency (“HHS”) and \_\_\_\_\_ (“CONTRACTOR”), and incorporated into the terms of HHS Contract No. \_\_\_\_\_, in Travis County, Texas (the “Base Contract”).

#### **ARTICLE 1. PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE**

The purpose of this DUA is to facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information with CONTRACTOR, and describe CONTRACTOR’s rights and obligations with respect to the Confidential Information and the limited purposes for which the CONTRACTOR may create, receive, maintain, use, disclose or have access to Confidential Information. 45 CFR 164.504(e)(1)-(3) This DUA also describes HHS’s remedies in the event of CONTRACTOR’s noncompliance with its obligations under this DUA. This DUA applies to both Business Associates and Contractors who are not Business Associates who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of HHS, its programs or clients as described in the Base Contract.

As of the Effective Date of this DUA, if any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

#### **ARTICLE 2. DEFINITIONS**

For the purposes of this DUA, **capitalized, underlined terms have the meanings set forth in the following:** Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (42 U.S.C. §1320d, et seq.) and regulations thereunder in 45 CFR Parts 160 and 164, including all amendments, regulations and guidance issued thereafter; The Social Security Act, including Section 1137 (42 U.S.C. §§ 1320b-7), Title XVI of the Act; The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a and regulations and guidance thereunder; Internal Revenue Code, Title 26 of the United States Code and regulations and publications adopted under that code, including IRS Publication 1075; OMB Memorandum 07-18; Texas Business and Commerce Code Ch. 521; Texas



Government Code, Ch. 552, and Texas Government Code §2054.1125. In addition, the following terms in this DUA are defined as follows:

“**Authorized Purpose**” means the specific purpose or purposes described in the Statement of Work of the Base Contract for CONTRACTOR to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

“**Authorized User**” means a Person:

- (1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze Confidential Information pursuant to this DUA;
- (2) For whom CONTRACTOR warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and
- (3) Who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by this DUA.

“**Confidential Information**” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to CONTRACTOR or that CONTRACTOR may create, receive, maintain, use, disclose or have access to on behalf of HHS that consists of or includes any or all of the following:

- (1) Client Information;
- (2) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information;
- (3) Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;
- (4) Federal Tax Information;
- (5) Personally Identifiable Information;
- (6) Social Security Administration Data, including, without limitation, Medicaid information;
- (7) All privileged work product;
- (8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

“**Legally Authorized Representative**” of the Individual, as defined by Texas law, including as provided in 45 CFR 435.923 (Medicaid); 45 CFR 164.502(g)(1) (HIPAA); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code §166.164; Estates Code Ch. 752 and Texas Prob. Code § 3.

### **ARTICLE 3. CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION**

#### **Section 3.01 Obligations of CONTRACTOR**

CONTRACTOR agrees that:

(A) CONTRACTOR will exercise reasonable care and no less than the same degree of care CONTRACTOR uses to protect its own confidential, proprietary and trade secret information to prevent any portion of the Confidential Information from being used in a manner that is not



expressly an Authorized Purpose under this DUA or as Required by Law. **45 CFR 164.502(b)(1); 45 CFR 164.514(d)**

(B) CONTRACTOR will not, without HHS's prior written consent, disclose or allow access to any portion of the Confidential Information to any Person or other entity, other than Authorized User's Workforce or Subcontractors of CONTRACTOR who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Event or Breach to CONTRACTOR's management, to carry out the Authorized Purpose or as Required by Law.

HHS, at its election, may assist CONTRACTOR in training and education on specific or unique HHS processes, systems and/or requirements. CONTRACTOR will produce evidence of completed training to HHS upon request. **45 C.F.R. 164.308(a)(5)(i); Texas Health & Safety Code §181.101**

(C) CONTRACTOR will establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or applicable law. CONTRACTOR will maintain evidence of sanctions and produce it to HHS upon request. **45 C.F.R. 164.308(a)(1)(ii)(C); 164.530(e); 164.410(b); 164.530(b)(1)**

(D) CONTRACTOR will not, without prior written approval of HHS, disclose or provide access to any Confidential Information on the basis that such act is Required by Law without notifying HHS so that HHS may have the opportunity to object to the disclosure or access and seek appropriate relief. If HHS objects to such disclosure or access, CONTRACTOR will refrain from disclosing or providing access to the Confidential Information until HHS has exhausted all alternatives for relief. **45 CFR 164.504(e)(2)(ii)(A)**

(E) CONTRACTOR will not attempt to re-identify or further identify Confidential Information or De-identified Information, or attempt to contact any Individuals whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS or as expressly permitted by the Base Contract. 45 CFR 164.502(d)(2)(i) and (ii) CONTRACTOR will not engage in prohibited marketing or sale of Confidential Information. **45 CFR 164.501, 164.508(a)(3) and (4); Texas Health & Safety Code Ch. 181.002**

(F) CONTRACTOR will not permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information, on behalf of CONTRACTOR without requiring that Subcontractor first execute the Form Subcontractor Agreement, Attachment 1, which ensures that the Subcontractor will comply with the identical terms, conditions, safeguards and restrictions as contained in this DUA for PHI and any other relevant Confidential Information and which permits more strict limitations; and **45 CFR 164.502(e)(1)(i)(ii); 164.504(e)(1)(i) and (2)**

(G) CONTRACTOR is directly responsible for compliance with, and enforcement of, all conditions for creation, maintenance, use, disclosure, transmission and Destruction of Confidential Information and the acts or omissions of Subcontractors as may be reasonably necessary to prevent unauthorized use. **45 CFR 164.504(e)(5); 42 CFR 431.300, et seq.**

(H) If CONTRACTOR maintains PHI in a Designated Record Set, CONTRACTOR will make PHI available to HHS in a Designated Record Set or, as directed by HHS, provide PHI to the Individual, or Legally Authorized Representative of the Individual who is requesting PHI in compliance with the requirements of the HIPAA Privacy Regulations. CONTRACTOR will make other Confidential Information in CONTRACTOR's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach of Unsecured PHI as defined in HIPAA. **45 CFR 164.524 and 164.504(e)(2)(ii)(E)**

(I) CONTRACTOR will make PHI as required by HIPAA available to HHS for amendment and incorporate any amendments to this information that HHS directs or agrees to pursuant to the HIPAA. **45 CFR 164.504(e)(2)(ii)(E) and (F)**

(J) CONTRACTOR will document and make available to HHS the PHI required to provide access, an accounting of disclosures or amendment in compliance with the requirements of the HIPAA Privacy Regulations. **45 CFR 164.504(e)(2)(ii)(G) and 164.528**

(K) If CONTRACTOR receives a request for access, amendment or accounting of PHI by any Individual subject to this DUA, it will promptly forward the request to HHS; however, if it would violate HIPAA to forward the request, CONTRACTOR will promptly notify HHS of the request and of CONTRACTOR's response. Unless CONTRACTOR is prohibited by law from forwarding a request, HHS will respond to all such requests, unless HHS has given prior written consent for CONTRACTOR to respond to and account for all such requests. **45 CFR 164.504(e)(2)**

(L) CONTRACTOR will provide, and will cause its Subcontractors and agents to provide, to HHS periodic written certifications of compliance with controls and provisions relating to information privacy, security and breach notification, including without limitation information related to data transfers and the handling and disposal of Confidential Information. **45 CFR 164.308; 164.530(c); 1 TAC 202**

(M) Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, CONTRACTOR may use or disclose PHI for the proper management and administration of CONTRACTOR or to carry out CONTRACTOR's legal responsibilities if: **45 CFR 164.504(e)(ii)(1)(A)**

- (1) Disclosure is Required by Law, provided that CONTRACTOR complies with Section 3.01(D);
- (2) CONTRACTOR obtains reasonable assurances from the Person to whom the information is disclosed that the Person will:
  - (a) Maintain the confidentiality of the Confidential Information in accordance with this DUA;
  - (b) Use or further disclose the information only as Required by Law or for the Authorized Purpose for which it was disclosed to the Person; and
  - (c) Notify CONTRACTOR in accordance with Section 4.01 of any Event or Breach of Confidential Information of which the Person discovers or should

have discovered with the exercise of reasonable diligence. **45 CFR 164.504(e)(4)(ii)(B)**

(N) Except as otherwise limited by this DUA, CONTRACTOR will, if requested by HHS, use PHI to provide data aggregation services to HHS, as that term is defined in the HIPAA, 45 C.F.R. §164.501 and permitted by HIPAA. **45 CFR 164.504(e)(2)(i)(B)**

(O) CONTRACTOR will, on the termination or expiration of this DUA or the Base Contract, at its expense, return to HHS or Destroy, at HHS's election, and to the extent reasonably feasible and permissible by law, all Confidential Information received from HHS or created or maintained by CONTRACTOR or any of CONTRACTOR's agents or Subcontractors on HHS's behalf if that data contains Confidential Information. CONTRACTOR will certify in writing to HHS that all the Confidential Information that has been created, received, maintained, used by or disclosed to CONTRACTOR, has been Destroyed or returned to HHS, and that CONTRACTOR and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, CONTRACTOR acknowledges and agrees that it may not Destroy any Confidential Information if federal or state law, or HHS record retention policy or a litigation hold notice prohibits such Destruction. If such return or Destruction is not reasonably feasible, or is impermissible by law, CONTRACTOR will immediately notify HHS of the reasons such return or Destruction is not feasible, and agree to extend indefinitely the protections of this DUA to the Confidential Information and limit its further uses and disclosures to the purposes that make the return of the Confidential Information not feasible for as long as CONTRACTOR maintains such Confidential Information. **45 CFR 164.504(e)(2)(ii)(J)**

(P) CONTRACTOR will create, maintain, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threats or hazards to the security or integrity of such information or unauthorized uses. **45 CFR 164.306; 164.530(c)**

(Q) If CONTRACTOR accesses, transmits, stores, and/or maintains Confidential Information, CONTRACTOR will complete and return to HHS at [infosecurity@hhsc.state.tx.us](mailto:infosecurity@hhsc.state.tx.us) the HHS information security and privacy initial inquiry (SPI) at Attachment 2. The SPI identifies basic privacy and security controls with which CONTRACTOR must comply to protect HHS Confidential Information. CONTRACTOR will comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. CONTRACTOR's security controls will be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. CONTRACTOR will update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and will provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements. **45 CFR 164.306**

(R) CONTRACTOR will establish, implement and maintain any and all appropriate procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, and with respect to

PHI, as described in the HIPAA Privacy and Security Regulations, or other applicable laws or regulations relating to Confidential Information, to prevent any unauthorized use or disclosure of Confidential Information as long as CONTRACTOR has such Confidential Information in its actual or constructive possession. **45 CFR 164.308 (administrative safeguards); 164.310 (physical safeguards); 164.312 (technical safeguards); 164.530(c)(privacy safeguards)**

(S) CONTRACTOR will designate and identify, subject to HHS approval, a Person or Persons, as Privacy Official 45 CFR 164.530(a)(1) and Information Security Official, each of whom is authorized to act on behalf of CONTRACTOR and is responsible for the development and implementation of the privacy and security requirements in this DUA. CONTRACTOR will provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. **45 CFR 164.308(a)(2)**

(T) CONTRACTOR represents and warrants that its Authorized Users each have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose pursuant to this DUA and the Base Contract, and further, that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this DUA. **45 CFR 164.502; 164.514(d)**

(U) CONTRACTOR and its Subcontractors will maintain an updated, complete, accurate and numbered list of Authorized Users, their signatures, titles and the date they agreed to be bound by the terms of this DUA, at all times and supply it to HHS, as directed, upon request.

(V) CONTRACTOR will implement, update as necessary, and document reasonable and appropriate policies and procedures for privacy, security and Breach of Confidential Information and an incident response plan for an Event or Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the DUA. **45 CFR 164.308; 164.316; 164.514(d); 164.530(i)(1)**

(W) CONTRACTOR will produce copies of its information security and privacy policies and procedures and records relating to the use or disclosure of Confidential Information received from, created by, or received, used or disclosed by CONTRACTOR on behalf of HHS for HHS's review and approval within 30 days of execution of this DUA and upon request by HHS the following business day or other agreed upon time frame. **45 CFR 164.308; 164.514(d)**

(X) CONTRACTOR will make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, PHI in accordance with HIPAA and other applicable laws and regulations relating to Confidential Information. CONTRACTOR will provide such information in a time and manner reasonably agreed upon or as designated by the Secretary, or other federal or state law. **45 CFR 164.504(e)(2)(i)(I)**

(Y) CONTRACTOR will only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form. A secure transmission of electronic Confidential Information in motion includes secure File Transfer Protocol (SFTP) or Encryption at an appropriate level or otherwise protected as required by rule, regulation or law. HHS Confidential Information at rest requires Encryption unless there is adequate administrative, technical, and physical security, or as otherwise protected as required by rule, regulation or

law. All electronic data transfer and communications of Confidential Information will be through secure systems. Proof of system, media or device security and/or Encryption must be produced to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit or the Discovery of an Event or Breach. Otherwise, requested production of such proof will be made as agreed upon by the parties. De-identification of HHS Confidential Information is a means of security. With respect to de-identification of PHI, "secure" means de-identified according to HIPAA Privacy standards and regulatory guidance. **45 CFR 164.312; 164.530(d)**

(Z) CONTRACTOR will comply with the following laws and standards if applicable to the type of Confidential Information and Contractor's Authorized Purpose:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;
- The Privacy Act of 1974;
- OMB Memorandum 07-16;
- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) as defined in the DUA;
- Internal Revenue Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;
- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI; and
- Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that CONTRACTOR supports on behalf of HHS.

#### **ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS**

##### **Section 4.01 Breach or Event Notification to HHS. 45 CFR 164.400-414**

(A) CONTRACTOR will cooperate fully with HHS in investigating, mitigating to the extent practicable and issuing notifications directed by HHS, for any Event or Breach of Confidential Information to the extent and in the manner determined by HHS.

(B) CONTRACTOR'S obligation begins at the Discovery of an Event or Breach and continues as long as related activity continues, until all effects of the Event are mitigated to HHS's satisfaction (the "incident response period"). **45 CFR 164.404**

(C) Breach Notice:

(1) Initial Notice

- (a) For federal information, including without limitation, Federal Tax Information, Social Security Administration Data, and Medicaid Client Information, within the first, consecutive clock hour of Discovery, and for all other types of Confidential Information not more than 24 hours after Discovery, or in a timeframe otherwise approved by HHS in writing, initially report to HHS's Privacy and Security Officers via email at: privacy@HHSC.state.tx.us and to the HHS division responsible for this DUA; and IRS Publication 1075; Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a; OMB Memorandum 07-16 as cited in HHSC-CMS contracts for information exchange.
- (b) Report all information reasonably available to CONTRACTOR about the Event or Breach of the privacy or security of Confidential Information. **45 CFR 164.410**
- (c) Name, and provide contact information to HHS for, CONTRACTOR's single point of contact who will communicate with HHS both on and off business hours during the incident response period.

(2) 48-Hour Formal Notice. No later than 48 consecutive clock hours after Discovery, or a time within which Discovery reasonably should have been made by CONTRACTOR of an Event or Breach of Confidential Information, **provide** formal notification to the State, including all reasonably available information about the Event or Breach, and CONTRACTOR's investigation, including without limitation and to the extent available: For (a) - (m) below: 45 CFR 164.400-414

- (a) The date the Event or Breach occurred;
- (b) The date of CONTRACTOR's and, if applicable, Subcontractor's Discovery;
- (c) A brief description of the Event or Breach; including how it occurred and who is responsible (or hypotheses, if not yet determined);
- (d) A brief description of CONTRACTOR's investigation and the status of the investigation;
- (e) A description of the types and amount of Confidential Information involved;
- (f) Identification of and number of all Individuals reasonably believed to be affected, including first and last name of the individual and if applicable the, Legally Authorized Representative, last known address, age, telephone

- number, and email address if it is a preferred contact method, to the extent known or can be reasonably determined by CONTRACTOR at that time;
- (g) CONTRACTOR's initial risk assessment of the Event or Breach demonstrating whether individual or other notices are required by applicable law or this DUA for HHS approval, including an analysis of whether there is a low probability of compromise of the Confidential Information or whether any legal exceptions to notification apply;
  - (h) CONTRACTOR's recommendation for HHS's approval as to the steps Individuals and/or CONTRACTOR on behalf of Individuals, should take to protect the Individuals from potential harm, including without limitation CONTRACTOR's provision of notifications, credit protection, claims monitoring, and any specific protections for a Legally Authorized Representative to take on behalf of an Individual with special capacity or circumstances;
  - (i) The steps CONTRACTOR has taken to mitigate the harm or potential harm caused (including without limitation the provision of sufficient resources to mitigate);
  - (j) The steps CONTRACTOR has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Event or Breach;
  - (k) Identify, describe or estimate of the Persons, Workforce, Subcontractor, or Individuals and any law enforcement that may be involved in the Event or Breach;
  - (l) A reasonable schedule for CONTRACTOR to provide regular updates to the foregoing in the future for response to the Event or Breach, but no less than every three (3) business days or as otherwise directed by HHS, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and
  - (m) Any reasonably available, pertinent information, documents or reports related to an Event or Breach that HHS requests following Discovery.

**Section 4.02     *Investigation, Response and Mitigation. For A-F below: 45 CFR 164.308, 310 and 312; 164.530***

(A) CONTRACTOR will immediately conduct a full and complete investigation, respond to the Event or Breach, commit necessary and appropriate staff and resources to expeditiously respond, and report as required to and by HHS for incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the satisfaction of HHS.

(B) CONTRACTOR will complete or participate in a risk assessment as directed by HHS following an Event or Breach, and provide the final assessment, corrective actions and mitigations to HHS for review and approval.

(C) CONTRACTOR will fully cooperate with HHS to respond to inquiries and/or proceedings by state and federal authorities, Persons and/or Individuals about the Event or Breach.

(D) CONTRACTOR will fully cooperate with HHS's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such Event or Breach, or to recover or protect any Confidential Information, including complying with reasonable corrective action or measures, as specified by HHS in a Corrective Action Plan if directed by HHS under the Base Contract.

**Section 4.03 Breach Notification to Individuals and Reporting to Authorities.  
*Tex. Bus. & Comm. Code §521.053; 45 CFR 164.404 (Individuals), 164.406 (Media); 164.408 (Authorities)***

(A) HHS may direct CONTRACTOR to provide Breach notification to Individuals, regulators or third-parties, as specified by HHS following a Breach.

(B) CONTRACTOR must obtain HHS's prior written approval of the time, manner and content of any notification to Individuals, regulators or third-parties, or any notice required by other state or federal authorities. Notice letters will be in CONTRACTOR's name and on CONTRACTOR's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of CONTRACTOR's representative, an email address and a toll-free telephone number, for the Individual to obtain additional information.

(C) CONTRACTOR will provide HHS with copies of distributed and approved communications.

(D) CONTRACTOR will have the burden of demonstrating to the satisfaction of HHS that any notification required by HHS was timely made. If there are delays outside of CONTRACTOR's control, CONTRACTOR will provide written documentation of the reasons for the delay.

(E) If HHS delegates notice requirements to CONTRACTOR, HHS shall, in the time and manner reasonably requested by CONTRACTOR, cooperate and assist with CONTRACTOR's information requests in order to make such notifications and reports.

**ARTICLE 5. STATEMENT OF WORK**

Statement of Work means the services and deliverables to be performed or provided by CONTRACTOR, or on behalf of CONTRACTOR by its Subcontractors or agents for HHS that are described in detail in the Base Contract. The Statement of Work, including any future amendments thereto, is incorporated by reference in this DUA as if set out word-for-word herein.



## ARTICLE 6. GENERAL PROVISIONS

### **Section 6.01     *Ownership of Confidential Information***

CONTRACTOR acknowledges and agrees that the Confidential Information is and will remain the property of HHS. CONTRACTOR agrees it acquires no title or rights to the Confidential Information.

### **Section 6.02     *HHS Commitment and Obligations***

HHS will not request CONTRACTOR to create, maintain, transmit, use or disclose PHI in any manner that would not be permissible under applicable law if done by HHS.

### **Section 6.03     *HHS Right to Inspection***

At any time upon reasonable notice to CONTRACTOR, or if HHS determines that CONTRACTOR has violated this DUA, HHS, directly or through its agent, will have the right to inspect the facilities, systems, books and records of CONTRACTOR to monitor compliance with this DUA. For purposes of this subsection, HHS's agent(s) include, without limitation, the HHS Office of the Inspector General or the Office of the Attorney General of Texas, outside consultants or legal counsel or other designee.

### **Section 6.04     *Term; Termination of DUA; Survival***

This DUA will be effective on the date on which CONTRACTOR executes the DUA, and will terminate upon termination of the Base Contract and as set forth herein. If the Base Contract is extended or amended, this DUA is updated automatically concurrent with such extension or amendment.

(A) HHS may immediately terminate this DUA and Base Contract upon a material violation of this DUA.

(B) Termination or Expiration of this DUA will not relieve CONTRACTOR of its obligation to return or Destroy the Confidential Information as set forth in this DUA and to continue to safeguard the Confidential Information until such time as determined by HHS.

(D) If HHS determines that CONTRACTOR has violated a material term of this DUA; HHS may in its sole discretion:

- (1) Exercise any of its rights including but not limited to reports, access and inspection under this DUA and/or the Base Contract; or
- (2) Require CONTRACTOR to submit to a corrective action plan, including a plan for monitoring and plan for reporting, as HHS may determine necessary to maintain compliance with this DUA; or
- (3) Provide CONTRACTOR with a reasonable period to cure the violation as determined by HHS; or
- (4) Terminate the DUA and Base Contract immediately, and seek relief in a court of competent jurisdiction in Travis County, Texas.

Before exercising any of these options, HHS will provide written notice to CONTRACTOR describing the violation and the action it intends to take.

(E) If neither termination nor cure is feasible, HHS shall report the violation to the Secretary.

(F) The duties of CONTRACTOR or its Subcontractor under this DUA survive the expiration or termination of this DUA until all the Confidential Information is Destroyed or returned to HHS, as required by this DUA.

### **Section 6.05     *Governing Law, Venue, and Litigation***

(A) The validity, construction and performance of this DUA and the legal relations among the Parties to this DUA will be governed by and construed in accordance with the laws of the State of Texas.

(B) The Parties agree that the courts of Travis County, Texas, will be the exclusive venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, or in connection with, or by reason of this DUA.

### **Section 6.06     *Injunctive Relief***

(A) CONTRACTOR acknowledges and agrees that HHS may suffer irreparable injury if CONTRACTOR or its Subcontractor fails to comply with any of the terms of this DUA with respect to the Confidential Information or a provision of HIPAA or other laws or regulations applicable to Confidential Information.

(B) CONTRACTOR further agrees that monetary damages may be inadequate to compensate HHS for CONTRACTOR's or its Subcontractor's failure to comply. Accordingly, CONTRACTOR agrees that HHS will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief without posting a bond and without the necessity of demonstrating actual damages, to enforce the terms of this DUA.

### **Section 6.07     *Indemnification***

CONTRACTOR will indemnify, defend and hold harmless HHS and its respective Executive Commissioner, employees, Subcontractors, agents (including other state agencies acting on behalf of HHS) or other members of its Workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this DUA or from any acts or omissions related to this DUA by CONTRACTOR or its employees, directors, officers, Subcontractors, or agents or other members of its Workforce. The duty to indemnify, defend and hold harmless is independent of the duty to insure and continues to apply even in the event insurance coverage required, if any, in the DUA or Base Contract is denied, or coverage rights are reserved by any insurance carrier. Upon demand, CONTRACTOR will reimburse HHS for any and all losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party to the extent caused by and which results from the CONTRACTOR's failure to meet any

of its obligations under this DUA. CONTRACTOR's obligation to defend, indemnify and hold harmless any Indemnified Party will survive the expiration or termination of this DUA.

#### **Section 6.08     *Insurance***

(A) In addition to any insurance required in the Base Contract, at HHS's option, HHS may require CONTRACTOR to maintain, at its expense, the special and/or custom first- and third-party insurance coverages, including without limitation data breach, cyber liability, crime theft and notification expense coverages, with policy limits sufficient to cover any liability arising under this DUA, naming the State of Texas, acting through HHS, as an additional named insured and loss payee, with primary and non-contributory status, with required insurance coverage, by the Effective Date, or as required by HHS.

(B) CONTRACTOR will provide HHS with written proof that required insurance coverage is in effect, at the request of HHS.

#### **Section 6.09     *Fees and Costs***

Except as otherwise specified in this DUA or the Base Contract, including but not limited to requirements to insure and/or indemnify HHS, if any legal action or other proceeding is brought for the enforcement of this DUA, or because of an alleged dispute, contract violation, Event, Breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this DUA, each party will bear their own legal expenses and the other cost incurred in that action or proceeding.

#### **Section 6.10     *Entirety of the Contract***

This Data Use Agreement is incorporated by reference into the Base Contract and, together with the Base Contract, constitutes the entire agreement between the parties. No change, waiver, or discharge of obligations arising under those documents will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced.

#### **Section 6.11     *Amendment and Interpretation***

Upon the effective date of any amendment or issuance of additional regulations to HIPAA, or any other law applicable to Confidential Information, this DUA will automatically be amended so that the obligations imposed on HHS and/or CONTRACTOR remain in compliance with such requirements. Any ambiguity in this DUA will be resolved in favor of a meaning that permits HHS and CONTRACTOR to comply with HIPAA or any other law applicable to Confidential Information.

### **ARTICLE 7.     AUTHORITY TO EXECUTE**

The Parties have executed this DUA in their capacities as stated below with authority to bind their organizations on the dates set forth by their signatures.

IN WITNESS WHEREOF, HHS and CONTRACTOR have each caused this DUA to be signed and delivered by its duly authorized representative:

TEXAS HEALTH AND  
HUMAN SERVICES

CONTRACTOR

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

## **ARTICLE 8. ATTACHMENT 1. SUBCONTRACTOR AGREEMENT FORM**

HHS CONTRACT NUMBER \_\_\_\_\_

The DUA between HHS and CONTRACTOR establishes the permitted and required uses and disclosures of Confidential Information by CONTRACTOR.

CONTRACTOR has subcontracted with \_\_\_\_\_ (SUBCONTRACTOR) for performance of duties on behalf of CONTRACTOR which are subject to the DUA. SUBCONTRACTOR acknowledges, understands and agrees to be bound by the identical terms and conditions applicable to CONTRACTOR under the DUA, incorporated by reference in this Agreement, with respect to HHS Confidential Information. CONTRACTOR and SUBCONTRACTOR agree that HHS is a third-party beneficiary to applicable provisions of the subcontract.

HHS has the right but not the obligation to review or approve the terms and conditions of the subcontract by virtue of this Subcontractor Agreement Form.

CONTRACTOR and SUBCONTRACTOR assure HHS that any Breach or Event as defined by the DUA that SUBCONTRACTOR Discovers will be reported to HHS by CONTRACTOR in the time, manner and content required by the DUA.

If CONTRACTOR knows or should have known in the exercise of reasonable diligence of a pattern of activity or practice by SUBCONTRACTOR that constitutes a material breach or violation of the DUA or the SUBCONTRACTOR's obligations CONTRACTOR will:

- (1) Take reasonable steps to cure the violation or end the violation, as applicable;
- (2) If the steps are unsuccessful, terminate the contract or arrangement with SUBCONTRACTOR, if feasible;
- (3) Notify HHS immediately upon discovery of the pattern of activity or practice of SUBCONTRACTOR that constitutes a material breach or violation of the DUA and keep HHS reasonably and regularly informed about steps CONTRACTOR is taking to cure or end the violation or terminate SUBCONTRACTOR's contract or arrangement.

This Subcontractor Agreement Form is executed by the parties in their capacities indicated below.

CONTRACTOR	SUBCONTRACTOR
_____ SIGNATURE	_____ SIGNATURE
_____ PRINTED NAME	_____ PRINTED NAME
_____ TITLE	_____ TITLE
_____ DATE	_____ DATE

**EXHIBIT F: HHS ENTERPRISE DUA SECURITY AND PRIVACY  
INITIAL INQUIRY (SPI) FORM**

Document will be on the ESD as a separate bid packet.

**EXHIBIT G: EXCEPTIONS AND ASSUMPTIONS**

Item #	Solicitation Document	Solicitation Document Section Number & Title	Solicitation Language to which Exception is Taken/ or related to Assumption	Basis of Exception/ or Assumption	Respondent's Proposed Language	Still Want to be Considered for Contract Award if Exception Denied? (State "Yes" or "No")

**INSTRUCTIONS:**

Completion of this Exhibit is not required if there are no Exceptions or Assumptions that Respondent is required to cite for the Narrative Proposal Response, or the Cost Proposal Response (See RFP Section 3.6.5, and 3.6.6). Exhibit G Responses for Narrative Proposal and Cost Proposal must be submitted on two, separate forms, adhering to instructions in Section 3.6.2.

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

Add additional rows if needed.



**EXHIBIT H: HUB SUBCONTRACTING PLAN FORMS AND  
INFORMATION**

**HUB PARTICIPATION REQUIREMENTS**

**Table of Contents**

1. HUB Participation Requirements
2. Quick Check List – Document will be on the ESBD as a separate bid packet.
3. HUB Subcontracting Plan Form – **Document will be on the ESBD as a separate bid packet.**

# **HUB PARTICIPATION REQUIREMENTS**

## **1 HISTORICALLY UNDERUTILIZED BUSINESS PARTICIPATION**

It is the policy of the Health and Human Services' (HHS) HUB Program Office to include the HUB Subcontracting Plan (HSP), when subcontracting opportunities are probable and a contract has an expected value of \$100,000 or more over and the HSP is applicable for the life of the contract, which will also be applicable to any subsequent amendments and renewals after award of the contract as related to the original HSP.

In addition to, and in accordance with, Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter B, Rule §20.14, when the contractor is selected and decides to subcontract any part of the contract after the award, as a provision of the contract, the contractor must comply with the HSP provisions relating to developing and submitting a revised HSP before any modifications or performance in the awarded contract involving subcontracting can be authorized by the state agency.

HHSC has determined that subcontracting opportunities are probable for this RFP. As a result, the respondent must submit an HSP with its proposal. The HSP is required whether a respondent intends to subcontract or not.

In accordance with Texas Government Code [Chapter 2161, Subchapter F, §2161.252 \(b\)](#) a proposal that does not contain a HUB Subcontracting Plan (HSP) is non-responsive; and in accordance with Texas Administrative Code §20.14 (b) (3) Responses that do not include a completed HUB subcontracting plan in accordance with this subsection shall be rejected without further evaluation. In addition, if HHSC determines that the HSP was not developed in good faith, it will reject the proposal for failing to comply with material RFP specifications.

### **1.1 INTRODUCTION**

#### **The sole point of contact for HUB inquires:**

**Texas Health and Human Services Commission**  
**Cheryl Bradley, HUB Coordinator**  
**Phone: (512) 406-2529**  
**E-mail: [cheryl.bradley@hhsc.state.tx.us](mailto:cheryl.bradley@hhsc.state.tx.us)**

HHSC is committed to promoting full and equal business opportunities for businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study. HHSC encourages the use of Historically Underutilized Businesses (HUBs) through race, ethnic and gender-neutral means. HHSC has adopted administrative rules relating to HUBs and a Policy on the Utilization of HUBs which is located on HHSC's website.

Pursuant to Texas Government Code [§2161.181](#) and [§2161.182](#) and HHSC's HUB policy and rules, HHSC is required to make a good faith effort to increase HUB participation in its contracts. HHSC may accomplish the goal of increased HUB participation by contracting directly with HUBs or indirectly through subcontracting opportunities.

## 1.2 HHSC'S ADMINISTRATIVE RULES

HHSC has adopted the CPA's HUB rules as its own. HHSC's rules are located in the Texas Administrative Code [Title 1, Part 15, Chapter 391, Subchapter G](#) and the CPA rules are located in Texas Administrative Code [Title 34, Part 1, Chapter 20, Subchapter B](#). If there are any discrepancies between HHSC's administrative rules and this RFP, the rules shall take priority.

## 1.3 STATEWIDE ANNUAL HUB UTILIZATION GOAL

The CPA has established statewide annual HUB utilization goals for different categories of contracts in Texas Administrative Code [Title 34, Part 1, Chapter 20, Subchapter B, §20.13 of the HUB rules](#). In order to meet or exceed the **statewide annual HUB utilization goals**, HHSC encourages outreach to certified HUBs. Contractors shall make a good faith effort to include certified HUBs in the procurement process.

This procurement is classified as an **Other Services** procurement under the CPA rule and therefore has a **statewide annual HUB utilization goal** of **26%** per fiscal year.

## 1.4 REQUIRED HUB SUBCONTRACTING PLAN

**Respondent must submit one (1) copy of the HSP, in accordance with the RFP, in a separate sealed envelope, with the RFP submission, labeled "HUB Subcontracting Plan (HSP)", and include all supporting documentation in accordance with the HSP. Respondent must also submit one (1) electronic copy of the HSP and supporting documentation in Adobe PDF format on a USB flash drive.**

In the HSP, a Respondent must indicate whether it is a Texas certified HUB. Being a certified HUB does not exempt a Respondent from completing the HSP requirement.

HHSC shall review the documentation submitted by the Respondent to determine if a good faith effort has been made in accordance with solicitation and HSP requirements. During the good faith effort evaluation, HHSC may, at its discretion, allow revisions necessary to clarify and enhance information submitted in the original HSP.

If HHSC determines that the Respondent's HSP was not developed in good faith, the HSP will be considered non-responsive and will be rejected as a material failure to comply with advertised specifications. The reasons for rejection shall be recorded in the procurement file.

## 1.5 CPA CENTRALIZED MASTER BIDDERS LIST

Respondents may search for HUB subcontractors in the CPA's Centralized Master Bidders List (CMBL) HUB Directory, which is located on the CPA's website at <http://www2.cpa.state.tx.us/cmb/cmbhub.html>. For this procurement, HHSC has identified the following class and item codes for potential subcontracting opportunities:

### 1.5.1 National Institute of Governmental Purchasing (NGIP) Class/Item Code(s):

- 920-24 Data Conversion Services
- 920-45 Software Maintenance/Support
- 920-40 Programming Services, Computer, Including Mobile Device Applications

Respondents are not required to use, nor limited to using, the class and item codes identified above, and may identify other areas for subcontracting.

HHSC does not endorse, recommend nor attest to the capabilities of any company or individual listed on the CPA's CMBL. The list of certified HUBs is subject to change, so Respondents are encouraged to refer to the CMBL often to find the most current listing of HUBs.

## **1.6 HUB SUBCONTRACTING PROCEDURES – IF A RESPONDENT INTENDS TO SUBCONTRACT**

An HSP must demonstrate that the Respondent made a good faith effort to comply with HHSC's HUB policies and procedures. The following subparts outline the items that HHSC will review in determining whether an HSP meets the good faith effort standard. A Respondent that intends to subcontract must complete the HSP to document its good faith efforts.

### **1.6.1 Identify Subcontracting Areas and Divide Them into Reasonable Lots**

A Respondent should first identify each area of the contract work it intends to subcontract. Then, to maximize HUB participation, it should divide the contract work into reasonable lots or portions, to the extent consistent with prudent industry practices.

### **1.6.2 Notify Potential HUB Subcontractors**

The HSP must demonstrate that the Respondent made a good faith effort to subcontract with HUBs. The Respondent's good faith efforts shall be shown through utilization of all methods in conformance with the development and submission of the HSP and by complying with the following steps:

Divide the contract work into reasonable lots or portions to the extent consistent with prudent industry practices. The Respondent must determine which portions of work, including goods and services, will be subcontracted.

Use the appropriate method(s) to demonstrate good faith effort. The Respondent can use either method(s) 1, 2, 3, 4 or 5:

**Method 1:** Respondent Intends to Subcontract with only HUBs:

The Respondent must identify in the HSP the HUBs that will be utilized and submit written documentation that confirms 100% of all available subcontracting opportunities will be performed by one or more HUBs; or,

**Method 2:** Respondent Intends to Subcontract with HUB Protégé(s):

The Respondent must identify in the HSP the HUB Protégé(s) that will be utilized and should:

- include a fully executed copy of the Mentor Protégé Agreement, which must be registered with the CPA prior to submission to HHSC, and
- identify areas of the HSP that will be performed by the Protégé.

HHSC will accept a Mentor Protégé Agreement that has been entered into by a Respondent (Mentor) and a certified HUB (Protégé) in accordance with Texas Government Code

[§2161.065](#). When a Respondent proposes to subcontract with a Protégé(s), it does not need to provide notice to three (3) HUB vendors for that subcontracted area.

Participation in the Mentor Protégé Program, along with the submission of a Protégé as a subcontractor in an HSP, constitutes a good faith effort for the particular area subcontracted to the protégé; or,

**Method 3:** Respondent Intends to Subcontract with HUBs and Non-HUBs (Meet or Exceed the Goal):

The Respondent must identify in the HSP and submit written documentation that one or more HUB subcontractors will be utilized and that the aggregate expected percentage of subcontracts with HUBs will meet or exceed the goal specified in this solicitation. When utilizing this method, only HUB subcontractors that have existing contracts with the Respondent for five years or less may be used to comply with the good faith effort requirements.

When the aggregate expected percentage of subcontracts with HUBs meets or exceeds the goal specified in this solicitation, Respondents may also use non-HUB subcontractors; or,

**Method 4:** Respondent Intends to Subcontract with HUBs and Non-HUBs (Does Not Meet or Exceed the Goal):

The Respondent must identify in the HSP and submit documentation regarding both of the following requirements:

- Written notification to trade organizations or development centers that serve members of groups (e.g., Black Americans, Hispanic Americans, American Women, Asian Pacific Americans, Native Americans, and Veterans as defined by 38 U.S.C. Section 101[2]) to assist in identifying potential HUBs by disseminating subcontracting opportunities to their membership/participants of the subcontracting opportunities the Respondent intends to subcontract.
- Respondents must give trade organizations and/ or development centers at least seven (7) working days prior to submission of the Respondent's response for dissemination of the subcontracting opportunities to their members. A list of trade organizations and/or development centers is located on CPA's website under the [Minority and Women Organization Links](#).
- Written notification to at least three (3) HUB businesses of the subcontracting opportunities that the Respondent intends to subcontract. The written notice must be sent to potential HUB subcontractors prior to submitting proposals and must include:
  - ◆ a description of the scope of work to be subcontracted;
  - ◆ information regarding the location to review project plans or specifications;
  - ◆ information about bonding and insurance requirements;
  - ◆ required qualifications and other contract requirements; and
  - ◆ a description of how the subcontractor can contact the Respondent.
- Respondents must give potential HUB subcontractors a reasonable amount of time to respond to the notice, at least seven (7) working days prior to submission of the

Respondent's response unless circumstances require a different time period, which is determined by the agency and documented in the contract file.

- Respondents must also use the CMBL, the HUB Directory, and Internet resources when searching for HUB subcontractors. Respondents may rely on the services of contractor groups, local, state and federal business assistance offices, and other organizations that provide assistance in identifying qualified applicants for the HUB program.

### **1.6.3 Written Justification of the Selection Process**

HHSC will make a determination if a good faith effort was made by the Respondent in the development of the required HSP. One or more of the methods identified in the previous sections may be applicable to the Respondent's good faith efforts in developing and submission of the HSP. HHSC may require the Respondent to submit additional documentation explaining how the Respondent made a good faith effort in accordance with the solicitation.

A Respondent must provide written justification of its selection process if it chooses a non-HUB subcontractor. The justification should demonstrate that the Respondent negotiated in good faith with qualified HUB bidders and did not reject qualified HUBs who were the best value responsive bidders.

## **1.7 METHOD 5: RESPONDENT DOES NOT INTEND TO SUBCONTRACT**

When the Respondent plans to complete all contract requirements with its own equipment, supplies, materials and/or employees, it is still required to complete an HSP.

The Respondent must complete the "Self Performance Justification" portion of the HSP, and attest that it does not intend to subcontract for any goods or services, including the class and item codes identified in Section 4.5. In addition, the Respondent must identify the sections of the proposal that describe how it will complete the Scope of Work using its own resources or provide a statement explaining how it will complete the Scope of Work using its own resources. The Respondent must agree to comply with the following if requested by HHSC:

- provide evidence of sufficient Respondent staffing to meet the RFP requirements;
- provide monthly payroll records showing the Respondent staff fully dedicated to the contract;
- allow HHSC to conduct an on-site review of company headquarters or work site where services are to be performed and,
- provide documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the Scope of Work.

## **1.8 POST-AWARD HSP REQUIREMENTS**

The HSP shall be reviewed and evaluated prior to contract award and, if accepted, the HSP will become a provision of the contract with the successful Respondent(s).

After contract award, HHSC will coordinate a post-award meeting with the successful Respondent to discuss HSP reporting requirements. The contractor must maintain business records documenting compliance with the HSP and must submit monthly subcontract reports to HHSC by completing the HUB HSP Prime Contractor Progress Assessment Report.

This monthly report is required as a condition for payment to report to the agency the identity and the amount paid to all subcontractors. Note: the PAR does not have to be returned with respondent's proposal.

As a condition of award, the Contractor is required to send notification to all selected subcontractors as identified in the accepted/approved HSP. In addition, a copy of the notification must be provided to the agency's Contract Manager and/or HUB Program Office within 10 days of the contract award.

During the term of the contract, if the parties in the contract amend the contract to include a change to the scope of work or add additional funding, HHSC will evaluate to determine the probability of additional subcontracting opportunities. When applicable, the Contractor must submit an HSP change request for HHSC review. The requirements for an HSP change request will be covered in the post-award meeting.

When making a change to an HSP, the Contractor will obtain prior written approval from HHSC before making any changes to the HSP. Proposed changes must comply with the HUB Program good faith effort requirements relating to the development and submission of a HSP.

If the Contractor decides to subcontract any part of the contract after the award, it must follow the good faith effort procedures outlined in Section 4.6 of this RFP (e.g., divide work into reasonable lots, notify at least three (3) vendors per subcontracted area, provide written justification of the selection process, and/or participate in the Mentor Protégé Program).

For this reason, HHSC encourages Respondents to identify, as part of their HSP, multiple subcontractors who are able to perform the work in each area the Respondent plans to subcontract. Selecting additional subcontractors may help the selected contractor make changes to its original HSP, when needed, and will allow HHSC to approve any necessary changes expeditiously.

Failure to meet the HSP and post-award requirements will constitute a breach of contract and will be subject to remedial actions. HHSC may also report noncompliance to the CPA in accordance with the provisions of the Vendor Performance and Debarment Program.