



TEXAS
Health and Human Services

Dr. Courtney N. Phillips, Executive Commissioner

**Request for Proposals (RFP) for
Civil Commitment Center(s) for Civilly Committed Sex Offenders**

RFP No. HHS0001193

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**NIGP Class/Item Codes: 952-49 Housing Services, 952-20 Correctional Services, 952-21
Counseling Services, 952-62 Mental Health Services: Vocational, Residential, Etc., 958-28
Corrections Management Services**

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ARTICLE 1. EXECUTIVE SUMMARY, DEFINITIONS, AND
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1.1 EXECUTIVE SUMMARY

The Texas Health and Human Services Commission (HHSC) on behalf of the Texas Civil Commitment Office (TCCO), seeks one or more qualified vendors to provide client services at one or more Civil Commitment Center(s) (CCC), a confined sex offender treatment facility. Services shall include but are not limited to all necessary personnel, equipment, materials, supplies, and services as specifically identified within the Contract and otherwise all things necessary for, or incidental to, the location, operation and management of a CCC with associated programs for the treatment and monitoring of Sexually Violent Predator (SVP) Clients assigned to the center.

SVP Clients assigned have been civilly committed pursuant to Texas Health and Safety Code, Chapter 841. SVP Clients have been found to be a repeat sexually violent offender and to suffer from a behavioral abnormality that makes the SVP Client likely to engage in future predatory acts of sexual violence.

TCCO is interested in contracting for up to seven hundred and fifty (750) CCC beds with the ability to expand to meet the agency's needs. Respondents can propose one or multiple locations. The contract period will consist of a five (5) year base period, subject to appropriations, with the option to renew for two (2) two-year terms to extend services for a potential contract period of nine (9) years.

To be considered for award, Respondents must execute **Exhibit A, Affirmations and Solicitation Acceptance** and **Exhibit B, Lobbying and Federal Assurances**, of this Solicitation and provide all other required information and documentation as set forth in this Solicitation.

Information regarding TCCO and its programs is available online and can currently be accessed at www.tcco.texas.gov.

1.2 DEFINITIONS

Refer to **Exhibit C, TCCO Terms and Conditions** for additional definitions.

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

Absconders - an SVP Client who leaves the center without authorization or fails to return as required.

Addendum - a written clarification or revision to this Solicitation issued by HHSC.

Additional Services - those additional services required to be furnished by the Respondent pursuant to changes in TCCO policies from those in effect as of the date of this Contract, which changes are not required by changes in laws, government regulations, or Court Orders generally applicable to TCCO, and which changes cause an increase in cost of operating and managing the center.

Base Salary - the minimum salary, in the salary range, on the effective date of this Contract or as in effect at the time of renewal or extension thereof.

Bed Book Check - receiving a verbal response and positively identifying the SVP Client.

Biennium - any of the two (2) year periods beginning on September 1 and ending on August 31 of odd numbered years, which periods are used for budgetary purposes by the State of Texas.

Case Manager - a person employed by or under contract with TCCO to perform duties related to outpatient treatment and supervision of a person civilly committed pursuant to Title 11, Health and Safety Code, Chapter 841.

CCTV - a closed-circuit television is the use of video cameras to transmit a signal to a specific place, on a limited set of monitors.

Center Capacity - the maximum number of SVP Clients authorized by contract to be housed at the center.

Center Generated Income - all income generated at a center. Sources include, but are not limited to: commissaries; telephones; vending machines; and aluminum can sales.

Child Safety Zone - the 1,000-foot buffer zone that must be maintained between sex offenders and any premises where children commonly gather, including schools, day-care facilities, playgrounds, public or private youth centers, or swimming pools. Any area within 1,000 feet of these types of premises is considered a Child Safety Zone unless TCCO modifies the distance requirement and gives written notice of this modification to the Respondent.

Civil Commitment Center- a confined treatment facility to provide housing, supervision and treatment to SVP Clients committed under Chapter 841 of the Texas Health and Safety Code.

Client Census Report - the official numerical count of the number of SVP Clients at the center at the end of each day (being 11:59 p.m.), which for purposes of this Contract shall be conclusive as to the number of SVP Clients present at the center for the day just ended, but shall not include any SVP Clients that terminated from the center prior to 11:59 p.m.

Compliance Standards - Contract requirements that have specific and clearly defined recoupment strategies to ensure that TCCO does not pay for services that are not received.

Contract Monitor - a TCCO employee responsible for technical administration of this Contract.

Contract Term - the duration of this operations and management Contract and as further set out in Section 2.4.2.

Contractor Per Diem Rate - rate paid per Day for each SVP Client

Court Orders - any orders or judgments issued by a court of competent jurisdiction and any stipulations, agreements, or plans entered into in connection with litigation that are applicable to the operations, management, or maintenance of the center and relate to the

custodial care of SVP Clients. For purposes of this Contract, this term includes such orders, judgments, stipulations, plans or agreements applicable to TCCO.

Day(s) - any day of the week including Saturday, Sunday, state and federal holidays, unless otherwise specified.

Direct Care Staff - an employee of the contractor whose primary duty is to ensure the control, safety and security of the center twenty-four (24) hours per Day, seven (7) Days per week. This position does not include administrative or program staff.

ESBD - 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 www.txsmartbuy.com/sp.

Event of Default - any of the events or circumstances described within 2.2.45.

Filled Date - the first date on the job following the completion of all required pre-service, receipt of appropriate certification/license and a satisfactory criminal background clearance.

Fiscal Year - any of the one (1) year periods beginning September 1 and ending August 31, which periods are used for annual budgetary purposes by the State of Texas.

Free Exercise of Religion - an act or refusal to act that is substantially motivated by sincere religious beliefs in which a Contractor cannot substantially burden.

Global Positioning Satellite Tracking (GPS) - technology that incorporates a portable tracking device (PTD) which is a GPS receiver, cellular transceiver, computer, radio frequency receiver, motion sensor, and an electronic radio frequency ankle bracelet.

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

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

HUB subcontracting plan or HSP - written documentation regarding the use of subcontractors, which is required to be submitted with all responses to state agency Contracts with an expected value of \$100,000 or more where subcontracting opportunities have been determined by the state agency to be probable. The HUB subcontracting plan subsequently becomes a provision of the awarded Contract, and shall be monitored for compliance by the state agency during the term of the Contract.

Hygiene Items - items that include, but are not limited to, soap, deodorant, toothbrush, toothpaste, razor, shaving cream, shampoo and comb.

Income - money received by an SVP Client to include money earned from employment, Veterans Administration benefits, Supplemental Security Income (SSI), unemployment compensation, etc.

Indigent SVP Clients - SVP Clients who have no more than \$5.00 during any thirty (30) day period.

Monthly Contractor Payment - the mathematical product of the Contractor's per diem rate times the number of Days each SVP Client occupies the center during the billing month plus any mileage reimbursement owed the Contractor.

NCIC - the National Crime Information Center operated under the authority of the Federal Bureau of Investigation.

Non-appropriation - the failure by the Texas State Legislature, as part of its budgetary process, to appropriate money to be used for the Payments due hereunder.

Operational Plan - policies, plans, standards, and procedures for operation of a center provided to TCCO and approved as required by Section 2.3.2, as such Operational Plan may be modified from time to time by the mutual agreement of TCCO and Contractor.

Payment or Payments - amount(s) agreed to be paid by TCCO to Contractor for services provided according to this Contract.

Position Vacancy - a position in which there is no qualified, fully trained incumbent. A vacant position occurs when an employee resigns, has been terminated, is reassigned to another position or center or is off the payroll after exhausting all accrued leave, with the exception of Family Medical Leave (FML), Military Leave, and Worker's Compensation and no other qualified, trained person or employee is placed in that position. Similarly, positions are considered vacant if the individual in that position does not meet the criteria for employment. A position becomes vacant when the incumbent is removed from the payroll either temporarily or permanently, regardless of leave status, with the exception of FML and Worker's Compensation. A position also becomes partially vacant when Contractor places a part-time incumbent in a full-time position. Positions requiring certifications, licensure or registrations are considered vacant if the person in that position does not possess the appropriate certification, license or registration.

Program Budget - the budget that reflects all resources necessary to perform contracted activities per Exhibits G and H.

Quarter - the time period that relates to the State Fiscal Year, with quarters beginning September 1, December 1, March 1 and June 1, unless specifically noted otherwise.

Respondent - the entity responding to this Solicitation.

Service Commencement Date - the date on which Contractor shall begin providing services at the center pursuant to this Contract.

Sexually Violent Predator (SVP) - a person who has been civilly committed pursuant to Texas Health and Safety Code, Chapter 841, who have been found to be a repeat sexually violent offender and to suffer from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence.

Solicitation - this Request for Proposals including any Exhibits and Addenda, if any.

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

SVP Client - a person assigned by TCCO to reside at the center.

State-Owned Equipment - all machinery, equipment, furniture and other items of tangible personal property that are purchased with center generated income or with the proceeds of bonds issued by the Financing Corporation in connection with the financing of the center or provided by General Revenue Appropriations to TCCO.

TCCO - the Texas Civil Commitment Office

TCCO Policies - all written policies, procedures, standards, guidelines, directives and manuals of TCCO, applicable to the operation, management, or maintenance of a Civil Commitment Center

TCIC - the Texas Crime Information Center operated under the authority of the Texas Department of Public Safety.

Team Meeting - a meeting between the TCCO Case Manager, the Sex Offender Treatment Provider, the SVP Client and any others deemed appropriate by the TCCO Case Manager to determine current status of the SVP Client.

Upper Level Management Personnel - the top center-assigned individuals who are responsible for the administration of the services provided under this Contract.

Working Day - Monday through Friday unless a nationally recognized holiday.

1.3 AUTHORITY

HHSC on behalf of TCCO intends to competitively solicit proposals from entities interested in contracting with TCCO. The purpose of this RFP is to obtain proposals that will meet the stated objectives of TCCO in providing quality civil commitment center(s) in an efficient, effective manner.

Pursuant to Texas Government Code Chapter 420A and Texas Health and Safety Code Chapter 841, the Texas Civil Commitment Office (TCCO) requires the operation and management of a Civil Commitment Center (CCC or Center) in the state of Texas with associated programs for the treatment and monitoring of SVP Clients assigned to the Center.

ARTICLE 2. SCOPE OF WORK/SPECIFICATIONS

2.1 DESCRIPTION OF SERVICES/STATEMENT OF WORK/SPECIFICATIONS

The Contractor shall, in accordance with the terms of the Contract, provide all necessary personnel, equipment, materials, supplies, and services as specifically identified within the Contract and otherwise do all things necessary for, or incidental to, the location, operation and management of a CCC with associated programs for the treatment and monitoring of SVP Clients assigned to the Center. TCCO Compliance with Applicable Rules, Regulations, Policies, Procedures and Laws.

Contractor shall provide services to TCCO that are in compliance with all applicable local, state, and federal laws, rules and regulations now in effect or that become effective during the term hereof including but not limited to, Civil Rights Act of 1964; Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age of Discrimination in Employment Act; the Immigration Reform and Control Act of 1986; Code of Federal Regulations, Title 42, Part 2 (regarding information about drug and alcohol abuse); Environmental Protection Agency (EPA) Rules and Regulations; Texas Health and Safety Code, Chapters 85, 595, 611; the Americans with Disabilities Act of 1990; the Civil Rights Act of 1991; Occupational Safety and Health Act (OSHA) of 1970; Section 231.006, Texas Family Code; Texas Government Code, Chapter 783, 2254, 2259, and 2260; Health and Safety Code, Chapter 841, Texas Administrative Code, Title 37, Part 16, Chapter 810; and any and all relevant federal and state financial cost principles and audit requirements; and any and all rules, policies and procedures established by TCCO regarding the operations of CCC facilities.

The Contractor shall not deviate in any material respect from applicable TCCO Policies in the provision of services without the prior written approval of TCCO, which approval shall not be unreasonably withheld by TCCO. Contractor's written request(s) for deviations from said policies shall originate from the Authorized Representative of the Contractor and shall be forwarded to TCCO. The Contractor's written request(s) for deviation shall contain language which details the specific deviation with reference to the policy number, section, paragraph, etc., as well as the justification for such deviation. TCCO's written approval of Contractor's Operational Plan pursuant to Section 2.3.2 hereof shall, for the purposes of this Section 2.1, constitute approval of Contractor's deviations from established policies to the extent that such Operational Plan contains variances to any policies as outlined above. TCCO must approve any revisions to the Contractor's Operational Plan or modifications from required policies prior to implementation by the Contractor.

2.2 SPECIFIC DUTIES AND OBLIGATIONS

2.2.1 Training

- A. The Contractor shall provide all employees with a new employee orientation program after being hired and prior to regular assignment. This program shall be based on a curriculum approved by TCCO and shall consist of a minimum of sixteen (16) hours, and shall include:
 1. Sexually Violent Predators to include the oversight and monitoring of mentally impaired and development disabled SVPs – minimum of three (3) hours;

2. HIV/AIDS education;
 3. Self-administration of medication – minimum of four (4) hours for those employees responsible for medication; and
 4. SVP Client Behavioral Management.
- B. The Contractor shall provide, at its own expense, annual in-service training to staff and shall provide a copy of its training curriculum in its Operational Plan for TCCO approval. Training curriculum is subject to change at the discretion of TCCO. All staff are required to complete an annual twenty (20) hour in-service training program, which shall include updates on the topics noted in 2.2.1(A) and shall be completed within 30 days of the employee's hire date anniversary.
- C. The Contractor shall submit to TCCO an annual training schedule listing all training for the upcoming year. The schedule shall include the following information:
1. Proposed date(s) of training;
 2. Duration of training;
 3. Topic(s) of training;
 4. A brief synopsis of each topic; and
 5. Staff positions to be trained.
- D. All training hours an employee receives shall be documented in the employee's personnel file and/or personnel training records, to include course topic, number of hours and date completed. Training documentation shall include an authorized signature validating such training. The Contractor shall maintain accurate, complete, current and orderly training records at the center for each employee.
- E. Each full-time Licensed Sex Offender Treatment Provider (LSOTP) or Affiliate Sex Offender Treatment Provider (ASOTP) employed by Contractor may miss up to five (5) work days per contract year for approved trainings and continuing education required for LSOTP or ASOTP licensing renewal purposes. Contractor is not required to make up sex offender group treatment sessions missed during the five work days missed for approved trainings and required continuing education. Such missed sessions shall be documented as approved training days on the group session roster, which includes the date of the missed session and the Treatment Provider name. Documentation shall be provided to TCCO upon request.

2.2.2 Staffing

- A. The Contractor shall have qualified and trained paid employees on the Center premises to provide twenty-four (24) hour supervision, seven (7) days a week and shall have a sufficient number of employees who are awake, fully dressed and present to meet all contractual requirements as well as to ensure Center control, security, and SVP Client safety.

- B. A Texas Crime Information Center (TCIC) and National Crime Information Center (NCIC) criminal background check shall be completed, at the Contractor's expense, for each applicant (including consultants, independent Contractors and their employees and agents, and volunteer workers who work on a routine basis at the Center) prior to being assigned by Contractor to the Center.
 - 1. The results of the criminal background check, utilizing fingerprint analysis, must be acceptable to TCCO. Applicants with a misdemeanor or felony conviction being considered for employment, contract, or volunteer work shall be approved by TCCO prior to having contact with SVP Clients.
 - 2. The Contractor shall maintain in a file, a copy of the TCCO letter regarding eligibility for hire.
 - 3. Applicants are ineligible for the following reasons:
 - a. There are pending criminal charges, except a minor traffic violation;
 - b. The applicant is on Parole or Community Supervision; or
 - c. The applicant is a civil commitment client.
 - 4. Applicants with convictions may be considered based on the following:
 - a. Have not been convicted of a Class A misdemeanor within the previous twelve (12) months;
 - b. Have not been convicted of a Class B misdemeanor within the previous six (6) months;
 - c. Felony Convictions:
 - i. Direct Care Staff – Ten (10) years have elapsed since the termination of the sentence;
 - ii. Other Staff – Five (5) years have elapsed since the termination of the sentence.

- C. A pre-employment drug test shall be completed by the Contractor, at the Contractor's expense, for each applicant (including consultants, independent contractors, and their employees and agents, and volunteer workers who work on a routine basis at the center) prior to being assigned by the Contractor to the center.

- D. The personnel file of each employee shall contain the following information at a minimum:
 - 1. Application for employment and/or resume;
 - 2. Verification of past employment;
 - 3. Verification of high school, college, and any graduate education, to include copies of transcripts or other pre-approved documentation;
 - 4. Verification of any licensure required as part of the employee's job description;

5. A copy of the TCCO-approved job description; and
 6. All training records.
- E. The Contractor is responsible for the conduct and behavior of all persons working on the center (including consultants, independent Contractors and their employees and agents and volunteer workers). Should a violation occur, the Contractor shall take immediate corrective action acceptable to TCCO. The Contractor shall immediately notify TCCO in writing, of employees who resign while under investigation for inappropriate conduct related to SVP Client management and for violations of policies related to center security. At the end of each month, the Contractor shall provide to TCCO a listing of all employees terminated during the previous thirty (30) days.
 - F. The Contractor shall immediately notify TCCO in writing of any employee who has been convicted, arrested, indicted or charged with a criminal offense. Such employee shall not be permitted to return to duty until authorized in writing by TCCO. A copy of such written authorization shall be maintained in the employee's personnel file.
 - G. The Contractor shall implement an employee random drug testing program.
 - H. LSOTPs and ASOTPs shall meet criteria established by the Council on Sex Offender Treatment (CSOT) pursuant to requirements set forth in Texas Administrative Code, Title 22, Chapter 810. Each treatment providers' professional license and CSOT certification shall remain in effect through the contract period and any renewal period. Upon renewal of either license, Contractor shall provide a copy to TCCO.
 - I. LSOTPs and ASOTPs shall be approved by TCCO prior to rendering services under the Contract. A written request for approval shall include copies of treatment provider's licenses and curriculum vitae.
 - J. All prospective Contractors' employees who currently or previously worked for TCCO must authorize TCCO to release to the Contractor information concerning all disciplinary actions taken during their employment with TCCO as well as their re-hire status. TCCO will determine employment eligibility for any prospective employee requiring TCCO's approval prior to being rehired. Job applicants must authorize the Contractor to release to TCCO or a TCCO Contractor information concerning all disciplinary actions taken during their employment with the Contractor as well as their re-hire eligibility status as determined by the Contractor in the event the employee seeks employment with TCCO or another Contractor. Such releases shall be documented in the employee's personnel file.
 - K. It is understood and agreed that from time to time a Position Vacancy, as defined in the Definitions Section of the RFP may occur in staff positions required by the staffing plan. A Position Vacancy does not occur when an employee is temporarily absent due to vacation, sick leave, or other temporary leave condition including employee participation in management and professional conferences or in-service training. Temporary leave shall not exceed a period greater than two weeks in duration. When the Contractor transfers any employee not in temporary leave status, from one position to another

position, notification of this transfer must be made to TCCO by so indicating on the Monthly Position Vacancy Report. It is the policy of TCCO that the Contractor will ensure that any vacancies in the approved staffing plan be filled by a qualified employee having a verifiable Filled Date (as defined in this Contract) within thirty (30) Days of the Position Vacancy occurring.

1. If a position remains vacant for more than thirty (30) Days, the Monthly Contractor Payment for the period during which the position remains vacant shall be reduced by an amount equal to the Base Salary (including company fringe benefits) of the position for each Day on which such position is vacant, starting on the thirty-first (31st) Day from the position being vacant.
 2. If it is determined by TCCO staff that a service has not been provided while the official incumbent of a position is off the payroll due to Family Medical Leave (FML) status, Worker's Compensation status or Military Leave status, then the salary for that position will be deducted for the time period for which the service was not provided.
 3. TCCO will allow staffing credits for direct care staff, based on accrued overtime, to offset vacancy withholdings. The following provisions apply to the staffing credits:
 - a. Accrued overtime for these positions shall be reported and credited for a calendar month; and
 - b. Unused credit cannot be carried from one month to the next.
 4. The Contractor shall submit by the tenth (10th) of each month to TCCO a Monthly Position Vacancy Report, Exhibit D, a Position Control Number List, the direct care staff Overtime Report, and other relevant reports.
- L. The Contractor shall have an Affirmative Action Plan outlining Equal Employment Opportunity (EEO) compliance and strategies used to meet goals outlined in the Affirmative Action Plan.
- M. In the event an Upper Level Manager anticipates an extended absence or will be out of state, the Upper Level Manager shall notify TCCO and provide a designated staff member, duly qualified and acceptable to TCCO in his/her absence.

2.2.3 Risk Management

- A. The Contractor shall operate and maintain the center in compliance with all applicable federal, state and local safety and fire codes, Texas Administrative Code, Title 37, Chapter 810, TCCO policy statements and Americans with Disability Act Standards. The Contractor shall establish a risk management program and written procedures that shall include, but not be limited to, occupational safety and health, safety training for SVP Client workers, environmental maintenance and emergency management.
- B. The Contractor shall maintain the physical center in compliance with all applicable codes, including, but not limited to, the National Electric Code, Uniform Plumbing Code, Uniform

Mechanical Code, National Fire Protection Association (NFPA) 101 (Life Safety Code), and local zoning ordinances.

- C. The Contractor shall provide to TCCO written documentation of compliance with these codes at the beginning of every State Fiscal Year, which shall consist of certificates from local health departments, fire marshal's offices and building inspector's offices. Readable copies of these certificates shall be forwarded by the Contractor to TCCO. In addition, evidence of compliance shall be submitted to TCCO upon receipt from the inspecting agency. When differences between applicable standards exist, the higher standard shall be followed.
- D. The Contractor shall establish an emergency fire plan and written procedures for the safe evacuation of SVP Clients and staff. Each new SVP Client shall be briefed on evacuation procedures during orientation. Fire safety equipment shall be tested as specified by the manufacturer or the fire authority, whichever is more frequent.
- E. Written emergency fire exit plans shall be posted in all sleeping rooms, major meeting rooms, dining rooms and hallways.
- F. Quarterly fire drills requiring evacuation shall take place with written documentation to include the time, date, amount of time to evacuate the building(s), and the number of SVP Clients evacuated. Each shift shall conduct a fire drill at least once per Quarter. Any problem areas identified during the drill shall also be noted on the report. This report shall be signed by the Contractor's employee(s) conducting the drill and maintained on file.
- G. The Contractor shall report, verbally, followed by e-mail notification, serious and/or unusual incidents to TCCO immediately upon learning of the event in accordance with TCCO policy. Immediate notification is defined as reporting the incident to TCCO, upon becoming aware of the incident.
- H. The Contractor shall complete injury and other types of reports as may be required by TCCO.
- I. Any SVP Client report of sexual assault or sexual harassment shall be reported immediately to TCCO management and appropriate law enforcement authorities.

2.2.4 Center Requirements

- A. The Center shall not be located in a Child Safety Zone. Contractor shall be required to submit written certification that the site is or is not within a Child Safety Zone (Exhibit J).
- B. The Center site shall comply with all local, city and county ordinances. The Contractor shall be required to provide written documentation in regard to community acceptance. The Center site shall be accessible to adequate community resources.
- C. The Center shall be structured in a manner that supports and facilitates the TCCO Civil Commitment Program structure and allows for tiered housing ranging from total confinement to a less restrictive environment as defined by TCCO. Although not mandatory, it will be considered a value-added benefit if a respondent is also able to offer opportunities for SVP Clients to transition to transitional housing in the community outside the Center.
- D. The Center shall support housing and treatment programming for male and female SVP Clients.
- E. The Center shall accept all SVP Clients placed by TCCO.
- F. The Center size shall meet the needs of the program and comfortably accommodate the number of SVP Clients it serves. The Center shall be kept clean and in good repair.
- G. Provisions shall be made for SVP Client sleeping space and SVP Client lounge areas.
- H. Contractor shall provide the number of square feet per SVP Client, which shall be in accordance with local building codes. Bathrooms, closets and hall space shall not be included in the square foot requirements for sleeping areas.
- I. The Contractor shall furnish the Center with the appropriate furniture for the number of SVP Clients contracted for placement in the center. At a minimum, the SVP Client shall be provided proper bedding and storage space for clothing and personal articles. Each SVP Client shall have access to an individual locked storage area or drawer for private articles, and the Center Director shall have access to the locked storage. The storage space shall accommodate hanging and folded clothing.

- J. The Contractor shall provide the number of showers, sinks and toilets in the proposed center to accommodate the number of SVP Clients being proposed. All of the bathroom facilities shall be maintained and in good operating condition.
- K. Adequate heat, air conditioning, electrical outlets, light and ventilation shall be provided in all rooms including hallways, bathrooms, bedrooms, dining rooms and activity rooms. Electrical outlets shall meet the needs of the SVP Client and the GPS equipment.
- L. Separate activity rooms shall be large enough to accommodate all SVP Clients in the Center for the purpose of meetings and recreational activities, including but not limited to: TV, radio, library and law library, table games, game room, weight room (if provided) shall be separate to allow non-interference of activities. Seating shall be available for all SVP Clients who wish to participate in activities. Smaller rooms shall be allowed to accommodate fewer people as long as all SVP Clients have an equal opportunity to attend meetings or recreational activities.
- M. A recreational area for activities such as basketball, volleyball, or other reasonable activities shall be provided.
- N. Extension cords shall not be used as a substitute for fixed wiring, but power strips can be utilized in resident rooms if approved by local fire marshal.
- O. Contractor shall provide, at its own expense, separately keyed private and secure offices to adequately accommodate the TCCO Case Managers and Management staff.
- P. The Contractor shall provide enclosed meeting rooms, for the purpose of conducting confidential group treatment.
- Q. The Center shall be well lit, have a perimeter fence and have a single point of ingress and egress from the center for the SVP Clients. The Center shall be secured to prevent unrestricted access by the general public or others without proper authorization.

2.2.5 Maintenance, Remodeling, Damages and Condemnation

- A. The Contractor shall, at its own expense, maintain the physical structure of the center and all tangible personal property contained therein, including all maintenance related to structural conditions or defects as well as ordinary routine maintenance, and shall in so doing maintain, preserve, and keep the center in good repair, working order and condition, subject to normal wear and tear, and shall from time to time make or cause to be made all necessary and proper repairs, replacements and renewals. The Contractor shall meet all

standards applicable to sanitation and shall operate the center in accordance with both the Contractor and TCCO Policies and Procedures.

- B. Promptly after occurrence of any damage or loss to the center that materially affects the continued operation of the center; the Contractor shall notify TCCO of such loss or damage. If the Contractor determines that such rebuilding, repairing or restoring is practicable and desirable, and the Contractor proceeds to cause such rebuilding, repairing, or restoring, the Contractor shall provide a detailed plan with timelines to accomplish the rebuilding, repair or restore the center to TCCO for review and approval. If the Contractor determines not to rebuild, repair, or restore the center or if TCCO determines not to continue this Contract in accordance with this paragraph, then TCCO may terminate this Contract for convenience in accordance with Section 2.2.43.
- C. The Contractor shall establish a contingency disaster recovery plan that shall include temporary living facilities and services in accordance with the awarded contract. The disaster recovery plan shall be a part of the Operational Plan upon final approval from TCCO.

2.2.6 Intake and Orientation Requirements

- A. The Contractor shall have written policies and procedures regarding intake for SVP Clients.
- B. The Contractor shall photograph each SVP Client during intake, and maintain the photograph in the SVP Client's file. Photos shall be updated every six (6) months or more frequently if the SVP Client's appearance changes.
- C. Intake fees/deposits are strictly prohibited.
- D. Official placement by TCCO for all SVP Clients is required for Payment of services. In the event the Contractor accepts SVP Clients without appropriate TCCO authorization, the Contractor is at risk for not receiving Payment for said services.
- E. Intake and orientation must be completed within twenty-four (24) hours of SVP Client arrival at the Center.
- F. Intake and Orientation Process
 1. SVP Client shall receive an explanation of admission forms and, upon signature, will receive copies of such.
 2. SVP Client records shall be entered into TCCO's case management automated system.
 3. Orientation shall include an overview of the following, but not be limited to:

- a. An overview of Program Services;
 - b. Spanish interpreter service procedures;
 - c. House duties and assignments;
 - d. Access to medical/dental/mental health services;
 - e. Religious services;
 - f. Visitation rules and regulations;
 - g. Recreation;
 - h. SVP Client handbook (rules, regulations, policies);
 - i. SVP Client rights and the grievance process; and
 - j. Life safety and safety regulations.
4. Each SVP Client shall receive a SVP Client handbook during orientation and shall sign a receipt acknowledging such.

2.2.7 Treatment Programs

- A. Tiered Sex Offender Treatment Program
 1. The Respondent shall propose a four-tier sex offender treatment program to provide group and individual treatment sessions for SVP Clients while in the Center, whereby there are defined goals and/or levels of attainment allowing the SVP Client to progress between levels.
 2. Upon successful completion of a goal, a SVP Client may be afforded Center privileges. Any privileges afforded to SVP Clients who meet the goals, shall be coordinated and approved by the TCCO Case Manager, in advance.
 3. The proposed sex offender treatment program shall be based on cognitive behavioral programs incorporating the Good Lives Model and Risk-Needs-Responsivity Model to include:
 - a. Tier 1:
 - i. Builds problem solving skills and teaches SVP Clients how good decisions are made
 - ii. Introduces the language and concepts of the Good Lives Model, which is founded on the belief that all humans share primary needs
 - iii. Address individual needs as well as consider the various levels of skills each person has for managing their life
 - b. Tier 2:
 - i. SVP Clients participate in disclosure group that covers offending, relationships, and sexual history
 - ii. SVP Clients develop their path toward establishing a balance, self-determined lifestyle, free from offending behavior
 - c. Tier 3:
 - i. Helps the SVP Client to control their psychological risk factors
 - ii. Relationship Skills: Ability to develop and maintain emotionally closed relationship with adults
 - iii. Assist SVP Clients to understand and share with others in a more empathic and emotionally healthy manner

- iv. On-going development and supervised practice of self-control behaviors, thoughts, and emotions
 - d. Tier 4:
 - i. SVP Clients have the change to receive support and guidance with reinforcing and supporting the new skills they learned in treatment
 - ii. SVP Clients prepare to return to the community through individually tailored curriculum using offense-focused group presentation, cognitive restructuring, role play, and “new me” life planning
4. The proposed program shall describe how SVP Clients will advance through the tiers, the number of hours of group and individual treatment to be utilized in each tier, and the estimated length of each tier. At minimum, ten (10) hours of sex offender treatment related activities is required weekly to include no less than six (6) hours of group sex offender treatment.
 5. Respondent shall follow CSOT Rules. Any request for an exception from CSOT rules shall be submitted to TCCO for review and approval. TCCO will submit the request for exception to CSOT.
 6. Contractor shall complete an initial assessment for SVP Clients releasing from the Texas Department of Criminal Justice (TDCJ) who have not previously had an initial assessment and upon request by TCCO. The Respondent shall submit a concise and complete description of the assessment process to include the validated instruments and methods of collecting information used during an initial assessment. The assessment shall include, at a minimum, the categories listed below. The Respondent shall submit with their proposal the testing or methods utilized for each category and subcategory.
 - a. Clinical Interview – During the initial interview with the SVP Client the Contractor shall complete a Client Needs Profile using a format approved by TCCO.
 - b. Physiological Assessment – Contractor shall review the file material regarding SVP Client and if there is no report of a penile plethysmograph assessment within the last twenty-four (24) months, the treatment provider shall conduct or arrange for the client to undergo a penile plethysmograph assessment in accordance with TCCO policy.
 - c. Collateral Information – Contractor shall review as much of the following material as is available, including but not limited to: instant offense reports, victim statement(s), existing psychological reports, arrest records, child welfare reports, treatment history information.
 - d. Formal Tests – The following tests shall be conducted if they have not been performed in the last twenty-four (24) months, respondent may propose alternative testing instruments for approval by TCCO:
 - i. Personality Testing/Mental Illness – i.e. MMPI 2 or Personality Assessment Inventory.
 - ii. Intellectual Functioning – i.e. Test of Nonverbal Intelligence, Fourth Edition.
 - iii. Substance Abuse – i.e. SASSI-III.

- iv. Sexual Deviance – i.e. MSI, Abel-Becker Cognition Scale, Wilson Sex Fantasy Questionnaire, Rape Myth Acceptance Scale, Bumby Rape Scale, Bumby Molest Scale, Hanson Sexual Attitude Questionnaire or the Abel Screen.
 - e. Risk Assessment – Static 99R or 2002, Hare Psychopathy Checklist Revised, Stable/Acute 2007 or Level of Service Inventory Revised.
- 7. The assessment report shall be completed within sixty (60) days of the client's initial assessment using a report form acceptable to TCCO. The report shall be scanned into the TCCO case management automated system. The assessment report shall be in a summary format addressing at minimum the:
 - i. Reason for referral;
 - ii. Assessment methods;
 - iii. Background information;
 - iv. Test results; and
 - v. Conclusions and recommendations.
- 8. Contractor shall complete and submit a written individual treatment plan for each SVP Client within sixty (60) days of admission. The plan shall be documented in the TCCO case management automated system and the client's file using a form acceptable to TCCO. The treatment plan, including a Stable/Acute assessment, shall be updated as needed but no less frequently than once per year.
- 9. Respondent shall propose treatment workbooks and materials to utilize. The treatment provider shall utilize the treatment workbooks and materials as approved by TCCO and implement the techniques as specified in CSOT rules to include, but not limited to:
 - i. Arousal or impulse control;
 - ii. Cognitive Behavioral Treatment;
 - iii. Sex Offense Sequence/Re-offense Prevention;
 - iv. Victim empathy;
 - v. Bio-medical Approaches;
 - vi. Co-morbid diagnoses;
 - vii. Couples/Family Therapy;
 - viii. Increase Social Competence;
 - ix. Chaperones;
 - x. Improving Primary Relationships;
 - xi. Support Systems;
 - xii. Adjunct Therapies;
 - xiii. Assessment of progress in treatment; and
 - xiv. Aftercare planning/treatment.
- 10. Respondent shall make at least one sixty-minute (60 minute) individual treatment session available to SVP Clients every ninety (90) days or more frequently as needed by the SVP Client.
- 11. Respondent shall propose the number of hours of group sex offender treatment available to each SVP Client each week.
- 12. Respondent shall utilize polygraph examinations in accordance with TCCO policy. The Contractor may subcontract this service but TCCO shall approve all subcontractors prior to the provision of services.

13. Respondent shall utilize the plethysmograph to evaluate the client's deviant sexual arousal and the effectiveness of interventions in accordance with TCCO policy. In the event Contractor is unable to provide plethysmograph assessments, Contractor shall subcontract for this service. All subcontracts require TCCO approval prior to the provision of services.
14. Contractor shall participate in monthly treatment team meetings with TCCO staff to evaluate each SVP client's progress in treatment.
15. Contractor shall participate in continuity of care staffing with case managers and treatment providers for newly assigned SVP clients.
16. Treatment provider shall enter treatment notes of all treatment sessions and contacts in the TCCO case management automated system and the client's file within five (5) working days of the session or contact.
17. Treatment provider shall document all contacts with the case manager and other professionals involved in the client's case in the TCCO case management automated system and client file within five (5) working days of the date and time of contact.
18. Contractor shall make available family/social support sessions for each client for whom family/social support has been approved. Family sessions may be conducted via videoconference if requested by the family member. Family members or individuals identified as part of the client's social support system must be approved by TCCO and must be willing to participate in treatment.
19. Treatment provider shall complete and maintain a copy of all program required forms in accordance with TCCO policy and enter or scan all forms into the TCCO case management automated system within five (5) working days of the activity.
20. Treatment provider shall evaluate client's progress in treatment and advance client through the program utilizing criteria specified in TCCO policy.
21. Treatment provider shall complete a monthly report of the client's progress in treatment in accordance with TCCO policy using a form acceptable to TCCO. A signed and dated copy of the report must be scanned into the TCCO case management automated system within five (5) working days after the due date. The report shall include the client's signature.
22. Treatment provider shall complete a biennial treatment summary report for submission to court and in accordance with TCCO policy.
23. Treatment provider shall provide treatment program compliance information to clinical examiners as needed.

B. Additional Programs

The Contractor shall provide programs in which each SVP Client shall participate during their assignment to the center. Additionally, the Contractor shall provide life skills classes and substance abuse education for SVP Clients. The classes shall include but are not limited to, the following components:

1. Employment Services – To include completing employment applications, interviewing skills, dressing for success, and interactive experience;
2. Budget Planning – To include on-going realistic personal budget planning, implementation, evaluation, and adjustment as individual circumstance arises;

3. Substance Abuse Education – To include chemical dependency education, relapse warning signs and triggers, disease model, defense mechanisms, destructive coping and thinking errors;
 4. Personal Care – To include infectious diseases, personal hygiene, health and nutrition.
 5. Adult Basic Education – To include assistance with improving literacy levels; and
 6. General Education Development (GED)-To include the measurement of proficiency in Science, Math, Social Studies, Reading and Writing.
- C. The Contractor shall provide Alcohol Anonymous (AA) and Narcotic's Anonymous (NA) group sessions to support the SVP client population.
- D. The Contractor shall propose a therapeutic work program for SVP Clients and may propose a vocational educational program for SVP Clients.
- E. A tentative schedule of tiered programming and structured activities shall be provided to include class name/activity and number of hours per week. The schedule may also identify the days of attendance.
- F. The SVP Client participation in any program offered by the Contractor and required by TCCO shall not be contingent upon the SVP Client applying for or qualifying for financial assistance in the form of grants, such as Pell grants, or loans.
- G. The Contractor shall have written policies that govern religious programs for SVP Clients. The policies shall provide that SVP Clients have the opportunity to voluntarily practice the requirements of a SVP Client's religious faith, have access to worship/religious services and/or contact with community religious resources.
- H. The Contractor shall maintain attendance rosters for all classes/programs, which at a minimum shall include: the date, time and duration; name of class/group; name and signature of the instructor; and the SVP Client's signature reflecting attendance. In the event the SVP Client fails to attend the scheduled session, the Contractor shall notate the missed session, identifying whether the missed session was excused. Also, rosters shall be completed for cancelled classes/programs.

2.2.8 SVP Client Records and Disclosure of Information

- A. The Contractor shall maintain all attendance rosters as noted in 2.2.7(H).
- B. Appropriate safeguards shall be established by the Contractor to protect the confidentiality of SVP Client records and minimize the possibility of theft, loss, or destruction, recognizing that any and all records provided to the center or any center employee by TCCO are deemed confidential and privileged information.

- C. All records shall be locked in a file cabinet accessible only to the Contractor's staff and/or TCCO representatives.

- D. Individual case files for each SVP Client shall be maintained on a current basis and for a period of not less than five (5) years after the SVP Client has been discharged from the center. Upon completion of the five (5) year retention period, all individual case files shall be transferred to TCCO. Should an Event of Default or termination occur TCCO will secure and maintain custody of the SVP Client files.

- E. Each SVP Client file shall include but is not limited to the following information:
 - 1. Identification data, to include photograph;
 - 2. TDCJ-Parole Case Summary (if applicable);
 - 3. Order of Civil Commitment;
 - 4. Intake forms;
 - 5. Correspondence regarding the SVP Client;
 - 6. Signed release of information form to specific agencies, if applicable;
 - 7. Current employment data;
 - 8. All reports generated by the Contractor; and
 - 9. Copies of all disciplinary reports.

- F. Contractor shall not disclose or make known, in any manner to any person, any personal information concerning SVP clients, except as may be necessary in the performance of the contract, or as required by licensing authority (i.e. duty to report ongoing abuse etc.)

- G. Contractor shall notify TCCO immediately upon receipt of any legal action or notice requiring disclosure of client records.

- H. Contractor shall, upon request by TCCO or in response to a subpoena or subpoena duces tecum appear or submit an affidavit and testify in any legal proceedings convened by a court of competent jurisdiction.

- I. Contractor shall place all clinical notes, treatment reports, grievances, disciplinary reports, all reports generated by Contractor, and other notes or activity with the client in the TCCO case management automated system within five (5) working days.

2.2.9 Health Services

- A. HIV/AIDS
 - 1. The Contractor shall develop workplace guidelines that address HIV/AIDS policies, confidentiality, and employee/SVP Client education programs. The

guidelines shall, at a minimum, incorporate the model workplace guidelines developed by the Texas Department of State Health Services (DSHS). The Contractor shall maintain the written policies and guidelines at the center site.

2. The Contractor shall develop confidentiality guidelines regarding AIDS and HIV medical information for employees and SVP Clients. The policies shall be consistent with guidelines published by the DSHS with state and federal laws and regulations at <https://www.dshs.state.tx.us/hivstd/contractor/policy.shtm>
 3. Educational programs regarding HIV/AIDS shall be provided to all employees and SVP Clients on a routine basis. These programs shall be based on the model educational program created by DSHS. The education programs developed by the Contractor shall be tailored to meet the needs of all employees and SVP Clients including the use of braille or telecommunications devices for the deaf. The HIV education and prevention programs shall be tailored to address the needs of persons with physical or mental disabilities.
 4. The Contractor shall provide TCCO with copies of the above stated policies/programs.
 5. The Contractor shall develop and maintain written documentation in each SVP Client and employee file of HIV/AIDS education/training completion.
- B. The Contractor shall provide for the management of serious and infectious diseases. Policies and procedures shall be in place to direct actions to be taken by employees concerning SVP Clients who have been diagnosed with communicable diseases. The policies and procedures shall include appropriate safeguards for staff and SVP Clients; staff and SVP Client issues of confidentiality; and counseling and support services.
- C. SVP Clients shall have access to health care onsite and in the community. Primarily, health care shall be provided onsite to the extent possible. Respondent shall propose the medical services to be provided on site and the manner in which access to off-site health care shall be provided. Access to mental health services shall be available to SVP Clients.
- D. Each center shall have a written suicide prevention and intervention program reviewed and approved by a qualified medical or mental health professional. All staff with SVP Client supervision responsibilities shall be trained in the implementation of the suicide prevention program.
- E. State certification and licensing requirements shall apply to all health care personnel, employed by the Contractor, responsible for dispensing medical services to SVP Clients.
- F. The Contractor shall provide each shift with at least one employee certified in both standard first aid procedures and cardiopulmonary resuscitation (CPR).
- G. The Contractor shall have written documentation of emergency medical plans that are communicated to all center employees and SVP Clients.

- H. The Contractor shall maintain sufficient first aid supplies and equipment to adequately support the overall medical treatment requirements of the assigned center population at all times.
- I. Medical first aid supplies and equipment shall be maintained in accordance with prescribed standards recognized or approved by a licensed, recognized health authority who possesses the expertise to evaluate, assess, and determine the potential need or conditions of the required first aid supplies and equipment.
- J. The Contractor shall implement an inventory management system to ensure that first aid equipment and supplies are adequately replaced and replenished in accordance with the Contractor's established policy.
- K. The Contractor shall have and implement written policies that set forth required procedural guidelines to be followed in the administration and management of all SVP Client medication, to include controlled substances, prescribed medications, supplies and over the counter (OTC) drugs. The written policy in place shall set forth the required procedural guidelines for the administration, documentation, storage, management, accountability of all SVP Client medication, inventory, disposal of medications, handling medication errors and adverse reactions. If medications are dispensed through the practice of self-administration in a non-medical model program, staff trained by a qualified health professional to supervise residents in the self-administration of medication shall monitor the SVP Clients during the self-administration process. Policies on monitoring of self-administration of medication shall be consistent with Texas Department of State Health Services (DSHS) guidelines and the following:
 - 1. Policy guidelines shall govern the standards for storage, security, monitoring, dispensing, self-administration and maintaining administrative control and accountability of all medication. Guidelines are to include training requirements for those employees responsible/authorized to monitor medications;
 - 2. Administrative control and accountability procedures shall require a written record (Medical Log Sheet) providing the name of the SVP Client, count at time medication is received, date, time, name and dosage of medication, together with the name and signature of the Contractor's employee witnessing the self-administration of medication;
 - 3. All prescribed medication that would show up on a drug screen urinalysis (UA) shall be monitored and recorded only by an employee of the Contractor who is authorized to monitor medication and to record the administration of medication; and
 - 4. The Contractor shall obtain TCCO approval prior to implementation of any "keep on person" medication policy.

- L. All medication, except as approved in Section 2.2.9(K)(4), shall be secured in a suitable locked container subject to TCCO approval and the Contractor shall audit control records on a monthly basis.
- M. SVP Clients shall be provided with a thirty-day (30-day) supply of their medication upon release. In the event a SVP Client is released from the center without his/her medication, the medication shall be disposed of in accordance with State standards, Texas Administrative Code, Title 37, Part 6, Chapter 195. The disposition of the medication shall be witnessed and documented on the SVP Client's medical log sheet.
- N. The Contractor shall have written policies and procedures for the prompt notification of the SVP Client's next of kin in case of death. The Contractor shall provide immediate notification of a SVP Client's serious illness, surgery, injury or death to TCCO.
- O. The Contractor shall not use SVP Clients for medical, pharmaceutical or cosmetic experiments.
- P. The Contractor shall provide immediate notification to the TCCO Case Manager regarding a SVP Client's hospitalization.
- Q. The Contractor shall have a policy and procedure, as well as a tracking system that follows the SVP Client's request for health services, through triage, offsite health care or hospitalization and ending with the resolution of the SVP Client's health-related issue.

2.2.10 Community Relationships

The Contractor shall develop and maintain positive relationships with the community, to include neighborhood associations, civic leaders, local law enforcement, local resources, advocacy groups and other individuals or groups interested in or affected by the operation of the center.

2.2.11 Security

- A. The Contractor shall develop, implement, document, record and maintain a daily system for physically counting all SVP Clients assigned to the center to assure real time accounting of SVP Clients. Count procedures shall require multiple SVP Client counts within a twenty-four (24) hour period and shall include, at a minimum one (1) Bed Book Check between the hours of 9:30 p.m. and 6:00 a.m.

- B. The Contractor shall adequately secure the center (to include buildings, keys, chemicals, cleaners and tools) and provide other security equipment to include CCTV cameras, door alarms and metal detectors as well as any other measures deemed appropriate by TCCO to maintain control of the SVP Clients in residence at the center. The CCTV cameras shall be placed to provide perimeter views of the center as well as inside, where necessary to enhance visibility of SVP Client activity. Cameras shall be operable 24 hours per day. Contractor shall provide written policies on how its staff will monitor the CCTV Cameras and maintain the recordings of the CCTV cameras.

- C. The Contractor shall establish written policies and procedures to address:
 - 1. Emergency Response Plans;
 - 2. Control of contraband and SVP Client property (including a list of authorized items SVP Clients are allowed to possess);
 - 3. SVP Client personal and property searches;
 - 4. Incident Notification;
 - 5. Transportation of SVP Clients;
 - 6. Use of Force; and
 - 7. Post Orders for Security Officers and Duty Post.

2.2.12 SVP Client Monitoring

- A. The Contractor shall establish written policies and procedures regarding egress and ingress to the center.

- B. The Contractor shall notify the TCCO Case Managers at least one working day in advance, excluding medical emergencies, when an SVP Client is being transported outside the center via Contractor transport.

- C. The Contractor shall have procedures in place to ensure that any SVP Client leaving the Center submits to GPS monitoring prior to departure.

- D. The Contractor shall establish and maintain a transport log for any SVP Client being transported and escorted outside the center which shall include:
 - 1. The SVP Client's complete name and destination to include the name, address and telephone number of the destination;
 - 2. The time the SVP Client leaves the center, the designated SVP Client time to return and the time the SVP Client actually returns to the center;
 - 3. An authorized center staff member's signature or approved initials; and
 - 4. Sign-in/sign-out sheets shall be maintained in a central log.

- E. The Contractor shall notify the TCCO Case Manager immediately should a SVP Client fail to either arrive at or return to the center as scheduled, or the SVP Client cannot be located on the center premises.

2.2.13 Food Service

- A. The Contractor shall provide wholesome and nutritious meals for all SVP Clients in compliance with the Texas Food Establishment Rules, as well as applicable legislation and Court Orders.
- B. The Contractor shall plan and post menus in advance. All menus along with appropriate substitutions shall be reviewed and approved by a registered dietitian or physician.
- C. All meals shall meet the Dietary Reference Intakes promulgated by the Food and Nutrition Board of the Institute of Medicine, National Academy of Sciences.
 - 1. All meals shall be of sufficient portions to meet the needs of the SVP Client (as outlined by a registered dietician).
 - 2. The Contractor shall be responsible for preparing and providing three (3) meals per Day per SVP Client for the full Contract term.
 - 3. The Contractor, with prior approval from TCCO, shall be allowed to serve two (2) meals consisting of brunch and dinner on weekends and Texas state holidays, as defined by the legislature. Documented evidence will be required that all dietary needs are met to TCCO's satisfaction and that the hours between meals served do not exceed fourteen (14) hours.
- D. Special diets shall be available to SVP Clients as prescribed by appropriate medical or dental personnel and shall meet the Recommended Daily Allowance as outlined by Dietary Reference Intakes promulgated by the Food and Nutrition Board of the Institute of Medicine, National Academy of Sciences, unless otherwise specified by a physician and/or dentist.
- E. Special diets for SVP Clients whose religious beliefs require the adherence to universally recognized religious dietary laws shall be provided.
- F. The Contractor shall provide TCCO with a description of any additional food services provided for SVP Clients of the center along with a monthly detailed accounting of all income derived from such services (i.e. coin operated vending machines). The detailed accounting should include all approved expenditures, total revenues and the resulting net income from vending operations. The monthly net income generated from vending operations shall be included on the monthly invoice as a deduction from the amount billed to TCCO. In the event the Contractor had additional revenue or funding sources related (fully or partially) to SVP Clients, any income from these sources shall be allocated to the TCCO SVP Clients proportionally and must be accounted for in the same manner described in this section.

2.2.14 SVP Clothing and Necessities

- A. All clothing shall meet the needs of the SVP Client and should accommodate necessary daily wear/usage. A minimum of three complete changes of clothing shall be in the possession of Indigent SVP Clients.
- B. The Contractor shall ensure Indigent SVP Clients, as defined by TCCO, are provided clothing that is appropriate for the weather at no cost to the SVP Client.
- C. Any Indigent SVP Client released from a center during cold weather shall be provided with clothing appropriate for the weather at no cost to the SVP Client.
- D. The Contractor shall provide Indigent SVP Clients with toiletries and hygiene items at no cost to the SVP Client.
- E. The Contractor shall have written policies and procedures regarding property confiscation and disposition of property belonging to those SVP Clients who have left the center without their property.

2.2.15 Laundry Facilities

- A. The Contractor shall provide operable washers, dryers and detergent for use by SVP Clients of the center at no cost to the SVP Client.
- B. The Contractor shall issue clean linen, bath and hand towels to each SVP Client upon arrival at the center. Laundering of linens and clothing shall be in accordance with the Contractor's policies and procedures. No linen deposit/fees may be charged to SVP Clients.
- C. Pillows and mattresses shall be sanitized with chemicals before being reissued to a newly received SVP Client or at least every six (6) months if still in the possession of the SVP Client to which it was issued.

2.2.16 Essentials

The Contractor shall provide, at its expense, all supplies to include but not limited to: clothing, paper, pencils, building support items (cleaners, brooms, mops, sponges), and SVP Client living quarter items (sheets, pillowcases, blankets, mattresses, and bedding materials) necessary. The Contractor shall provide Indigent SVP Clients, at the

Contractor's expense, envelopes and stamps for legal correspondence and general correspondence as approved by TCCO in Contractor's correspondence policy.

2.2.17 Transportation

- A. In the event TCCO requires the Contractor to transport a SVP Client to or from a specific destination, TCCO shall reimburse the Contractor based on the Texas Comptroller of Public Accounts' travel policy at: <https://fmx.cpa.state.tx.us/fmx/travel/index.php>.
- B. Reimbursement shall be per trip, not per SVP Client transported.
- C. The Contractor shall be responsible for providing transport for a SVP Client upon release from a penal institution, state supported living center, state hospital, county jail or civil commitment court or other designated pick up point as directed by TCCO.
- D. The Contractor shall attach the mileage reimbursement form to the monthly invoice to obtain reimbursement.
- E. In addition, the Contractor shall utilize and maintain a transportation log in each vehicle which shall include, at a minimum: destination, time trip begins and ends, SVP Client's name and number, purpose of trip, and beginning and ending mileage to each point.

2.2.18 Telecommunications

- A. The Contractor shall provide, at its expense, all telecommunications equipment adequate for the operations of the center.
- B. The Contractor shall provide TCCO with a description of resident phone services.
- C. The Contractor shall provide TCCO with a monthly detailed accounting of all income derived from telephone services (i.e. resident phone services). The detailed accounting should include all approved expenditures, total revenues and the resulting net income from SVP telephone services. The monthly net income generated from telephone services shall be included on the monthly invoice as a deduction from the amount billed to TCCO.

2.2.19 Information Technology Services

- A. The Contractor, in cooperation with TCCO, shall utilize compatible computer hardware, software and peripheral devices necessary to connect to an Internet service provider.

- B. The Contractor shall utilize software compatible with Microsoft® Excel for billing purposes.
- C. The Contractor shall be responsible for all equipment and service costs so incurred.
- D. The Contractor shall utilize the internet browser as directed by TCCO to interface with the TCCO case management automated system.

2.2.20 Recreation and Exercise

The Contractor shall provide adequate physical facilities (inside and outside), equipment, and supplies for a recreation program as outlined in Contractor's policy and procedures.

2.2.21 Visitation

- A. The Contractor shall provide SVP Client visitation in accordance with Contractor's TCCO-approved policy and procedures.
- B. The Contractor shall provide all space, furniture, equipment, and supervision necessary to implement a visitation program as outlined in the Contractor's policy and procedures. The area shall accommodate visitors and provide shelter in inclement weather.

2.2.22 SVP Client Correspondence

The Contractor shall process SVP Client correspondence in accordance with TCCO-approved Contractor policy and procedures.

2.2.23 Termination of SVP Clients

In the event a SVP Client poses a physical threat to the Contractor's employees and/or other SVP Clients and has committed a criminal offense, the local law enforcement authority shall be contacted immediately. Notification under these circumstances (when the SVP Client poses a physical threat) shall be immediately provided to TCCO.

2.2.24 Disciplinary Procedures

- A. The Contractor shall establish written “Disciplinary Procedures,” which shall be approved in writing by TCCO, to include the processing of violations and graduated sanctions that may be imposed.
- B. Specific limits on corrective actions and summary punishment shall be established and strictly adhered to in an effort to reduce the potential of staff participating in abusive behavior towards SVP Clients. Limits shall include:
 - 1. No physical contact by staff shall be made on a SVP Client, except as proposed and approved by TCCO;
 - 2. No profanity, sexual or racial comments shall be directed at SVP Clients by staff;
 - 3. SVP Clients shall not be used to impose corrective action on other SVP Clients;
 - 4. The severity of the corrective action shall be commensurate with the severity of the infraction; and
 - 5. The duration of corrective action shall be limited to the minimum time necessary to achieve effectiveness.
- C. Each SVP Client shall be informed verbally of the disciplinary procedures and provided with a copy of these procedures upon intake/orientation and upon request by SVP Client.
- D. The Contractor shall notify TCCO of SVP Client violations immediately and submit a written report.
- E. The Contractor shall ensure that all disciplinary cases are processed to completion within policy guidelines. A copy of the final disciplinary report shall be provided to TCCO the next Working Day.
- F. The Contractor shall maintain a copy of each disciplinary report in the SVP Client’s file and shall also maintain a master file of all disciplinary reports and actions taken at the center organized, alphabetically and by month.

2.2.25 Grievance Procedures

- A. The Contractor shall have written SVP Client grievance procedures, approved in writing by TCCO, which shall be provided to all SVP Clients during orientation.
- B. The Contractor shall provide copies of the policy and grievance form which shall be available in both Spanish and English. The Spanish translation will be provided to Spanish-speaking SVP Clients who are unable to communicate effectively in spoken English.
- C. At a minimum, the procedure shall utilize a two-step process:
 - 1. Step 1: Shall be processed by designated staff and signed by the center administration. A written response must be provided to the SVP Client. A written response by the Contractor to all grievances shall include the reason for the

decision. A signed receipt from the SVP Client indicating receipt of the grievance response shall be maintained. The Contractor shall respond within the time frame specified; and

2. Step 2: Shall be processed by a higher level of the Contractor's administration and shall note the review of the grievance, decision and response.
- D. All SVP Clients shall have access to grievance forms without staff assistance, and a guarantee against reprisals by staff members.
- E. The Contractor shall have a process by which each SVP Client can appeal the decision.
- F. The Contractor shall maintain a log and master file of all grievances filed which shall include dates received, dates responded, category or type of grievance, and actions taken. The grievance log shall be provided to TCCO monthly and upon request.
- G. The Contractor shall upload all grievances and responses to the TCCO automated case management system within five (5) working days of receipt or completion.

2.2.26 Self-Monitoring

- A. The Contractor shall establish written policies and procedures to facilitate evaluation and monitoring of the center and its operation, which shall include but not limited to:
1. Reporting procedures;
 2. Frequency of reporting; and
 3. Subject matter reported.
- B. An audit system providing quarterly and periodic assessment of required center operations shall reveal the degree to which the Contractor has complied with said policies and procedures. The Contractor shall forward to TCCO copies of quarterly self-monitoring reports no later than the fifteenth (15th) of the month following the end of the Quarter utilizing the State Fiscal Year.
- C. The internal administrative audit conducted by the Contractor shall exist apart from any external or continuing audit conducted by TCCO or any other agency.

2.2.27 SVP Client Rights

- A. Access to Court and Counsel

SVP Clients shall be granted access to courts including via videoconference and any attorney licensed in the United States or a legal aid society (an organization providing legal services to SVP Clients or other persons) contacting the SVP Client in order to provide legal services. Such contacts may include, but are not limited to: confidential telephone communications, uncensored correspondence and confidential visits.

SVP Clients shall have access to law library services on site at the Center.

B. Abuse, Neglect, and Exploitation

The Contractor shall protect the SVP Clients from abuse, neglect, and exploitation, and shall establish a zero tolerance standard for the incidence of sexual assault. The center shall have written policies and procedures regarding the reporting, investigation, and prevention of abuse, neglect, exploitation, and sexual assault.

If the Contractor has a finding, within the last two years, by a federal or state regulatory agency or court holding that the Contractor or Contractor's staff violated SVP Client rights, committed misconduct toward SVP Clients, abused or exploited SVP Clients, the Contractor shall explain the finding/holding in detail and give a list of the steps taken to remedy the situation, as well as explain the steps that will be taken to ensure that type of incident will not occur at the facilities subject to this Contract. Any Contractor with these findings/holdings may receive less favorable consideration for the awarding of the Contract.

C. Use of Force

The Contractor shall ensure that there are written policies, procedures, and practices that restrict the use of physical force to instances of self-protection, protection of SVP Clients or others or prevention of property damage. In no event shall the use of physical force against a SVP Client be justifiable as punishment. A written report shall be prepared following all uses of force, and promptly submitted to TCCO for review. The application of restraining devices, aerosol sprays, chemical agents, and related security equipment shall only be accomplished by an individual who is properly trained in the use of such devices and only in an emergency situation for self-protection, protection of others or other circumstances as previously described.

2.2.28 Incident Notification

The Contractor shall notify TCCO of all serious or unusual events pertaining to the operations and staff, in accordance with TCCO policy. Serious incidents and injury/illness

of a life-threatening nature shall require immediate notification to TCCO and in all cases no later than within one hour. Absconders from the residential center shall be reported immediately via telephone to designated TCCO staff and to local law enforcement.

Incidents requiring notification to TCCO include, but are not limited to:

- Serious injury/illness of a SVP Client;
- Death of a SVP Client;
- Absconders;
- Threats made by an SVP Client;
- SVP Client is at risk of doing harm to himself or others;
- Inappropriate behaviors toward staff or other clients;
- The SVP Client commits a violation that has criminal intent; or
- Any natural disaster.

2.2.29 SVP Client Funds

- A. The Contractor shall have written policies and procedures to govern the operation of any fund established for the SVP Clients, including the amount of money SVP Clients may have on their person. Monies in excess of the center's allowable limits must be confiscated and placed for the benefit of the SVP Client in the respective SVP Client's account.
- B. The accounting of each SVP Client's personal funds held by the Contractor shall be governed by Generally Accepted Accounting Principles (GAAP).
- C. The Contractor shall establish policies and procedures that prohibit financial transactions between SVP Clients, between SVP Clients and non-SVP Clients and between SVP Clients and Contractor's staff.
- D. All funds abandoned in the center by SVP Clients shall be deposited with the Texas Comptroller of Public Accounts in accordance with Title 6 of the Texas Property Code.

2.2.30 Required Reports and Documentation

- A. Weekly Treatment Activity Report

Each Monday, Contractor shall submit to TCCO a Weekly Treatment Activity Report that provides the following information regarding the prior week:

1. Number of clients in each tier;
2. Tier Movement;
3. Names of SVP Clients refusing to participate in treatment and why (i.e. mental health, medical);
4. New Arrivals;
5. Residents In-Custody;
6. Mental Health Caseload; and
7. Resident Worker Program Participants.

B. Weekly Housing Report

Each Monday, Contractor shall submit to TCCO a Weekly Housing Report that includes individual bunk assignments.

C. Contractor shall submit a Resident Alpha Roster upon revision or as requested by TCCO.

D. Contractor shall submit an Employee Alpha Roster upon revision or as requested by TCCO.

E. Contractor shall submit Monthly Position Vacancy Reports as outlined in Exhibit D.

F. Contractor shall submit all policy updates as required by Section 2.3.2.

G. Contractor shall submit Monthly Self-Monitoring Reports as outlined in Section 2.2.26.

H. Contractor shall submit the Grievance Log outlined in Section 2.2.25 each Monday.

I. Weekly Group Sex Offender Treatment Report

Each Monday, Contractor shall submit to TCCO a Weekly Group Sex Offender Treatment Report to include the following information regarding the prior week:

1. Number of group treatment sessions required;
2. Number of group treatment sessions completed; and
3. List of all group treatment sessions that were not held, the reason why the treatment session was not held and the date/time the treatment session was made up.

2.2.31 Billing

A. The Contractor shall bill TCCO for each calendar month, one (1) calendar month in arrears, for the amount due for the center or services, and TCCO will remit payments in accordance with the Texas Government Code Chapter 2251, also known as the "Prompt Payment Act."

- B. The Contractor shall prepare and submit to TCCO no later than the tenth (10th) Day of the following month, the required monthly billing reports and invoices in TCCO's approved format. The monthly invoice shall include the contract number, the vendor's address, vendor's telephone number, name of the vendor contact, the vendor's valid Texas Identification Number issued by the Comptroller of Public Accounts, a description of the goods or services and any other relevant information required under the contract.
- C. Contractor shall utilize the software compatible with Microsoft Excel® for billing. The Contractor shall adopt all TCCO forms and form revisions. The Contractor shall provide and maintain proper computer hardware, software and peripheral devices to maintain electronic communication with TCCO via the Internet.
- D. The Contractor shall submit a SVP Client Activity Report (Billing Detail) to TCCO each month with the billing invoice. The SVP Client Activity Report shall contain, at a minimum: the SVP Client name, SID#, date of arrival, date of termination, number of days in the center for the month, and dollar amount owed for each SVP Client. The date of termination is the last partial Day the SVP Client was at the center (regardless if the SVP Client departed the center with or without TCCO's approval). The Contractor shall not bill TCCO for Day of termination. The payment schedule shall be based on the occupancy level determined by the Client Census Report. The Contractor shall not bill TCCO for unoccupied beds.
- E. For each SVP Client that did not participate in any sex offender treatment services during the month, the Contractor shall reduce the dollar amount owed on the invoice for that SVP Client by an amount corresponding to the percentage of the per diem rate related to sex offender treatment services.
- F. The Contractor shall ensure TCCO is not billed for the Day on which any SVP Client is admitted to the hospital, unless Contractor's staff remains at the hospital with the SVP Client twenty-four hours a day, seven days a week for the duration of the SVP Client's hospital stay, taken into custody by law enforcement officials, or any Day thereafter until the SVP Client returns to the center.
- G. Services or expenditures submitted by the Contractor that cannot be verified will be disallowed for reimbursement. Illegible or incomplete documentation that cannot be verified will be disallowed.

2.2.32 Payments

- A. It is recommended that the Contractor receive Payments via Electronic Funds Transfer (EFT), also known as Direct Deposit. To receive payments by direct deposit, the Contractor must download and fill out the Direct Deposit Form available at <https://comptroller.texas.gov/programs/systems/direct-deposit/> and return the completed form to:

Texas Civil Commitment Office
4616 West Howard Lane
Building 2 Suite 350
Austin, Texas 78728

- B. In the event the Contractor elects to decline Direct Deposit, the Contractor shall provide a Payment remittance address.

2.2.33 Deductions for Unacceptable Compliance

- A. Compliance Standards and deductions are listed in Exhibit K.
- B. The Contractor's failure to meet the listed Compliance Standards shall result in a deduction to the Monthly Contractor Payment.

2.2.34 Annual Financial Disclosure Reports

- A. The Contractor shall have an annual audit performed by an independent Certified Public Accountant (CPA) or annual financial information such as audited or unaudited reports or most recent tax return submissions and submit to TCCO the financial reports prepared according to Generally Accepted Accounting Principles and Auditing Standards (GAAP and GAAS) within one hundred twenty (120) Days after the end of the Contractor's Fiscal Year.
- B. In the disclosure of its financial affairs, the Contractor agrees to allow TCCO or its representatives access to all its corporate books, to cooperate in any audits thereof and to provide TCCO with the following:
 - 1. Consolidated financial statements, such as are required by GAAP, of the Contractor and its affiliates for such year, setting forth in each case in comparative form the corresponding figures for the preceding Fiscal Year, all in reasonable detail and certified by independent CPA's of recognized standing to the effect that said financial statements fairly present, except as specifically stated, the consolidated financial position and result of operations of the Contractor and its affiliates as of the end of the year for the year involved, and a statement signed by a senior accounting or financial officer of the Contractor that such officer has no knowledge, except as specifically stated, of the occurrence and continuance of any Event of

Default or event which, with the time or the giving of notice, or both, would constitute an Event of Default (as defined in Section 2.2.45) or, if such circumstance does exist, specifying the nature and extent thereof and the actions proposed to cure same; or

2. Copies of any “management letters” (as that term is understood pursuant to GAAP and GAAS) received by the Contractor following any such audits.

2.2.35 Withholding of Payment

- A. TCCO shall have the right to withhold the Payment until the failures described below have been corrected.
 1. Failure to submit reports required for Compliance Standards listed in Exhibit K.
 2. Failure to respond to audit reports as set forth in 2.3.4 D.
 3. Failure to meet the deadlines set forth in Section 2.3.1.
 4. Failure to correct identified areas of non-compliance to the satisfaction of TCCO within twenty (20) calendar days upon receipt of written notification.
- B. The Contractor agrees that TCCO shall not pay interest to the Contractor for monies so withheld.
- C. The Payment withheld shall be released upon TCCO's satisfaction that compliance has been achieved for thirty (30) consecutive days.
- D. TCCO shall withhold the final Payment to the Contractor pending TCCO's acceptance by and transfer of State-Owned Property to TCCO.
- E. In the event that money is due to TCCO for the Contractor's failure to provide adequate maintenance or replacement of the property as required in this Contract, the amount required for TCCO to correct deficiencies and replace property will be withheld from the final Payment.
- F. With the exception of disputed issues, such withholding of final Payment by TCCO shall not exceed one hundred twenty (120) calendar days from date of Contract termination.

2.2.36 Transition

- A. The Contractor shall provide detailed transition procedures in the Operational Plan to be accomplished upon expiration or termination of this contract and transition to TCCO management or management by a third party.

- B. Upon termination of this Contract, the Contractor shall work with TCCO under TCCO's supervision for a period of ninety (90) Days, prior to the expiration of the Contract, to ensure the orderly transfer and efficient transition from current Contractor management to either TCCO management or management by a third party.
 - 1. During this transition period, the Contractor shall transfer all SVP Client records, files, logs to TCCO if requested in writing to do so by TCCO.
 - 2. In the event the Contractor requires copies of any records after Contract expiration and program management transition, TCCO will furnish copies to the Contractor at the Contractor's expense.

- C. TCCO reserves the right to require the Contractor, at contractor's expense, to provide an additional staff member for the sole purpose of overseeing the transition of records and State-Owned property and equipment.
 - 1. Such Contractor employee shall be assigned ninety (90) days prior to the conclusion of this Contract.
 - 2. The employee shall work a shift/schedule to meet the needs of TCCO.
 - 3. Such contractor employee shall represent the Contractor in all transition activities.
 - 4. In the event the Contractor fails to have a representative present during transition inventories the Contractor waives all rights to contest the inventory.

2.2.37 Certain Prohibitions

- A. Notwithstanding any other section of this Contract, nothing contained herein shall be interpreted to grant to the Contractor the authority to, and the Contractor shall not have any authority to classify SVP Clients or place SVP Clients in less restricted environment than the environment order by TCCO. TCCO shall have the sole authority to assign or transfer SVP Clients from the center.

- B. Provided, however, that this section shall not prevent the Contractor from making recommendations to TCCO with respect to any of the above without the prior written decision of TCCO.

2.2.38 Approval of Employees

- A. The Contractor shall retain no Upper Level Management personnel for administration of the center without prior approval of each selection by TCCO, which approval shall not be unreasonably withheld.

- B. Upper Level Management are those individuals identified by the Contractor and approved by TCCO as having the authority to operate, manage and oversee the center, the staff and client population.

- C. Upper Level Management positions shall be available to respond to emergencies at the facility twenty-four (24) hours a Day, seven (7) Days a week and respond to TCCO inquiries.
- D. The Contractor Shall identify Upper Level Management positions in Exhibit H, under staffing costs, by placing the letters "ULM" next to the position title.
- E. Additionally, when the Contractor transfers any employees, regardless of rank, title, or position to another position, notification of this transfer must be made to TCCO by so indicating on the vacancy reports.
- F. Upon request by TCCO, the Contractor shall provide the name of the employee and location of transfer, all pending investigations and disciplinary actions, and previous disciplinary actions.

2.2.39 Criminal History Information Compliance

The parties hereto acknowledge and agree that in order for the Contractor to perform the services contemplated herein, TCCO may have to provide the Contractor with, or the Contractor may have access to, certain information regarding SVP Clients and former SVP Clients known as "criminal history information". Criminal history information means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information and other formal criminal charges and their dispositions. The term does not include information as to convictions, fingerprint information, and driving records. In the event TCCO provides the Contractor with criminal history information, the Contractor agrees to comply with the confidentiality requirements of 28 CFR 20, Part 20, Subpart B, Section 20.21; Section 524 (a) of the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. 3701, et seq., as amended (the "Act"), Texas Government Code, Chapter 411, Section 411.083, and with the FBI Criminal Justice Information Services (CJIS) Security Policy. More specifically, the Contractor agrees and acknowledges as follows:

- A. TCCO hereby specifically authorizes that the Contractor may have access to criminal justice history to the extent such access is necessary or appropriate to enable the Contractor to perform the services contemplated herein.
- B. The Contractor agrees to limit the use of such criminal justice information for the purposes set to herein.
- C. The Contractor agrees to maintain the confidentiality and security of the criminal justice history information in compliance with federal and state statutes, rules and regulations, and

return or destroy such information when it is no longer needed to perform the services contemplated herein.

- D. In the event that the Contractor's employee(s) fails to comply with the terms hereof, the Contractor shall take corrective action with the employee(s). Such corrective action must be acceptable to TCCO. An intentional or knowing violation may also result in civil and criminal violations under federal and state laws. Additionally, the Contractor shall submit for TCCO's approval, the Contractor's corrective action plan to ensure full compliance with the terms hereof.

2.2.40 Free Exercise of Religion

The Contractor is prohibited from substantially and unduly burdening an employee's or SVP Client's free exercise of religion or lack of religion.

2.2.41 Delay of Services

The Contractor shall meet its obligations to commence services at the center within the time frames defined by the Contract. In the event the Contractor fails to meet those time frames as defined by the Contract, absent extensions from TCCO, TCCO will have the right to obtain the services from another source and charge the cost thereof to the Contractor for each Day that services are not performed due to delays caused by the Contractor's nonperformance. TCCO will provide written notification to the Contractor by certified mail, return receipt requested, of the charges which will include the date of imposition and the amount that has accrued daily as of the date of the notification.

2.2.42 Electronic and Information Resources Accessibility Standards, as Required by 1 TAC Chapter 213

- A. Effective September 1, 2006 State Agencies and Institutions of Higher Education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC, Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- B. The Contractor shall provide TCCO with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/services accessibility information is

available from the General Services Administration “Buy Accessible Wizard” (<http://www.buyaccessible.gov>). Contractors not listed with the “Buy Accessible Wizard” or supplying a URL to their VPAT must provide TCCO with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the “Buy Accessible Wizard” or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

2.2.43 Termination for Convenience

TCCO may, in its sole discretion, terminate this Contract with or without cause, by providing the Contractor with ninety (90) Days prior written notice of such termination. Such notice may be provided by facsimile or certified mail, return receipt requested.

2.2.44 Termination by Mutual Agreement

The parties may terminate this Contract by mutual agreement, the terms of which shall be set forth in writing.

2.2.45 Event of Default – Termination

TCCO shall notify the Contractor in writing of any failure or default if the Contractor fails to carry out or comply with any requirements of this Contract (including but not limited to any statement, representation or warranty in this Contract that is false, misleading, or erroneous in any material respect). TCCO's notification shall demand that the failure or default be remedied within ten (10) Working Days. TCCO shall have the right to cancel this Contract upon ten (10) Working Days written notice if the contractor fails to remedy such failure or default with the ten (10) Working Day period.

2.2.46 Subcontracts

- A. The Contractor shall assume full responsibility for all deliverables under this Contract. TCCO shall consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges under this Contract. If any part of the deliverables is planned to be subcontracted, the Contractor shall include a list of

all subcontractors, including the firm name, address, and contact person of each subcontractor, a complete description of the deliverables to be subcontracted, financial statements for each subcontractor, and descriptive information concerning each subcontractor's qualifications.

- B. Subcontractors providing services under the contract shall meet the same requirements and level of experience as required of the respondent. No subcontract under the contract shall relieve the respondent of the responsibility for ensuring the requested services are provided. Respondents planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors.
- C. TCCO shall approve all subcontractors and to require the Contractor to replace any subcontractor found, in the opinion of TCCO, either initially or based on performance, to be unacceptable.
- D. The management of any subcontractor shall be the sole responsibility of the Contractor, and failure by a subcontractor to perform shall be deemed to be failure of the Contractor. The Contractor shall make all payments to subcontractors and suppliers. TCCO shall not direct payments for deliverables acquired in connection with this Contract other than to the Contractor, nor shall TCCO release the Contractor from having to perform any obligations under this Contract, notwithstanding the fact that a subcontractor may have been engaged by the Contractor to perform those obligations.
- E. The Contractor shall furnish to TCCO copies of all subcontracts. All subcontracts shall include all applicable provisions contained in this Contract and any provisions required by law.

2.3 PERFORMANCE MONITORING AND MANAGEMENT

2.3.1 Audits by Other Agencies

Upon receipt of audits, investigations or monitoring reports pertaining to the provision of the services under this Contract that are conducted by agencies or organizations other than TCCO, the Contractor shall provide copies thereof to TCCO within thirty (30) Days. The Contractor shall provide to TCCO copies of responses to audit or monitoring reports within seven (7) Days of issuance. Audit or monitoring reports shall be deemed to include allegations or complaints involving the center.

2.3.2 Operational Plan Requirements

- A. The Contractor shall provide for TCCO's written approval, an Operational Plan containing policies/procedures that details how operational requirements and standards discussed in Article II will be met.
- B. All policies/procedures (to include any updates or revisions) must be reviewed and approved by TCCO prior to implementation.
- C. The Contractor shall have policies and procedures that prohibit kickbacks, referral fees, headhunter fees, bounties, and any other related fees in all operations.
- D. The Contractor shall provide an Operational Plan that covers the full range of center operations:
 - 1. A policy and procedures operations manual;
 - 2. An emergency procedures/security manual for confidential use by the staff supervisors that are employed by the Contractor;
 - 3. A fully developed training package to be administered to all the Contractor staff as described in 2.2.1;
 - 4. Job descriptions for each position, education and experience requirements, descriptions of job duties, full-time or part-time designation, etc.; and
 - 5. Program Budget and Staffing Plan (Exhibit H).
- E. Any reference to policies, procedures, guidelines, manuals etc. shall be incorporated and submitted hereunder as the Operational Plan and shall comply with the requirements of Section 2.3.2 of this Contract. The Contractor shall notify TCCO in writing of proposed changes in, or additions to, the Operational Plan. Approval must be granted by TCCO prior to any changes or modifications being implemented. TCCO will respond to such requests within a reasonable time.
- F. The Contractor's positions shall be staffed with qualified employees in accordance with the format in Exhibit H. The staffing plan shall include, at a minimum:
 - 1. Position titles;
 - 2. Special qualifications;
 - 3. Number of Days covered;
 - 4. Identification of shifts;
 - 5. Identification as direct care staff;
 - 6. Deployment of staff. A basic center floor plan shall be submitted with the proposal, showing approximate locations of all direct care staff; and
 - 7. The Contractor shall provide job descriptions for each staff position identified on the Program Budget and Staffing Plan, Exhibit H.

- a. The LSOTP and ASOTP utilized by Contractor shall be licensed by the CSOT. If hiring an ASOTP, additional training, as approved by TCCO, shall be provided to the ASOTP.
 - b. Contractor job descriptions shall include minimum education and experience qualifications, description of job duties and full-time or part-time designation.
 - c. While the Contractor's minimum education and experience qualifications may vary by job title, the absolute minimum is a high school diploma or GED. The high school diploma shall be from an accredited high school or equivalent.
 - d. Award of this Contract does not constitute TCCO's approval of the Contractor's job descriptions but does determine that the job descriptions meet TCCO's minimum education and experience qualifications.
 - e. Contractor's request for exceptions to the minimum education and experience job description requirements must be in writing. Any exceptions previously granted by TCCO under a separate or previous contract do not apply to this Contract.
8. The Contractor shall include in the staffing plan positions for administration, training, medical service, food service, treatment programs, maintenance, laundry, programs (employment, budget planning, substance abuse education, personal care, AA/NA), transportation, personnel, intake/diagnostic, community service, and any other positions relating to Contractor's services and obligations.
- G. The Contractor shall provide architectural drawings, blueprints, floor plans and specifications of the center to TCCO.
- H. TCCO shall be allowed access to the proposed location prior to the awarding of a contract.

2.3.3 Performance Measures and Associated Remedies

TCCO will monitor the performance of the contract issued under this RFP as set forth in Exhibit K. All services and deliverables under the contract shall be provided at an acceptable quality level and in a manner consistent with acceptable industry standard, custom, and practice.

2.3.4 Inspection and Acceptance of Services

- A. TCCO has the right to inspect and test all services called for by this Contract, to the extent practicable at all times and places during the Contract Term. TCCO shall perform inspections in a manner that will not unduly interfere with the Contractor's performance of services. The Contractor shall furnish, and shall require subcontractors to furnish, at no

increase in Contract price, all reasonable assistance for the safe and convenient performance of these duties.

- B. TCCO shall, have the right to reasonably prompt access and to examine all records of the Contractor related specifically to the center, including all financial books and records, maintenance records, employee records including time and attendance records, and SVP Client records and any and all records and documents generated by the Contractor and its subcontractors in connection with the performance of this Contract.
- C. If subject to the outcome of an audit, it is determined that the Contractor is in non-compliance with any provisions of this Contract and/or that money is owed to TCCO by the Contractor, then TCCO may exercise its rights of recovery of money owed as authorized in Section 2.2.35 of this Contract.
- D. If any of the services are non-compliant with the Contract requirements, the Contractor shall be notified describing specific areas of non-compliance. The Contractor shall have twenty (20) Days to file a written response detailing corrective action(s) taken to address all items of non-compliance. The response must include supporting documentation which verifies execution of corrective action(s) taken. Unless otherwise specified, or previously agreed to by TCCO, the submission of a corrective action plan shall not be accepted as corrective action. For all items of non-compliance satisfactorily resolved by agreement between the Contractor and TCCO, no further action regarding such items shall be taken. If an item of non-compliance cannot be resolved between the Contractor and TCCO, and such item remains uncorrected for a period of twenty (20) Days or longer after written notification to the Contractor, then such item may be declared to be an Event of Default.

2.3.5 Inspection of Facilities

- A. The Contractor shall provide and maintain an inspection system acceptable to TCCO covering the facilities and work called for by this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to TCCO during contract performance and for as long afterwards as the Contract requires.
- B. The Contractor shall provide entry at all times by TCCO's authorized employees/agents for inspections, and any other official purposes. The Governor, members of the Legislature and all other members of the Executive and Judicial departments of the State, as well as any other persons designated by TCCO, shall be admitted into the center at any time.

2.3.6 Monitoring Criteria

- A. TCCO shall devise its own procedures for monitoring the quality of the Contractor's performance under this Contract.
- B. The Contractor shall cooperate fully with TCCO in obtaining the requisite information needed to complete such audits and to assess the quality of the Contractor's performance.
- C. Monitoring may include, but is not limited to, document reviews and on-site audits conducted by Authorized Representatives of TCCO. Such monitoring by TCCO shall not relieve the Contractor of any of its obligations under this Contract.
- D. TCCO staff shall provide written findings regarding non-compliant conditions, processes, procedures and operations implemented at the center, and observations that could, if not addressed by the Contractor, become an item of non-compliance as described in Section 2.3.4 D.

2.3.7 Authority to Audit

- A. The Contractor understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. The Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested.
- B. The Contractor shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.
- C. The Contractor shall reimburse the State of Texas for all costs associated with enforcing this provision.

2.3.8 Fraud, Waste or Abuse

- A. In accordance with Texas Government Code, Chapter 321, the State Auditor's Office (SAO) is authorized to investigate specific acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt or use of state funds.
- B. If there is a reasonable cause to believe that fraud, waste or abuse has occurred at this agency, it can be reported to the SAO by calling 1-800-892-8348 or at the SAO's website at <http://www.sao.state.tx.us/>.

- C. The Contractor shall comply with the Texas Comptroller of Public Accounts Anti-Fraud policy found at <http://www.window.state.tx.us/ssv/ethics.html>.

2.4 CONTRACT AWARD, TERM AND AMOUNT

2.4.1 Contract Award and Execution

TCCO intends to award one or more Contracts as a result of this Solicitation. Any award is contingent upon approval of the TCCO Executive Commissioner or their designee.

If, for any reason, a final Contract cannot be executed with a Respondent selected for award within thirty (30) days of TCCO's determination to seek to contract with that Respondent, TCCO may negotiate a contract with the next highest scoring Respondent or may withdraw, modify, or partially award this Solicitation.

2.4.2 Contract Term

The initial contract period will be for a five (5) year term and shall commence upon execution through August 31, 2024. TCCO reserves the option to renew the contract for two (2) additional two (2) year terms (September 1, 2024 - August 31, 2026 and September 1, 2026 - August 31, 2028.)

Following the base term and any allowable extensions, TCCO may extend any resulting Contract for the purpose of completing a new procurement, and/or to transition to a new vendor if necessary to avoid interruption in services. TCCO will provide written notice to the Contractor of its intent to extend within thirty (30) Days of Contract expiration, provided that TCCO shall give the Contractor a preliminary written notice of its intent to extend at least ninety (90) Days before the Contract expires.

2.5 DATA USE AGREEMENT

By entering into a Contract, or purchase order with TCCO as a result of this Solicitation, Respondent agrees to be bound by the terms of the Data Use Agreement attached as **Exhibit E**.

2.6 NO GUARANTEE OF VOLUME, USAGE OR COMPENSATION

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

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

2.7 GOVERNMENTAL ENTITIES

The selected Respondent shall be bound to specific terms and conditions found in **Exhibit C, TCCO Uniform Terms and Conditions**. However, to the extent Respondent is a governmental entity, responding to this Solicitation in its capacity as a governmental entity, certain terms and conditions may not be applicable. Furthermore, to the extent permitted by law, if a Solicitation response is received from a governmental entity, TCCO reserves the right to enter into an interagency or inter-local agreement with the governmental entity in lieu of awarding a Contract as a result of this Solicitation

ARTICLE 3. ADMINISTRATIVE INFORMATION

3.1 SCHEDULE OF EVENTS

EVENT	DATE/TIME
Solicitation Release Date	October 26, 2018
Vendor Conference	November 14, 2018 1:00 PM Central Time
Deadline for Submitting Questions	November 16, 2018 5:00 PM Central Time
HHSC Post Responses to Vendor Questions	November 25, 2018
Deadline for submission of Solicitation Responses [NOTE: Responses must be <u>RECEIVED</u> by HHSC by the deadline.]	FEBRUARY 1, 2019 2:00 PM Central Time
Anticipated Contract Start Date	MAY 1, 2019

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.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact the sole point of contact identified in this RFP at least 72 hours before the meeting so appropriate arrangements can be made.

3.2 CHANGES, AMENDMENT OR MODIFICATION TO SOLICITATION

HHSC on behalf of TCCO 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 TCCO. Any such revisions will be posted 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 on behalf of TCCO reserves the right to waive minor informalities in a Solicitation Response if it is in the best interest of TCCO. A "minor informality" is an omission or error that, in TCCO'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

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

Name: Gracie Perez, CTPM, CTCM
Title: Procurement Project Manager
Address: 1100 West 49th Street, Austin, TX 78756
Phone: 512-406-2554
Fax: 512-406-2688
Email: gracie.perez@hhsc.state.tx.us

3.5.2 Prohibited Communication

On issuance of this Solicitation, except for the written inquiries described in Section 3.5.4 and 3.5.5 below, HHSC and TCCO, 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 by this section. 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 Point of Contact

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 hshchub@hhsc.state.tx.us.

3.5.4 Questions

TCCO 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. 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 TCCO 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 will be posted on the ESBD. TCCO reserves the right to amend answers prior to the deadline for submission of Solicitation Responses. Amended answers will be posted on the ESBD. It is Respondent's responsibility to check the ESBD. TCCO also reserves the right to provide a single consolidated response of similar questions.

3.5.7 Vendor Conference

HHSC will conduct an optional pre-submittal vendor conference on November 14, 2018 at 1:00 pm Central Time at 4616 West Howard Lane, Building 2, Suite 350, Austin TX 78728.

The vendor conference will also be available via telephone and videoconference. Interested parties may attend via telephone call number 1-844-572-5683 extension 6381119#.

Connect over video: <https://call.lifesizecloud.com/6381119>

Other ways to call: <https://call.lifesizecloud.com/otherways/6381119>

Connecting from a Lifesize conference room system? Just dial 6381119 with the keypad.

While attendance at the vendor conference is not mandatory, it is strongly encouraged.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact the Point of Contact identified in Section 3.5.1 at least 72 hours before the meeting so appropriate arrangements can be made.

3.6 SOLICITATION RESPONSE COMPOSITION

3.6.1 Generally

Respondent shall submit an original Proposal and Respondent Information and an original Cost Proposal marked "Original" on paper and one 1 digital copies of the Proposal and Respondent Information document in searchable portable document format (PDF) on USB flash drives, compatible with Microsoft Office 2000. Respondent must also submit one (1) electronic copy of the Cost Proposal in Excel format with active formulas on a USB flash drive. The Original hard copy 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.

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

If a Respondent believes that parts of a Response contain proprietary or trade secret information and are excepted from required public disclosure under the Public Information Act, the Respondent must specifically mark those parts and the exception(s) that it believes apply, with specific detailed reasons. See Section 8.1.5, Public Information Act of this RFP for more information.

3.6.2 Submission in Separate Parts

Solicitation Responses must be submitted in separate parts:

- Narrative Proposal;
- Cost Proposal; and
- HSP.

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. flash drive).

The entire Solicitation Response—all separated paper documents and electronic copies—must then be submitted in one package to HHSC at the address listed in Section 3.8.3.

3.6.3 Page Limit and Supporting Documentation

The Narrative Proposal should be formatted as follows: 8 1/2" 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 TCCO. If Respondent fails to designate an "ORIGINAL," TCCO may reject the Solicitation Response or select a copy to be used as the original.

3.6.5 Exceptions

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 Form included as **Exhibit F** 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 F** 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 TCCO.

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. Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response.**

3.6.6 Assumptions

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

3.7 NOTIFICATION REQUIREMENTS

All Respondents shall provide proof of notification to elected officials of the intent to establish a center for the purpose of this Contract. **Separate notification shall be provided for each location proposed by Respondent.** All Respondents shall submit proof of the notification to TCCO. All Respondents shall:

- A. Mail a copy of the notice, via U.S. Certified Mail, overnight mail or hand delivered, to each police chief, sheriff, mayor, each city council member and/or each county commissioner, each county judge, district attorney, city attorney, each state representative and each state senator who serves or represents the area in which the proposed facility is to be located. The notice shall also be sent via U.S. Certified Mail to TCCO at 4616 West Howard Lane Building 2, Suite 350 Austin, Texas 78728. **The notification shall be received by the officials a minimum of thirty (30) Days prior to submitting a proposal.**
- B. Include in the notice the specific address of the civil commitment center on which a proposed action is to be taken and describe the proposed action. The notice shall detail the Respondent's intent to locate or designate a civil commitment center in the community. The notice shall clearly state the name of the Respondent that is proposing to operate a civil commitment center, including Respondent designated contact name, phone number and address.
- C. Clearly state in the notice that the proposed action concerns a center in which persons have been civilly committed as a sexually violent offender are to be housed. The notice shall specifically identify the population to be served.
- D. The Respondent shall include a self-addressed, postage paid envelope, as well as a Response Form to be utilized by the recipient of the notification. The Response Form shall include at a minimum: the recipient's name, signature, title, office held, address and contact phone number. Additionally, there shall be space for the recipient to indicate that he/she is: opposed, in support of or neutral, regarding the center. A comment area shall be included as well.
- E. In the event the Respondent does not receive a Response Form, the Respondent should follow up with the elected official regarding the status of the Response Form.
- F. The Respondent shall include all response forms with the RFP.

3.8 SOLICITATION RESPONSE SUBMISSION AND DELIVERY

3.8.1 Deadline

Solicitation Responses must be received at the address in Section 3.8.3 time-stamped by HHSC no later than the date and time specified in Section 3.1

3.8.2 Labeling

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

SOLICITATION NO: HHS0001193
SOLICITATION NAME: Civil Commitment Center(s) for Civilly Committed Sex Offenders

SOLICITATION RESPONSE DEADLINE: February 1, 2019, 2:00 PM Central Time

RESPONDENT'S NAME:

PURCHASER: Gracie Perez

HHSC and TCCO 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.

3.8.3 Delivery

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
	Gracie Perez, CTPM. CTCM Health and Human Services Commission Procurement and Contracting Services 1100 West 49 th Street, MC 2020 Austin, TX 78756	

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

3.8.4 Alterations, Modifications, and Withdrawals

Prior to the Solicitation Response 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. TCCO may request Solicitation Response Modifications at any time.

ARTICLE 4. SOLICITATION RESPONSE EVALUATION AND
AWARD PROCESS

4.1 EVALUATION CRITERIA

Solicitation Responses shall be evaluated in accordance with Title 10, Subtitle D of the Texas Government Code. TCCO 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. The criteria are described in further detail in Exhibit N.

4.1.1 Minimum Qualifications

- A. Respondents must possess the ability to obtain the minimum commercial insurance required by Section 8.2.1.
- B. Respondents must possess the ability to commence operations (start-up) without financial assistance from TCCO.
- C. Respondents must demonstrate the ability to provide staff to operate and manage the solicited center that meet or exceed minimum standards for like positions.

4.1.2 Specific Criteria

In accordance with Section 2155.074 and 2155.075 of the Texas Government Code, solicitation responses shall be evaluated to determine which Respondent provides the best value to the State of Texas. In determining best value, Solicitation Responses shall be consistently evaluated and scored in accordance with the following relevant factors:

- a) Cost 45%
- b) The quality and reliability of the goods and services, as indicated by Program Design 25%
- c) Probable vendor performance as indicated by Experience 25%
- d) Probable vendor performance as indicated by past vendor performance and references 5%

See **Exhibit N**, Evaluator Score Sheet. HHSC will 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. If TCCO 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.

TCCO may, at its discretion request that any or all Respondents provide a BAFO. A request for a BAFO from TCCO does not guarantee an award or further negotiations.

4.4 ORAL PRESENTATIONS AND SITE VISITS

TCCO may require an oral presentation from any or all Respondents. Respondents 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. TCCO is not responsible for any costs incurred by the Respondent in preparation for any oral presentation.

TCCO may require site visits from any or all Respondents. TCCO 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. TCCO is not responsible for any costs incurred by the Respondent in preparation for any site visit.

4.5 QUESTIONS OR REQUESTS FOR CLARIFICATION

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

4.6 DISCUSSIONS WITH RESPONDENTS

TCCO may, but is not required to, conduct discussions with all, some, or none of the respondents admitted to the field of competition for the purpose of obtaining the best value for TCCO. It may conduct discussions for the purpose of:

- Obtaining clarification of proposal ambiguities;
- Requesting modifications to a proposal; and/or
- Obtaining a best and final offer.

TCCO in conjunction with HHSC may make an award prior to the completion of discussions with all respondents admitted to the field of competition if TCCO determines that the award represents best value to the State of Texas.

ARTICLE 5. NARRATIVE PROPOSAL

5.1 NARRATIVE PROPOSAL

5.1.1 Executive Summary

In this section, condense and highlight the content of the Narrative Proposal to provide TCCO with a broad understanding of the respondent's approach to meeting the RFP's business requirements. The summary must demonstrate an understanding of TCCO's goals and objectives for this procurement.

5.1.2 Corporate Background and Experience

This section details the respondent's corporate background and experience. If the respondent proposes to use subcontractor(s), it must describe any existing or ongoing relationships with the subcontractor(s), including project descriptions. The section should include the following information:

A. Corporate Background and Experience

Describe the respondent's corporate background as it relates to projects similar in scope and complexity to the project described in this RFP.

If the proposal includes the use of subcontractors, include a similar description of each subcontractor's corporate background and experience.

B. Résumés

Identify and describe the respondent's and its subcontractor's proposed labor skill set and provide résumés of all proposed key personnel (as defined by the respondent). Résumés must demonstrate experience germane to the position proposed. Résumés should include work on projects cited under the respondent's corporate experience, and the specific functions performed on such projects. Each résumé should include at least three (3) references from recent projects. References may not be the respondent's or subcontractor's employees.

C. The Respondent shall provide a Dun & Bradstreet report.

5.1.2.1 Information Section

A. Name, address, telephone number and email address of Respondent. Also, identify by name, title, telephone number and email address of a contact person for all inquiries. The

contact person shall be responsible for fielding all inquiries from TCCO and providing answers.

- B. Business form of Respondent (e.g., corporation, partnership, etc.), if applicable.
1. If a corporation, include the date and state of incorporation.
 2. Names and addresses of principal officers, directors, or partners.
 3. A brief biography and complete resume of the person or persons who shall operate/manage the programs and center, including the proposed Center Administrator.
- C. The name and address of the Respondent's professional liability insurance carrier, along with a statement of liability from the carrier(s) issuing the policies. For the purpose of responding to this solicitation, Respondent will not be required to purchase insurance, but must show the ability to provide such insurance.
- D. Documentation from the appropriate State entity which indicates the Respondent is properly certified to conduct business in the State of Texas and not in debt or owing to the State of Texas (e.g., The Certificate of Existence from the Texas Secretary of State and the Certificate of Good Standing from the Texas Comptroller of Public Accounts). In the event the Respondent is not a corporation, the Respondent shall state that they are not a corporation and certify that they are not in debt owing to the State of Texas.
- E. Certification that proposed center is or is not located in a Child Safety Zone (Complete Exhibit J for each center proposed).

5.1.2.2 Organization Qualifications, and Past Performance

This section shall contain clear description of the entity submitting the proposal, including an outline of organizational capabilities, goals and purposes.

Respondents shall include a list of any contracts that have been cancelled or terminated within the last five (5) years, along with an explanation of the cancellation and the name and phone number of a contact person from the institution or agency that cancelled the Contract.

5.2 REFERENCES

Respondent shall provide a minimum of three (3) references from similar contracts or projects performed, preferably for state and/or local government, within the last three (3) years. Respondent must verify current contracts. Information provided shall include:

- Client name;
- Contract/Project Description;
- Project begin and end date;
- Total Dollar amount of contract/project;

- Key staff assigned to the referenced contract/project that will be designated for work under this Solicitation; and
- Client contract/project manager name, telephone number, fax number and email address.

5.3 USE OF SUBCONTRACTORS

- A. The Respondent may subcontract for the performance of any of its responsibilities to provide services pursuant to this Contract.
- B. No subcontract may be entered into unless TCCO provides prior written approval, which approval may not be unreasonably withheld.
- C. If a subcontractor is deemed to be needed for an event of an emergency nature, verbal approval may be obtained through an authorized TCCO representative. The Respondent shall submit a written request with supporting documentation for approval, by TCCO, as soon as possible.
- D. The Respondent shall furnish to TCCO copies of all subcontracts, without regard to amount of annual payments.
- E. Any arrangement by the Respondent with an affiliate or member company to provide services to the center shall be subject to the subcontractor provisions of this section.
- F. No contractual relationship shall exist between TCCO and any subcontractor and TCCO shall accept no responsibility whatsoever for the conduct, actions or omissions of any subcontractor selected by the Respondent.
- G. The Respondent shall be responsible for the management of the subcontractors in the performance of their work.
- H. A subcontractor may not work directly with TCCO in any manner and shall not be included in Contract negotiations, renewals, audit or any other discussions except at the request of TCCO.
- I. Unless waived in writing by TCCO, the subcontract shall contain the following:
 1. An acknowledgement that the subcontract is subject to the Contract between TCCO and the Respondent (the "Master Contract").
 2. The subcontractor shall agree to comply with the terms of the Master Contract to the extent applicable with respect to goods and services being provided under the subcontract. It is the intention of the parties of the subcontract that the

subcontractor shall “stand in the shoes” of the Respondent with respect to fulfilling the duties and obligations of the Respondent to TCCO under the Master Contract.

3. TCCO’s approval of a subcontract does not relieve the Respondent of its duty to perform under the Master Contract.
4. TCCO shall be deemed a “third party beneficiary” to the subcontract.

5.4 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 over the last five (5) years that involves Respondent or in which Respondent has been judged guilty or liable including any allegations of such that are currently pending.

Respondent must also disclose any settlement agreements entered into in the last five (5) years related to alleged contractual failures. 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.

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.

5.5 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. TCCO 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.

Additionally, pursuant to Section 2252.908 of the Texas Government Code, a successful respondent awarded a Contract greater than \$1 million dollars must submit a disclosure of interested parties to TCCO at the time the business entity submits the signed Contract. Rules and filing instructions may be found on the Texas Ethics Commission's public website and additional instructions will be given by HHSC to successful respondents.

5.6 AFFIRMATIONS AND CERTIFICATIONS

Respondent must complete and sign the Affirmations and assurances found in Exhibit A, Affirmations and Solicitation Acceptance and Exhibit B, Lobbying and Federal Assurances.

5.7 FINANCIAL CAPACITY AND ANNUAL REPORT INFORMATION

Respondent shall submit a copy of the its last annual fiscal report and a copy of the Respondent's last annual audit performed by an independent Certified Public Accountant (CPA) or annual financial information such as audited or unaudited reports or most recent tax return submissions including management letter and response. At a minimum, such financial statements and reports shall include: balance sheet; statement of income and expense; statement of changes in financial position; cash flows; and capital expenditures. If the respondent is a corporation that is required to report to the Securities and Exchange Commission, it must submit its two most recent SEC Forms 10K, Annual Reports. If any change in ownership is anticipated during the twelve (12) months following the proposal due date, the respondent must describe the circumstances of such change and indicate when the change is likely to occur.

5.8 CORPORATE GUARANTEE

If the respondent is substantially or wholly owned by another corporate (or other) entity, TCCO reserves the right to request that such entity unconditionally guarantee performance by the respondent in each and every term, covenant, and condition of the Contract as executed by the parties.

5.9 HUB SUBCONTRACTING PLAN

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, Title 34, §20.285(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.

Respondent must submit one (1) copy of the HUB Subcontracting Plan (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 **Exhibit I** and the HSP. In addition, submit one (1) electronic copy of the HSP on a portable media, such as a flash drive, compatible with Microsoft Office 2000.

5.10 VALUE-ADDED BENEFITS

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

ARTICLE 6. TECHNICAL PROPOSAL

6.1 TECHNICAL PROPOSAL

6.1.1 Technical Proposal and Operational Plan

Provide a description of the proposed center and program, addressing all requirements in Article 2 of the solicitation and using the same organizational format as Article 2. The Respondent shall also identify all deviations for which it requests approval. Proposal shall clearly identify the number of beds, location of center with address and services offered. This volume shall also include the Respondent's Operational Plan (refer to Section 2.3.2). In the technical portion of the proposal, Respondent shall cross-reference the specific section and page number of the Operational Plan that details the policies and procedures relating to the specific section. This volume should include, but not limited, to the following items:

- A. Architectural drawings, blueprints, floor plans and specifications of the proposed center;
- B. Respondent's Operational Plan; and
- C. Project Schedule: A time schedule shall be submitted by the Respondent that outlines the entire project from award of contract to when full operation can begin. Time is of the essence and an expedited schedule is preferred. The schedule should specifically demonstrate the length of time required for the completion of the following:
 - 1. Center preparation, renovation, or construction;
 - 2. Staffing, hiring, and training;
 - 3. Program development; and
 - 4. Full occupancy and operation.

6.1.2 Technical Evaluation Site Selection

A. Site Selection

The proposal need not contain specific legal descriptions of the property; however, enough data should be provided to enable TCCO to make an informed judgment as to the location of the center(s). The site(s) selected shall comply with all local, city and county ordinances. The site selected should have adequate community resources available to support the center, (i.e., hospital, fire protection services, law enforcement services, court systems and other services). Other site factors to be considered are staff recruitment considerations and the proximity of the site to population centers capable of augmenting services, such as mental health services and Licensed Sex Offender Treatment Providers.

B. Notification Requirements

Documentation in accordance with Section 3.7. This section shall contain documentation of notification to elected officials to include:

1. A copy of the notification sent to each elected official as identified in 3.7 (A);
 2. The elected officials' Response Form;
 3. A copy of the certified mail, return receipt;
 4. Any other documentation in the possession of the Respondent relative to community notification and/or acceptance.
- C. Respondents currently operating a center and submitting a proposal must also meet the above requirements.
- D. Child Safety Zone Certification (Exhibit J).

ARTICLE 7. COST PROPOSAL

7.1 COST PROPOSAL

7.1.1 Pricing Schedule and Program Budget Justification Forms

Using Exhibits G and H, the Respondent shall also provide its detailed budget, including a complete breakdown of how the price was derived (material, direct labor, overhead, general and administrative expenses, other direct costs, profit, etc.) to provide the services outlined in this RFP. The detailed budget shall be presented for the center, including subcontracting plans, indirect costs, and all other cost area. The detailed budget shall include but not be limited to, salaries, rent, utilities, food service, medical treatment, programming, transportation and administrative costs and the percentage of these costs allocated to TCCO if other funding sources exist. The Respondent shall estimate costs for providing these services, although it is specifically understood that the actual price shall be determined as a part of the negotiating process in developing any resulting contract. The proposed cost per SVP Client per Day shall be included in the cost summary information and shall be considered in the final decision. **The following forms shall be completed for each proposed center/location and service proposed and included in the respondent's proposal:**

- A. Exhibit G, Pricing Schedule.
- B. Exhibit H, Program Budget and Staff Plan, Justification Forms.

Respondents shall submit a pricing schedule and Program Justification Forms for each location and service proposed.

7.1.2 Allowable Costs

The proposed budget shall include only costs that are reasonable, necessary and allowable under State statutes, TCCO policies and procedures under Federal Cost Standards (OMB Circulars A-122 for Nonprofit Entities, A-21 for Educational Institutions, A-87 for State

and Local Governments, A-102 Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreement with State and Local Governments, and 48 CFR, Part 31, Subpart 31.2, Contracts with Commercial Organizations). TCCO shall make the final decision on the allow ability of a cost.

ARTICLE 8. GENERAL TERMS AND CONDITIONS

8.1 GENERAL CONDITIONS

8.1.1 Amendment

TCCO 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 240 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 TCCO.

8.1.3 Costs Incurred

Respondents understand that issuance of this Solicitation in no way constitutes a commitment by any TCCO to award a Contract or to pay any costs incurred by a Respondent in the preparation of a response to this Solicitation. TCCO 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

TCCO 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 and information, documentation, and other material submitted in connection with this Solicitation or any resulting Contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to any resulting Contract, and not otherwise excepted from disclosure under the

Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

Respondents who wish to protect portions of the Solicitation Response from public disclosure as proprietary or trade secret information or other privileged information must clearly mark the information the Respondent claims is proprietary, trade secret, or other privileged information.

8.2 INSURANCE

8.2.1 Required Coverage

For the duration of any Contract resulting from this Solicitation, Respondent shall acquire insurance, bonds, or both, if applicable with financially sound and reputable independent insurers, in the type and amount customarily carried within the industry. Failure to maintain insurance coverage or acceptable alternative methods of insurance shall be deemed a breach of Contract.

Contractor agrees and acknowledges that during the existence of this contract, contractor shall be entirely responsible for the liability and payment of contractor's and contractor's employees' taxes of whatever kind, arising out of the performances in this contract. Contractor shall comply with all state and federal laws applicable to such persons, including laws regarding wages, taxes, insurance, and workers' compensation. The customer and/or the state shall not be liable to the contractor, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and workers' compensation or any benefit available to a state employee or employee of another governmental customer.

8.2.2 Alternative Insurability

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

8.3 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 Title 1, Part 15, Chapter 391, Subchapter D.

ARTICLE 9. SUBMISSION CHECKLIST

This checklist is provided for Respondent's convenience only and identifies documents are requested in this Solicitation.

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

- a. Narrative Proposal (Section 5.1) _____

- b. Corporate Background and Experience (Section 5.1.2) _____
- c. References (Section 5.2) _____
- d. Major Subcontractor Information (Section 5.3) _____
- e. Litigation and Contract History (Section 5.4) _____
- f. Conflicts (Section 5.5) _____
- g. Affirmations and Certifications (Section 5.6) _____
- h. Lobbying and Federal Assurances (Exhibit B) _____
- i. Exceptions [and Assumptions] (Sections 3.6.5 and 3.6.6) _____
- j. Dun and Bradstreet Report (Section 5.1.2 C) _____
- k. Annual Report (Section 5.7) _____
- l. Corporate Guarantee (Section 6.8) _____

2. Cost Proposal

3. HUB Subcontracting Plan (Section 5.9 and Exhibit I) _____

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

1 Electronic copy of **Proposal and Respondent Information** in searchable PDF on individual USB Drives.

1 Electronic copy of **Cost Proposal** in Excel Format with active formulas on a USB Drive

EXHIBIT A- AFFIRMATIONS AND SOLICITATION ACCEPTANCE

EXHIBIT B- LOBBYING AND FEDERAL ASSURANCES

EXHIBIT C- TERMS & CONDITIONS

EXHIBIT D- MONTHLY POSITION VACANCY REPORT

EXHIBIT E- DUA

EXHIBIT F- EXCEPTIONS FORM

EXHIBIT G- PRICING SCHEDULE

EXHIBIT H- PROGRAM BUDGET AND STAFFING PLAN

EXHIBIT I- HUB INFO

EXHIBIT J- CHILD SAFETY ZONE CERTIFICATION

EXHIBIT K- COMPLIANCE STANDARDS

EXHIBIT L- REVENUE IDENTIFICATION FORM

EXHIBIT M- REPORTS REQUIRED FROM CONTRACTOR

EXHIBIT N-EVALUATOR SCORE SHEET

EXHIBIT A – 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 and TCCO are current, complete, and accurate. This includes all statements and information in this Solicitation Response.
3. Respondent understands that HHSC and TCCO will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
4. 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 and TCCO.
7. Respondent agrees that HHSC and TCCO has the right to use, produce, and distribute copies of and to disclose to HHSC and TCCO employees, agents, and contractors and other governmental entities all or part of Respondent's Solicitation Response as HHSC and TCCO 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 and TCCO.

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 Section 2155.444(c) of the Texas Government Code.
11. Respondent represents and warrants that it qualifies for all preferences claimed under 34 Texas Administrative Code Section 20.306 or Chapter 2155, Subchapter H of the Texas Government Code as indicated below (check applicable boxes):
 - a. Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
 - b. Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
 - c. Agricultural products grown in Texas
 - d. Agricultural products offered by a Texas bidder
 - e. Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
 - f. Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
 - g. Texas Vegetation Native to the Region
 - h. USA produced supplies, materials or equipment
 - i. Products of persons with mental or physical disabilities
 - j. Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
 - k. Energy Efficient Products
 - l. Rubberized asphalt paving material
 - m. Recycled motor oil and lubricants
 - n. Products produced at facilities located on formerly contaminated property
 - o. Products and services from economically depressed or blighted areas
 - p. Vendors that meet or exceed air quality standards
 - q. Recycled or Reused Computer Equipment of Other Manufacturers
 - r. Foods of Higher Nutritional Value
 - s. 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 Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
14. Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Respondent certifies that the individual or business entity named in this bid

or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

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

Name: _____ SSN: _____

Name: _____ SSN: _____

Name: _____ SSN: _____

Name: _____ SSN: _____

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of requested SSNs is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSNs will be used to identify persons that may owe child support. The SSNs will be kept confidential to the fullest extent permitted by law.

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

16. Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Respondent's subcontracts, if any, if payment in whole or in part is from federal funds.
17. Respondent certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
18. Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
19. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of an HHS agency or TCCO, (2) a person who at any time during the four years before the date of the contract was the executive head of an HHS agency or TCCO, or (3) a person who employs a current or former executive head of an HHS agency or TCCO.

20. 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.
21. Respondent agrees that any payments due under any contract resulting from this Solicitation shall be applied towards any debt or delinquency that is owed to the State of Texas.
22. 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).
23. Respondent agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
24. Respondent agrees that upon request of HHSC, Respondent shall provide copies of its most recent business continuity and disaster recovery plans.
25. Respondent expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Respondent represents and warrants to HHSC that the technology provided to HHSC for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:
 - providing equivalent access for effective use by both visual and non-visual means;
 - presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
 - being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this Section, the phrase “equivalent access” means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

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

27. If Respondent is submitting a Response for the purchase or lease of covered television equipment, then Respondent certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.
28. Should Respondent be awarded a contract resulting from this solicitation, Respondent represents and warrants, during the twelve (12) month period immediately prior to the date of the execution of the contract, none of its employees including, but not limited to those will provide services under the contract, were employees of an HHS Agency or TCCO.
29. Respondent acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Respondent may not accept employment from Respondent before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.
30. Respondent represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to HHSC and TCCO under this Solicitation and any resulting contract and that Respondent's provision of the requested goods and/or services under this Solicitation and any resulting contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
31. Respondent understands that HHSC and TCCO 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 and TCCO policies regarding fraud including, but not limited to, HHS Circular C-027.
32. The undersigned affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Response, neither I nor any representative of the Respondent has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (b) in connection with this Response, neither I nor any representative of the Respondent has violated any federal antitrust law; and (c) neither I nor any representative of the Respondent has directly or indirectly communicated any of the contents of this Response to a competitor of the Respondent or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Respondent.
33. 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 and TCCOs 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 and TCCO 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 HHSC's and TCCO's consideration of entering into a contract. In addition, Respondent acknowledges this is a continuing disclosure requirement. Respondent represents and warrants that, if awarded a contract as a result of this Solicitation, Respondent shall notify HHSC and TCCO 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 and TCCO shall constitute breach of contract and may result in immediate contract termination.

34. Respondent represents and warrants that, pursuant to Section 2270.002 of the Texas Government Code, Respondent does not boycott Israel and will not boycott Israel during the term of any contract resulting from this Solicitation.
35. Respondent certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of:
 - (a) all persons employed by Respondent to perform duties within Texas; and
 - (b) all persons, including subcontractors, assigned by Respondent to perform work pursuant to the contract within the United States of America.
36. 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.
37. Respondent represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to any contract resulting from this Solicitation.
38. Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.
39. By submitting this Response, Respondent represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of this Response.

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 B – LOBBYING AND FEDERAL ASSURANCES

EXHIBIT B, PART 1-CERTIFICATION REGARDING LOBBYING

(Posted on the ESD)

EXHIBIT B, PART 2-ASSURANCES – NON-CONSTRUCTION PROGRAMS

(Posted on the ESD)

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EXHIBIT C – TEXAS CIVIL COMMITMENT OFFICE TERMS & CONDITIONS

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ARTICLE I: INTRODUCTION

SECTION 1.01 INDUCEMENTS

In making the award of the Contract, the Texas Civil Commitment Office (TCCO) relies on Contractor's assurances of the following:

- A. Contractor and its subcontractors are established providers of the types of services described in the solicitation;
- B. Contractor and its subcontractors have the skills, qualifications, expertise, financial resources, and experience necessary to perform the services described in the solicitation, Contractor's proposal, and the Contract in an efficient, cost-effective manner, with a high degree of quality and responsiveness, and has performed similar services for other public or private entities;
- C. Contractor has thoroughly reviewed, analyzed, and understood the solicitation, has timely raised all questions or objections to the solicitation, and has had the opportunity to review and fully understand TCCO'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;
- D. 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 in accordance with the terms and conditions of the Contract;
- E. Contractor has also reviewed and understands the risks associated with the TCCO programs as described in the solicitation, including the risk of non-appropriation of funds.

Accordingly, TCCO desires to engage Contractor to perform the services described in the Contract under the terms and conditions set forth in the Contract.

SECTION 1.02 CONSTRUCTION OF CONTRACT

- A. Scope of Introductory Article – The provisions of any introductory article to the Contract are intended to be a general introduction and are not intended to expand the scope of the Parties' obligations under the Contract or to alter the plain meaning of the terms and conditions of the Contract.
- B. References to the "State" – References in the Contract to the "State" mean the State of Texas unless otherwise indicated and will be interpreted, as appropriate, to mean or include TCCO and other agencies of the State of Texas that may participate in the administration of TCCO programs, provided, however, that no provision will be interpreted to include any entity other than TCCO as the contracting agency.
- C. Severability – If any provision of the Contract is for any reason held to be unenforceable, the rest of it remains fully enforceable.
- D. Survival of Terms – Termination or expiration of the Contract for any reason will not release either party from any liabilities or obligations set forth in the Contract that:

1. The Parties agree will survive the termination or expiration; or
 2. Remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.
- E. Headings – The article and section headings in the Contract are for reference and convenience only and may not be considered in the interpretation of the Contract.
- F. Global Drafting Conventions
1. The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
 2. The terms “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.
 3. The terms “include,” “includes,” and “including” are terms of inclusion and enlargement and, where used in the Contract, should be read as if followed by the phrase “without limitation.”
 4. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
 5. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to those documents as amended, modified, or supplemented from time to time during the time of the Contract.

SECTION 1.03 NO IMPLIED AUTHORITY

The authority designated to Contractor by TCCO is limited to the terms of the Contract. TCCO is the state agency designated by the Legislature to administer the TCCO programs and no other state agency grants Contractor any authority related to the Contract unless directed through TCCO. 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 TCCO programs; or
- C. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of TCCO regarding TCCO programs or the Contract.

To the fullest extent possible, Contractor is required to assist TCCO in communications and negotiations with state and federal governments and agencies as directed by TCCO.

SECTION 1.04 LEGAL AUTHORITY

TCCO enters into the solicitation through administrative attachment to the Health and Human Services Commission (HHSC) under Chapter 420A of the Texas Government Code and the authority of HHSC under Section 2155.144 of the Texas Government Code. TCCO has the authority to enter into the Contract under

Chapter 841 of the Texas Health and Safety Code. Contractor is authorized to enter into the Contract pursuant to the authorization of its governing board or controlling owner or officer.

The person or persons signing and executing the Contract on behalf of the Parties, or representing themselves as signing and executing the Contract on behalf of the Parties, warrant and guarantee that he, she, or they have been duly authorized to execute the Contract and to validly and legally bind the Parties to all of its terms, performances, and provisions.

SECTION 1.05 CONSIDERATION

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

ARTICLE II: DEFINITIONS

“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 defined herein.

“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.

“Change” means any alteration, adjustment, exchange, substitution, or modification of the Services under the Contract that are authorized in accordance with the terms of the Contract.

“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 TCCO that consists of or includes any or all of the following:

- A. Client information;
- B. Protected health information, in any form including without limitation, electronic protected health information or unsecured protected health information;
- C. Sensitive personal information defined by Chapter 521 of the Texas Business and Commerce Code;
- D. Criminal history record information;
- E. Federal tax information;
- F. Personally identifiable information;
- G. Social security administration data, including, without limitation, Medicaid information;
- H. All privileged work product;
- I. All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health and Safety Code and the Texas Public Information Act, Chapter 552 of the Texas Government Code; and
- J. Other confidential information as designated in the Contract.

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

“Contractor” means the party identified in the Contract as the individual or entity that is required to perform the services and related obligations under the Contract.

“Corrective Action Plan” means the detailed written plan required by TCCO to correct or resolve a deficiency or breach of the Contract.

“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 TCCO or the State of Texas.

“Disability” means a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

“Effective Date” means the date of the complete execution of the Contract unless another date is agreed to by the Parties as the date on which the Contract takes effect. For purposes of the Contract, the term includes any period under which work is performed in accordance with a properly executed Letter of Intent between TCCO and Contractor.

“Initial Term” means the period between the effective date and the original expiration date of the Contract.

“Material Subcontract” means any subcontract that exceeds, or is reasonably expected to exceed, \$100,000 per year. Any subcontract between Contractor and a single entity that are split into separate agreements by time period, program, or service area etc. may be consolidated for the purpose of this definition.

“Parties” means TCCO and Contractor, collectively.

“Party” means either TCCO or Contractor, individually.

“Proposal” means the proposal submitted by Contractor in response to the Solicitation.

“Public Information” has the meaning assigned by Chapter 552 of the Texas Government Code.

“Scope of Work” means the description of Services and Deliverables specified in the Contract, the solicitation, and any agreed modifications.

“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 the documents that constitute the Contract.

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

“Solicitation” means the document issued by HHSC on behalf of TCCO 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 other party to fulfill the requirements of the Contract. All subcontracts are required to be in writing.

“Subcontractor” means any individual or entity that has entered into a subcontract with Contractor.

“Technical Guidance Letter” or “TGL” means an instruction, clarification, or interpretation of the requirements of the Contract, issued by TCCO to the Contractor.

“Turnover Plan” means the written plan developed by Contractor, approved by TCCO, and to be employed in the event that the work described in the Contract transfers to the State or another vendor from Contractor. TCCO may require Contractor to develop a turnover plan at any time during the term of the Contract at TCCO’s discretion. The turnover plan describes Contractor’s policies and procedures that will assure 1) the least disruption in the delivery of services during the transition to a substitute vendor and 2) cooperation with TCCO and the substitute vendor in transferring information and services to a substitute vendor.

ARTICLE III: GENERAL TERMS AND CONDITIONS

SECTION 3.01 CONTRACT ELEMENTS

A. Entire Agreement

The Contract between the Parties will consist of the document bearing the signatures of the Parties, Exhibits or Attachments to that document, these Terms and Conditions, the Solicitation, Contractor’s Proposal and any agreed to modifications (incorporated by reference).

B. Order of Precedence

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

1. The final executed document that bears the signature of the Parties, including any Exhibits or Attachments, and all amendments to that document;
2. These Terms and Conditions, including any attachments;
3. The solicitation and any addendums, corrections, and clarifications;
4. Contractor’s proposal and any agreed to modifications.

SECTION 3.02 FUNDING

This Contract is conditioned on the availability of state and federal appropriated funds. Contractor will have no right of action against TCCO in the event that TCCO is unable to perform its obligations under the Contract as a result of the suspension, termination, withdrawal of funding to TCCO, the failure to fund TCCO, or lack of sufficient funding of TCCO for any activities or functions contained within the scope of the Contract. If funds become unavailable, the provisions of Article 11 Remedies and Disputes will apply.

TCCO will use all reasonable efforts to ensure that such funds are available and will negotiate in good faith with Contractor to resolve any Contractor claims for payment that represent accepted services or deliverables that are pending at the time funds become unavailable. TCCO will make best efforts to provide reasonable written advance notice to Contractor upon learning that funding for the Contract may be discontinued.

SECTION 3.03 DELEGATION OF AUTHORITY

State and federal laws generally limit TCCO's ability to delegate certain decisions and functions to a contractor, including but not limited to: (1) policy-making authority; and (2) final decision-making authority on the acceptance or rejection of contracted services.

SECTION 3.04 NO WAIVER OF SOVEREIGN IMMUNITY

The Parties agree that no provision of the Contract is in any way intended to constitute a waiver by TCCO or the State of Texas of any immunities from suit or from liability that TCCO or the State of Texas may have by operation of law.

SECTION 3.05 FORCE MAJEURE

A Party will not be liable for any failure or delay in performing its obligations under the Agreement if such failure or delay is due to any cause beyond the reasonable control of the Party, including, but not limited to, unusually severe weather, strikes, natural disasters, fire, civil disturbance, epidemic, war, court order, or acts of God. The existence of such causes of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Each Party must inform the other in writing with proof of receipt within five (5) business days of the existence of a force majeure event as described above or otherwise waive this right as a defense.

SECTION 3.06 MOST FAVORED CUSTOMER

The Contractor agrees that if during the term of the Contract, the 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, the Contract will, at TCCO's option, be amended to afford equivalent advantage to TCCO.

SECTION 3.07 PUBLICITY

A. No Use

Except as provided in the paragraphs below, Contractor must not use the name of, or directly or indirectly refer to, TCCO, 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 (other than proposals or reports submitted to TCCO, an administrative agency of the State of Texas, or a governmental agency or unit of another state or the Federal Government).

B. Limited Exception

Contractor may publish, at its sole expense, results of Contractor performance under the Contract with TCCO's prior review and approval, which TCCO may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from TCCO and any federal agency, as appropriate. Contractor will provide TCCO at least three (3) copies of any such publication prior to public release. Contractor will provide additional copies at the request of TCCO. Contractor may include information concerning the Contract's terms, subject matter, and estimated value in any report to a governmental body to which the Contractor is required by law to report such information.

SECTION 3.08 ASSIGNMENT

A. Assignment by Contractor

Contractor will not assign all or any portion of its rights under or interests in the Contract or delegate any of its duties without prior written consent of TCCO. Any written request for assignment or delegation must be accompanied by written acceptance of the assignment or delegation by the assignee or delegation by the delegate. Except where otherwise agreed in writing by TCCO, assignment or delegation will not release Contractor from its obligations under the Contract.

B. Assignment by TCCO

Contractor understands and agrees TCCO 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.

C. Assumption.

Each party to whom a transfer is made must assume all or any part of Contractor's or TCCO's interests in the Contract, the product, 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.

SECTION 3.09 COOPERATION WITH OTHER VENDORS AND PROSPECTIVE VENDORS

A. Supplemental Contracts

TCCO may award supplemental contracts for work related to the Contract, or any portion thereof, TCCO reserves the right to award the Contract as a joint venture between two or more potential vendors, if such an agreement is in the best interest of TCCO. Contractor agrees to cooperate with such other vendors, and will not commit or permit any act that may interfere with the performance of work by any other vendor.

B. Access

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

SECTION 3.10 RENEGOTIATION AND REPROCUREMENT RIGHTS

A. Renegotiation of Contract Terms

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

B. Reprourement of the Services or Procurement of Additional Services

Notwithstanding anything in the Contract to the contrary, whether or not TCCO has accepted or rejected Contractor's Services or Deliverables provided during any period of the Contract, TCCO may at any time issue requests for proposals or offers to other potential contractors for performance of any portion of the services covered by the Contract or services similar or comparable to the Services performed by Contractor under the Contract.

C. Termination Rights Upon Reprourement

If TCCO elects to procure the services or any portion of the services from another vendor in accordance with this section, TCCO will have the termination rights set forth in Article 11.

SECTION 3.11 SOLICITATION ERRORS AND OMISSIONS

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

SECTION 3.12 ATTORNEYS' FEES

In the event of any litigation, appeal, or other legal action to enforce any provision of the Contract, Contractor agrees to pay all expenses of such action, including attorneys' fees and costs if TCCO is the prevailing or substantially prevailing party.

SECTION 3.13 BUY TEXAS; PREFERENCES UNDER SERVICE CONTRACTS

Contractor is required in performing the Contract to purchase products and materials produced in the State of Texas when they are available at a price and time comparable to products and materials produced outside the State.

SECTION 3.14 ENSURING TIMELY PERFORMANCE

The Parties acknowledge the need to ensure uninterrupted and continuous performance of the Scope of Work under the Contract, therefore, TCCO may terminate the Contract or apply any other remedy as noted in Article 11 Remedies and Disputes if Contractor's performance is not timely.

SECTION 3.15 FREE EXERCISE OF RELIGION

Contractor is prohibited from substantially and unduly burdening an employee or TCCO client's Free Exercise of Religion or lack of religion.

SECTION 3.16 STATE USE OF IDEAS

TCCO reserves the right to use any and all ideas presented in Contractor's proposal unless the Contractor presents a valid legal case that such ideas are trade secret or confidential information, and identifies the information as such in its proposal. Contractor may not object to the use of ideas that are not the contractor's intellectual property and so designated in the proposal that: (1) were known to TCCO before the submission of the proposal; (2) were in the public domain through no fault of TCCO; or (3) became properly known to TCCO after proposal submission through other sources or through acceptance of the proposal.

SECTION 3.17 PROPERTY OF TCCO

Except as otherwise provided in this contract, all products produced by contractor, including without limitations the proposal, all plans, designs, software, and other contract deliverables, become the sole property of TCCO.

SECTION 3.18 DELAY OF SERVICES

The Contractor shall meet its obligations to commence services within the time frames defined by the Contract. In the event the Contractor fails to meet those time frames as defined in the Contract, absent extensions from TCCO, TCCO will have the right to obtain the services from another source and charge the cost thereof to the Contractor for each day that services are not performed due to delays caused by Contractor's nonperformance. TCCO will provide written notification to the Contractor by certified mail, return receipt requested, of the charges which will include the date of imposition and the amount that has accrued daily as of the date of the notification.

SECTION 3.19 TECHNICAL GUIDANCE LETTERS

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

ARTICLE IV: CONTRACTOR PERSONNEL MANAGEMENT

SECTION 4.01 QUALIFICATIONS, RETENTION, AND REPLACEMENT OF CONTRACTOR EMPLOYMENT

Contractor agrees to maintain the organization and administrative capacity and capabilities to carry out all duties and responsibilities under the Contract. The personnel Contractor assigns to perform the duties and responsibilities under the Contract will be properly trained and qualified for the functions they are to

perform. Contractor does not warrant the quality of training for which the State is responsible. Notwithstanding transfer or turnover of personnel, Contractor remains obligated to perform all duties and responsibilities under the Contract without degradation and in accordance with the terms of the Contract.

SECTION 4.02 RESPONSIBILITY FOR CONTRACTOR PERSONNEL

A. Employment and Agency

Contractor's employees and subcontractors will not in any sense be considered employees of TCCO or the State of Texas but will be considered Contractor's employees for all purposes. Except as provided in the Contract, neither Contractor nor any of Contractor's employees or subcontractors may act in any sense as agents or representatives of TCCO or the State of Texas.

B. E-Verify System

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

1. All persons employed to perform duties within Texas, during the term of the Contract; and
2. All persons (including subcontractors) assigned by Contractor to perform work pursuant to the Contract, within the United States of America.

C. Liability

Contractor's employees must be paid exclusively by Contractor for all services performed. Contractor is responsible for and must comply with all requirements and obligations related to such employees under local, state or federal law, including minimum wage, social security, unemployment insurance, state and federal income tax, and workers' compensation obligations. Contractor assumes sole and full responsibility for its acts and omissions and the acts and omissions of its personnel and subcontractors.

CONTRACTOR AGREES THAT ANY CLAIM ON BEHALF OF ANY PERSON ARISING OUT OF EMPLOYMENT OR ALLEGED EMPLOYMENT (INCLUDING, BUT NOT LIMITED TO, CLAIMS OF DISCRIMINATION AGAINST CONTRACTOR, ITS OFFICERS, OR ITS AGENTS) ARE THE SOLE RESPONSIBILITY OF CONTRACTOR AND ARE NOT THE RESPONSIBILITY OF TCCO, AND THAT CONTRACTOR WILL INDEMNIFY AND HOLD HARMLESS THE STATE FROM ANY AND ALL SUCH CLAIMS ASSERTED AGAINST THE STATE.

Contractor understands that any person who alleges a claim arising out of employment or alleged employment by Contractor will not be entitled to any compensation, rights, or benefits from TCCO (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

SECTION 4.03 COOPERATION WITH TCCO AND STATE ADMINISTRATIVE AGENCIES

A. Cooperation with TCCO Contractors

Contractor agrees to reasonably cooperate with and work with the State's contractors, subcontractors and third-party representatives as requested by TCCO. To the extent permitted by TCCO's financial and

personnel resources, TCCO agrees to reasonably cooperate with Contractor and to use its best efforts to ensure that TCCO's other program contractors reasonably cooperate with Contractor.

B. Cooperation with State and Federal Administrative Agencies

Contractor must ensure that contractor personnel will cooperate with TCCO or other state or federal administrative agency personnel at no charge to TCCO for purposes relating to the administration of TCCO programs including, but not limited to the following purposes:

1. The investigation and prosecution of fraud, waste, and abuse in TCCO programs;
2. Audit, inspection, or other investigative purposes; and
3. Testimony in judicial or quasi-judicial proceedings related to the services under the Contract or other delivery of information to TCCO or other agencies' investigators or legal staff.

SECTION 4.04 CONDUCT OF AND RESPONSIBILITY FOR CONTRACTOR PERSONNEL

A. Conduct

While performing the Services or Deliverables, Contractor's personnel and subcontractors must:

1. Comply with applicable Contract terms, State and Federal rules, regulations, TCCO policies and TCCO requests regarding personal and professional conduct; and
2. Otherwise conduct themselves in a businesslike and professional manner.

B. Removal

If TCCO determines in good faith that a particular employee or subcontractor is not conducting himself or herself in accordance with this Section, TCCO may provide Contractor with notice and documentation concerning such conduct. Upon receipt of such notice, Contractor must promptly investigate the matter and, at TCCO's request, take appropriate action that may include:

1. Removing the employee from the project;
2. Providing TCCO with written notice of such removal; and
3. Replacing the employee with a similarly qualified individual acceptable to TCCO.

Nothing in the Contract will prevent Contractor, at the request of TCCO, from replacing any personnel who TCCO determines are not adequately performing their assigned responsibilities or who, in the reasonable opinion of TCCO, after consultation with Contractor, are unable to work effectively with the members of TCCO's staff. In such event, Contractor will provide replacement personnel with equal or greater skills and qualifications as soon as reasonably practicable. Replacement of key personnel will be subject to TCCO review and approval. The parties will work together in the event of any such required replacement so as not to disrupt the overall project schedule.

C. Sole Control

Contractor agrees that anyone employed by Contractor to fulfill the terms of the Contract is an employee of Contractor and remains under Contractor's sole direction and control. Contractor agrees to be responsible for the following with respect to its employees:

1. Any and all employment taxes or other payroll withholding;
2. Damages caused by Contractor's employees acting within or outside the scope of their duties under the Agreement; and

3. Determination of the hours to be worked and the duties to be performed by Contractor's employees.

Contractor agrees and will inform its employees and subcontractor(s) that there is no right of action against TCCO for any duty owed by Contractor under the Contract. Contractor understands that TCCO does not assume liability for the actions of, or judgments rendered against, the Contractor, its employees, agents or subcontractors. Contractor agrees that it has no right to indemnification or contribution from TCCO for any judgments rendered against Contractor or its subcontractors. TCCO's liability to the Contractor's employees, agents and subcontractors, if any, will be governed by the Texas Tort Claims Act, as amended or modified (Tex. Civ. Prac. & Rem. Code § 101.001 et seq.).

SECTION 4.05 RESPONSIBILITY FOR SUBCONTRACTORS

- A. The Contractor shall assume full responsibility for all deliverables under the contract. TCCO shall consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges under the contract. If any part of the deliverables is planned to be subcontracted, the Contractor shall include a list of all subcontractors, including the firm name, address, and contact person of each subcontractor, a complete description of the deliverables to be subcontracted, financial statements for each subcontractor, and descriptive information concerning each subcontractor's qualifications.
- B. Subcontractors providing services under the contract shall meet the same requirements and level of experience as required of the respondent. No subcontract under the contract shall relieve the respondent of the responsibility for ensuring the requested services are provided. Respondents planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors.
- C. The Contractor shall not delegate any duties under the contract to a subcontractor unless TCCO has given written consent to the delegation. TCCO shall approve all subcontractors and require the Contractor to replace any subcontractor found, in the opinion of TCCO, either initially or based on performance, to be unacceptable.
- D. The management of any subcontractor shall be the sole responsibility of the Contractor, and failure by a subcontractor to perform shall be deemed to be failure of the Contractor. The Contractor shall make all payments to subcontractors and suppliers. TCCO shall not direct payments for deliverables acquired in connection with the contract other than to the Contractor, nor shall TCCO release the Contractor from having to perform any obligations under the contract, notwithstanding the fact that a subcontractor may have been engaged by the Contractor to perform those obligations.
- E. The Contractor shall furnish to TCCO copies of all subcontracts. All subcontracts shall include all applicable provisions contained in the contract and any provisions required by law.
- F. Contractor must not disclose Confidential Information of TCCO or the State of Texas to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of Contractor under the Contract.

- G. 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 Services, and certify to TCCO that no loss of service will occur as a result of the performance of such subcontractor. The Contractor will assume responsibility for all contractual responsibilities whether or not the Contractor performs them. Further, TCCO considers the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the Contract.

- H. At least 30 days prior to executing a Material Subcontract or other agreement with a third party with a value greater than \$100,000.00, Contractor must submit a copy of the agreement to TCCO for TCCO's review at TCCO's option. TCCO reserves the right to: (1) reject the agreement or require changes to any provisions that do not comply with the requirements or duties and responsibilities of the Contract or create significant barriers for TCCO in monitoring compliance with the Contract; (2) object to the selection of the subcontractor; or (3) object to the subcontracting of the Services and Deliverables proposed to be subcontracted.

SECTION 4.06 TCCO'S ABILITY TO CONTRACT WITH SUBCONTRACTORS

The Contractor may not limit or restrict, through a covenant not to compete, employment agreement or other contractual arrangement, TCCO's ability to contract with subcontractors or former employees of the Contractor.

ARTICLE V: GOVERNING LAW AND REGULATIONS

SECTION 5.01 GOVERNING LAW AND VENUE

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

SECTION 5.02 CONTRACTOR RESPONSIBILITY FOR COMPLIANCE WITH LAWS AND REGULATIONS

Contractor is responsible for compliance with all laws, regulations, and administrative rules that govern the performance of the Services including all State and Federal tax laws, State and Federal employment laws, State and Federal regulatory requirements, and licensing provisions.

Contractor is responsible for 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 Services.

Contractor warrants that the Services and Deliverables comply with all applicable Federal, State, and County laws, regulations, codes, ordinances, guidelines, and policies. CONTRACTOR WILL INDEMNIFY AND HOLD HARMLESS TCCO FROM AND AGAINST ANY LOSSES, LIABILITY, CLAIMS, DAMAGES, PENALTIES, COSTS, FEES, OR EXPENSES ARISING FROM OR IN CONNECTION WITH CONTRACTOR'S NEGLIGENCE OR CONTRACTOR'S FAILURE TO COMPLY WITH OR VIOLATION OF ANY SUCH LAW, REGULATION, CODE, ORDINANCE, OR POLICY.

SECTION 5.03 COMPLIANCE WITH IMMIGRATION LAWS

Contractor must comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.

SECTION 5.04 COMPLIANCE WITH ANTI-DISCRIMINATION LAWS, REGULATIONS, AND RULES

Contractor shall provide services for TCCO that are in compliance with all applicable local, state, and federal laws, rules and regulations now in effect or that become effective during the term hereof including but not limited to, Civil Rights Act of 1964; Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age of Discrimination in Employment Act; the Immigration Reform and Control Act of 1986; Code of Federal Regulations, Title 42, Part 2 (regarding information about drug and alcohol abuse); Environmental Protection Agency (EPA) Rules and Regulations; Texas Health and Safety Code, Chapters 85, 595, 611; the Americans with Disabilities Act of 1990; the Civil Rights Act of 1991; Occupational Safety and Health Act (OSHA) of 1970; Section 231.006, Texas Family Code; Texas Government Code, Chapter 783, 2254, 2259, and 2260; Health and Safety Code, Chapter 841, Texas Administrative Code, Title 37, Part 16, Chapter 810; and any and all relevant federal and state financial cost principles and audit requirements; and any and all rules, policies and procedures established from time to time by TCCO.

The Contractor shall not deviate in any material respect from applicable TCCO Policies in the provision of services without the prior written approval of TCCO. Contractor's written request for deviations from said policies shall originate from the Authorized Representative of the Contractor and shall be forwarded to TCCO. The Contractor's written requests for deviation shall contain language which details the specific deviation with reference to the policy number, section, paragraph, etc., as well as the justification for such deviation.

Contractor must comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued under these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.

Contractor must comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 and 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. Applicable state and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Contractor must ensure that its policies do not have the effect of excluding or limiting the participation of persons in its programs, benefits, and activities on the basis of national origin. Contractor also must take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

Contractor must comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services will not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Upon request, Contractor will provide TCCO with copies of all of the Contractor's civil rights policies and procedures.

Contractor must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under the Agreement. This notice must be delivered no more than ten calendar days after receipt of a complaint. Notice provided under this section must be directed to: HHSC Civil Rights Office 701 W. 51st Street, Mail Code W206 Austin, Texas 78751 Phone Toll Free: (888) 388-6332 Phone: (512) 438-4313 TTY Toll Free: (877) 432-7232 Fax: (512) 438-5885.

SECTION 5.05 COMPLIANCE WITH ENVIRONMENTAL PROTECTION LAWS

Contractor must comply with state and federal environmental laws, including, without limitation:

- A. Pro-Children Act of 1994. Contractor must comply with the Pro-Children Act of 1994 (20 U.S.C. § 6081 et seq.), as applicable, regarding the provision of a smoke-free workplace and promoting the non-use of all tobacco products.
- B. National Environmental Policy Act of 1969. Contractor must comply with any applicable provisions relating to the institution of environmental quality control measures contained in the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) and Executive Order 11514 ("Protection and Enhancement of Environmental Quality").
- C. Clean Air Act and Water Pollution Control Act regulations. Contractor must comply with any applicable provisions relating to required notification of facilities violating the requirements of Executive Order 11738 ("Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans").
- D. State Clean Air Implementation Plan. Contractor must comply with any applicable provisions requiring conformity of federal actions to State (Clean Air) Implementation Plans under §176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.).
- E. Safe Drinking Water Act of 1974. Contractor must comply with applicable provisions relating to the protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (21 U.S.C. § 349; 42 U.S.C. §§ 300f to 300j- 9).

SECTION 5.06 COMPLIANCE WITH FRAUD, WASTE AND ABUSE REQUIREMENTS

In accordance with Chapter 321, Texas Government Code, the State Auditor's Office is authorized to investigate specific acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt or use of state funds.

If there is reasonable cause to believe that fraud, waste, or abuse has occurred at this agency, it can be reported to the SAO by calling 1-800-892-8348 or at the SAO's website: <http://www.sao.state.tx.us/>.

The Contractor shall comply with the Texas Comptroller of Public Accounts Anti-Fraud Policy found at <https://comptroller.texas.gov/ssv/ethics.html>.

SECTION 5.07 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS

- A. Applicability.

The following Electronic and Information Resources (EIR) requirements apply to the Agreement because Contractor performs services that include EIR that: (i) TCCO employees are required or permitted to access; or (ii) members of the public are required or permitted to access. This Section does not apply to incidental uses of EIR in the performance of the Agreement, unless the Parties agree that the EIR will become property of the State of Texas or will be used by TCCO's clients or recipients after completion of the Agreement. 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.

B. Definitions.

For purposes of this Section:

“Accessibility Standards” means accessibility standards and specifications for Texas agency and institution of higher education websites and EIR set forth in 1 Tex. Admin. Code Chapter 206 and/or Chapter 213

“Electronic and Information Resources” means information resources, including information resources technologies, and any equipment or interconnected system of equipment that is used in the creation, conversion, duplication, or delivery of data or information. The term includes telephones and other telecommunications products, information kiosks, transaction machines, Internet websites, multimedia resources, and office equipment, including copy machines and fax machines.

“Electronic and Information Resources Accessibility Standards” means the accessibility standards for electronic and information resources contained in 1 Tex. Admin. Code Chapter 213.

“Product” means information resources technology that is, or is related to, EIR.

“Web Site Accessibility Standards/ Specifications” means standards contained in Title 1 Tex. Admin. Code Chapter 206. Accessibility Requirements. Under Tex. Gov’t Code Chapter 2054, Subchapter M, and implementing rules of the Texas Department of Information Resources, TCCO must procure Products and services that comply with the Accessibility Standards when those Products are available in the commercial marketplace or when those Products are developed in response to a procurement solicitation. Accordingly, Contractor must provide electronic and information resources and associated Product documentation and technical support that comply with the Accessibility Standards.

C. Evaluation, Testing, and Monitoring

1. TCCO may review, test, evaluate and monitor Contractor’s Products and services as set forth in Solicitation section 2.3.4, as well as 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. Neither (1) the review, testing (including acceptance testing), evaluation or monitoring of any Product or service, nor (2) the absence of 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 TCCO and its representatives timely access to Products, records, and other items and information needed to conduct such review, evaluation, testing, and monitoring.

D. Representations and Warranties

1. Contractor represents and warrants that: (i) as of the Effective Date of the Contract, the Products 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 TCCO’s client or recipient after the Contract expiration or termination, the Products will continue to comply with Accessibility Standards after the expiration or termination of the Contract Term, unless TCCO or its clients or recipients, as applicable, use the Products in a manner that renders it noncompliant.

2. In the event Contractor becomes aware, or is notified that the Product or service 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 TCCO, perform all necessary steps to satisfy the Accessibility Standards, including remediation, replacement, and upgrading of the Product or service, or providing a suitable substitute.
 3. Contractor acknowledges and agrees that these representations and warranties are essential inducements on which TCCO 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.
- E. Remedies
1. Under Tex. Gov't Code § 2054.465, neither contractor nor any other person has cause of action against TCCO for a claim of a failure to comply with Tex. Gov't 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, consequential, indirect, special, or liquidated damages and any other remedies to which TCCO may be entitled under this Contract and other applicable law. This remedy is cumulative of any other remedies to which TCCO may be entitled under this Contract and other applicable law.

SECTION 5.08 PROHIBITION AGAINST PERFORMANCE OUTSIDE THE CONTIGUOUS UNITED STATES

A. Authority

TCCO is responsible for administering programs that require the collection and maintenance of information relating to TCCO clients. The information consists of, among other things, personal financial and medical information and information designated "Confidential Information." Some of this information may, within the limits of the law and this Contract, be shared from time to time with Contractor or a subcontractor for purposes of performing the Services or providing the Deliverables under this Contract.

TCCO is responsible for maintaining the confidentiality and integrity of information relating to TCCO clients and ensuring that any person or entity that receives such information, including Contractor and any subcontractor is similarly bound by these obligations.

B. Prohibition

In view of these obligations and to ensure accountability, integrity, and security of the information maintained by or for TCCO and the work performed on behalf of TCCO, TCCO determines that it is necessary and appropriate to require that:

1. All work performed under this Contract must be performed exclusively within the contiguous United States; and
2. All information obtained by Contractor or a subcontractor under this Contract must be maintained exclusively within the contiguous United States.

TCCO, without prior written approval, forbids the performance of any work or the maintenance of any information relating or obtained pursuant to this Contract to occur outside the Contiguous United States except as specifically authorized or approved by TCCO.

C. Meaning of "within the contiguous United States" and "outside the contiguous United States"

1. As used in this Section, the term “within the contiguous United States” means any location within the 48 coterminous states of the United States and the District of Columbia.
2. Conversely, the phrase “outside the contiguous United States” means any location that is not within any of the 48 coterminous states in the United States or the District of Columbia.

D. Maintenance of Confidential Information

1. Contractor and all subcontractors, vendors, agents, and service providers of or for Contractor must not allow any Confidential Information that Contractor receives from or on behalf of TCCO to leave the United States by any means (physical or electronic) at any time, for any period of time, for any reason.
2. Contractor and all subcontractors, vendors, agents, and service providers of or for Contractor must not permit any person to have remote access to TCCO information, systems, or Deliverables from a location outside the United States.

E. Performance of Work under Agreement

Unless otherwise approved in advance by TCCO in writing, and subject to the exceptions specified in paragraph (e) of this Section, Contractor and all subcontractors, vendors, agents, and service providers of or for Contractor must perform all services under this Contract, including all tasks, functions, and responsibilities assigned and delegated to Contractor under this Contract within the Contiguous United States. This obligation includes all services including but 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. All custom software prepared for performance of this Contract, and all modifications of custom, third party, or vendor proprietary software must be performed within the Contiguous United States.

Unless otherwise approved in advance by TCCO in writing and subject to the exceptions specified in this Section, Contractor and all subcontractors, vendors, agents, and service providers of or for Contractor must not permit any person to perform work under this Contract from a location outside the Contiguous United States.

F. Exceptions

1. COTS Software. The foregoing requirements will not preclude the acquisition or use of commercial off-the-shelf (COTS) software that is developed outside the Contiguous United States or hardware that is generically configured outside the Contiguous United States.
2. Foreign-made Products and Supplies. The foregoing requirements will not preclude Contractor from acquiring, using, or reimbursing products or supplies that are manufactured outside the Contiguous United States, provided such products or supplies are commercially available within the Contiguous United States for acquisition or reimbursement by TCCO.
3. TCCO Prior Approval. The foregoing requirements will not preclude Contractor from performing work outside the United States that TCCO has approved in writing and that TCCO has confirmed will not involve the sharing of Confidential Information outside the United States.

G. Disclosure

Contractor must disclose all Services and Deliverables under or related to this Contract that Contractor intends to perform or has performed outside the Contiguous United States, whether directly or via subcontractors, vendors, agents, or service providers.

H. Remedy

Contractor's violation of this Section will constitute a material breach of the Contract. Contractor will be liable to TCCO for all actual and consequential damages in accordance with these terms and conditions. For breach of the requirements under this Section, TCCO may terminate the Contract with notice to Contractor at least one calendar day before the effective date of such termination.

SECTION 5.09 CRIMINAL HISTORY RECORD INFORMATION

The parties hereto acknowledge and agree that in order for the Contractor to perform the services contemplated herein, TCCO may have to provide the Contractor with or the Contractor may have access to, certain information regarding TCCO clients and former TCCO clients known as "criminal history record information" ("CHRI").

CHRI means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information and other formal charges and their dispositions. The term does not include information as to convictions, fingerprint information, and driving records.

In the event TCCO provides the Contractor with CHRI, the Contractor agrees to comply with the confidentiality requirements of 28 CFR 20, Part 20, Subpart B, Section 201.21; Section 524(a) of the Omnibus Crime Control and Safe Streets Act, 47 USC 3701, et seq., as amended (the "Act"), Texas Government Code Chapter 411, Section 411.083 and with the FBI Criminal Justice Information Services Security Policy.

More specifically the Contractor agrees and acknowledges as follows:

- A. TCCO hereby specifically authorizes the Contractor to have access to criminal justice history to the extent such access is necessary or appropriate to enable the Contractor to perform the services contemplated herein.
- B. The Contractor agrees to limit the use of such information for the purposes set forth herein.
- C. The Contractor agrees to maintain the confidentiality and security of the CHRI in compliance with state and federal statutes, rules and regulations, and to return or destroy such information when it is no longer needed to perform the services contemplated herein.
- D. In the event that the Contractor's employee fails to comply with the terms hereof, the Contractor shall take corrective action with the employee(s). Such corrective action must be acceptable to TCCO. An intentional or knowing violation may also result in civil and criminal violations under federal and state laws. Additionally, the Contractor shall submit for TCCO's approval the Contractor's corrective action plan to ensure full compliance with the terms hereof.

SECTION 5.10 SPECIFIC DUTIES AND OBLIGATIONS

The Contractor shall provide services in accordance with applicable federal and state law, including all constitutional, legal and court ordered requirements, whether now in effect or hereinafter implemented. The Contractor shall comply with TCCO policies and regulations during the contract term. The Contractor shall comply with TCCO's safety requirements and reporting procedures, as well as all applicable local and state standards, codes and regulations, including zoning, building, fire, health and sanitation.

ARTICLE VI: CONTRACT MANAGEMENT AND PERFORMANCE MEASUREMENT

SECTION 6.01 CONTRACT MANAGEMENT

To ensure full performance of the Contract and compliance with applicable law, TCCO 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 the 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.

SECTION 6.02 PERFORMANCE MEASUREMENT

Satisfactory performance of the Contract will be measured by:

- A. Adherence to the Contract, including all representations and warranties;
- B. Compliance with project work plans, schedules and milestones as proposed by Contractor in its Proposal and as revised by Contractor and finally approved by TCCO;
- C. Delivery of the Services and Deliverables in accordance with the service levels and availability proposed in Contractor's proposal and as finally approved or accepted by TCCO;
- D. Results of audits performed by TCCO or its representatives in accordance with Article 8;
- E. Timeliness, completeness, and accuracy of required Deliverables; and
- F. Achievement of performance measures developed by Contractor and TCCO and as modified from time to time by written agreement during the initial term of the Contract.

ARTICLE VII: AMENDMENTS, MODIFICATIONS, AND CHANGE ORDER REQUESTS

SECTION 7.01 AMENDMENTS AND MODIFICATIONS

A. Amendments and Modifications Resulting from Changes in Law or Contract

The Contract may be amended by mutual written agreement of the Parties if changes in federal or state laws, rules, regulations, policies, guidelines or circumstances affect the performance of the work. The Parties will develop a business plan for negotiating appropriate change order and amendment procedures.

B. Modifications Resulting from Imposition of Remedies

The Contract may be modified under the terms of Article 11 relating to Remedies and Disputes.

SECTION 7.02 REQUIRED COMPLIANCE WITH AMENDMENT MODIFICATION PROCEDURES

No different or additional services, work, or products will be authorized or performed except those that are within scope and that are 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 any services, work or products that are not authorized by a properly executed Contract amendment or modification, or through the express authorization of TCCO.

ARTICLE VIII: AUDIT AND FINANCIAL COMPLIANCE

SECTION 8.01 RECORD RETENTION AND AUDIT

Contractor must maintain, and require its subcontractors to maintain, supporting information and documents that are adequate to ensure that payments are made and paid in accordance with applicable Federal and State requirements, and are sufficient to ensure the accuracy and validity of Contractor invoices. These documents, including all original claims forms, will be maintained and retained by Contractor or its subcontractors for a period of seven years after the date of submission of the final billing or until the resolution of all litigation, claim, financial management review, or audit pertaining to the Contract, whichever is longer. Contractor agrees to timely repay any undisputed audit exceptions taken by TCCO in any audit of the Contract.

SECTION 8.02 ACCESS TO RECORDS, BOOKS, AND DOCUMENTS

A. Notice

Upon reasonable notice, Contractor must provide, and cause its subcontractors to provide, the officials and entities identified in this Section with prompt, reasonable, and adequate access to any records, books, documents, and papers that are directly pertinent to the performance of the Contract.

B. Access

Contractor and its subcontractors must provide the access described in this section upon TCCO's request. This request may include the following purposes:

1. Examination;
2. Audit;
3. Investigation;
4. Contract administration; or
5. The making of copies, excerpts, or transcripts.

C. Entities

Contractor shall provide entry at all times by TCCO's authorized employees/agents for inspections, and any other official purposes. The Governor, members of the Legislature and all other members of the Executive and Judicial departments of the State, as well as any other persons designated by TCCO, will be admitted into Contractor's place of business at any time.

D. Accommodations

Contractor agrees to provide the access described wherever Contractor maintains the books, records, and supporting documentation described above. Contractor further agrees to provide such access in reasonable comfort and to provide any furnishings, equipment, or other conveniences deemed reasonably necessary to fulfill the purposes described in this Section. Contractor will require its subcontractors to provide comparable access and accommodations.

Upon request, Contractor must provide copies of the information described in this Section free of charge to TCCO and the entities described in subsection (c).

SECTION 8.03 AUDITS AND INSPECTIONS OF SERVICES AND DELIVERABLES

Upon notice from TCCO where possible, Contractor will provide, and will cause its subcontractors to provide, such auditors and inspectors as TCCO may from time to time designate with access to:

- A. Contractor service locations, facilities, or installations;
- B. Contractor software and equipment; and
- C. Contractor records.

Contractor must provide as part of the Services any assistance that such auditors and inspectors reasonably may require to complete such audits or inspections.

SECTION 8.04 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS

- A. Contractor must take action to ensure its or a subcontractor's compliance with a correction of any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle relating to the Services and Deliverables or any other deficiency contained in any audit, review, or inspection conducted under the Contract. This action will include Contractor's delivery to TCCO, for TCCO's approval, a Corrective Action Plan that addresses deficiencies identified in any audit(s), review(s), or inspection(s) within thirty (30) calendar days of the close of the audit(s), review(s), or inspection(s).
- B. Contractor must 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 Services and Deliverables; or
 - 3. Necessary due to Contractor's noncompliance with any law, regulation, rule or audit requirement imposed on Contractor.
- C. As part of the services, Contractor must provide to TCCO upon request a copy of those portions of Contractor's and subcontractor's internal audit reports relating to the Services and Deliverables provided to the State under the Agreement.

SECTION 8.05 AUDIT OF CONTRACTOR FEES

- A. Contractor will provide, and will cause its subcontractors to provide, to TCCO and its designees access to financial records and supporting documentation reasonably requested by TCCO.
- B. In addition to the normal monthly review and payment of administrative vouchers, TCCO may audit the fees charged to TCCO to determine whether such fees are accurate and in accordance with the Contract.
- C. If, as a result of such audit, TCCO determines that Contractor has overcharged the State, TCCO will notify Contractor of the amount of such overcharge and Contractor will promptly pay to TCCO the amount of the overcharge, plus interest. Interest on such overpayment amount will be calculated from the date of receipt by the Contractor of the overcharged amount until the date of payment to TCCO, and will be calculated at the Department of Treasury's Median Rate (resulting from the Treasury's auction of 13-week bills) for the week in which liability is assessed, but no in no event to exceed the highest lawful rate of interest. In the event any such audit reveals an overcharge to TCCO, Contractor will reimburse TCCO for the cost of such audit.

SECTION 8.06 SAO AUDIT

Contractor understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an investigation in connection with those funds. The Contractor further agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. The 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.

ARTICLE IX: TERMS AND CONDITIONS OF PAYMENT

SECTION 9.01 RIGHTS OF SET-OFF

A. General Right of Set-Off

With respect to any undisputed amount that a part in good faith determines should be reimbursed to it or is otherwise payable to it by the other party under the Contract, the party seeking the set-off may deduct the entire amount owed against charges otherwise payable or expenses owed to it under the Contract until such time as the entire amount determined to be owed has been paid.

B. Duty to Make Payments

TCCO will be relieved of its obligation to make any payments to the Contractor until such time as all set-off amounts have been credited to TCCO and the Contractor will be relieved of its obligation to make any payments to TCCO until such time as such amounts have been created to the Contractor.

SECTION 9.02 EXPENSES

Except as provided in the Contract, all other expenses incurred by the Contractor in connection with its provision of the Services or Deliverables will not be reimbursed by TCCO unless agreed to by TCCO. Contractor will be responsible for payment of all expenses related to salaries, benefits, employment taxes, and insurance for its staff. In addition, the costs associated with transportation, delivery, and insurance for each Deliverable will be paid by Contractor.

SECTION 9.03 DISPUTED FEES

If TCCO disputes payment of all or any portion of an invoice from the Contractor, TCCO will notify the Contractor of the dispute and both parties will attempt in good faith to resolve the dispute. TCCO will not be required to pay any disputed portion of a Contractor invoice unless and until the dispute is resolved. Notwithstanding any such dispute, the Contractor must continue to perform the Services and produce Deliverables 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.

SECTION 9.04 LIABILITY FOR TAXES

TCCO is not responsible in any way for the payment of any federal, state or local taxes related to or incurred in connection with the Contractor's performance of the Contract. Contractor must pay and discharge any and all such taxes, including any penalties and interest. In addition, TCCO is exempt from Federal excise taxes, and will not pay for any personal property taxes or income taxes levied on Contractor or on any taxes levied on employee wages.

SECTION 9.05 LIABILITY FOR EMPLOYMENT-RELATED CHARGES AND BENEFITS

Contractor will perform work under the Contract as an independent contractor and not as agent or representative of TCCO. Contractor is solely and exclusively liable for all taxes and employment-related charges incurred in connection with the performance of the Contract. TCCO will not be liable for any

employment-related charges or benefits of Contractor, such as workers' compensation benefits, unemployment insurance and benefits, or fringe benefits.

SECTION 9.06 NO ADDITIONAL CONSIDERATION

Contractor will not be entitled to nor receive from TCCO any additional consideration, compensation, salary, wages, or any other type of remuneration for services rendered under the Contract. Contractor will not be entitled by virtue of the Contract to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever. In addition, the costs associated with transportation, delivery, and insurance relating to the Contractor's performance of the Contract will be paid for by the Contractor.

SECTION 9.07 NO INCREASE IN RATES

Contractor will not increase rates during the term of the Contract, except as authorized in Article 7.

SECTION 9.08 NO DEBT AGAINST THE STATE

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

ARTICLE X: DISCLOSURE AND CONFIDENTIALITY OF INFORMATION

SECTION 10.01 HHSC DATA USE AGREEMENT

The HHSC Data Use Agreement, available at: <https://hhs.texas.gov/sites/default/files/documents/doing-business-with-hhs/providers/long-term-care/nf/data-use-agreement.pdf> is incorporated into the Contract and describes Contractor's rights and obligations with respect to the Confidential Information and limited purposes for which Contractor may create, receive, maintain, use, disclose, or have access to Confidential Information.

SECTION 10.02 REQUESTS FOR PUBLIC INFORMATION

- A. Notwithstanding any provisions of the Contract to the contrary, Contractor understands that TCCO will comply with the Texas Public Information Act, Texas Government Code Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of Texas.
- B. TCCO agrees to notify Contractor in writing within a reasonable time from receipt of a request for information related to Contractor's work under this Contract.
- C. Contractor shall cooperate with TCCO in the production of documents responsive to the request. TCCO will make a determination whether to submit a Public Information Act Opinion request to the Attorney General. Contractor shall notify TCCO General Counsel within twenty-four (24) hours of receipt of any third party requests for information that were provided by the State of Texas for use in performing this Contract.
- D. The Agreement and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act.
- E. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Agreement, including information which discloses confidential personal information, particularly, but not limited to social security numbers.

- F. With respect to any information that is the subject of a request for disclosure, Contractor is required to demonstrate to the Texas Office of Attorney General the specific reasons why the requested information is confidential or otherwise excepted from required public disclosure under law. Contractor will provide TCCO with copies of all such communications.
- G. Contractor must make information defined as public information not otherwise excepted from disclosure under the Texas Public Information Act, Texas Government Code Chapter 552, available to TCCO in a format agreeable to TCCO, accessible by the public, and at no additional charge to TCCO.
- H. To the extent authorized under the Texas Public Information Act, TCCO agrees to safeguard from disclosure information received from Contractor that the Contractor believes to be Confidential Information. Contractor must clearly mark such information as Confidential Information or provide written notice to TCCO that it considers the information confidential.
- I. To the extent allowed under the Texas Public Information Act, Texas Government Code Chapter 552, Contractor agrees that any consultant reports received by TCCO in connection with the Agreement, may be distributed by TCCO, in its discretion, to any other state agency and the Texas legislature. Any distribution may include posting on TCCO's website or the website of a standing committee of the legislature.

SECTION 10.03 PRIVILEGED WORK PRODUCT

- A. Contractor acknowledges that TCCO asserts that Privileged Work Product may be prepared in anticipation of litigation and that Contractor is performing the Services with respect to Privileged Work Product as an agent of TCCO, and that all matter related thereto is protected from disclosure by the Texas Rules of Civil Procedure, Texas Rules of Evidence, Federal Rules of Civil Procedure, or Federal Rules of Evidence.
- B. TCCO will notify Contractor of any Privileged Work Product to which Contractor has or may have access. After the Contractor is notified or otherwise becomes aware that such documents, data, database, or communications are Privileged Work Product, only Contractor personnel for whom such access is necessary for the purposes of providing the Services may have access to Privileged Work Product.
- C. If Contractor receives notice of any judicial or other proceeding seeking to obtain access to TCCO's Privileged Work Product, Contractor will: (1) Immediately notify TCCO; and (2) Use all reasonable efforts to resist providing such access.
- D. If Contractor resists disclosure of TCCO's Privileged Work Product in accordance with this Section, TCCO will, to the extent authorized under Civil Practices and Remedies Code or other applicable State law, have the right and duty (i) to represent Contractor in such resistance; (ii) to retain counsel to so represent Contractor; or (iii) to reimburse Contractor for reasonable attorneys' fees and expenses incurred in resisting such access. TCCO will make the sole determination as to which of the preceding duties it will undertake.
- E. If a court of competent jurisdiction orders Contractor to produce documents, disclose data, or otherwise breach Contractor's confidentiality obligations or maintenance obligations regarding the confidentiality, proprietary nature, and secrecy of Privileged Work Product, Contractor will not be liable for breach of such obligation.

SECTION 10.04 UNAUTHORIZED ACTS

Each Party agrees to:

- A. Notify the other Party promptly of any unauthorized possession, use, or knowledge, or attempt thereof, of any of the other Party's Confidential Information by any person or entity that may become known to it;
- B. Promptly furnish to the other Party full details of the unauthorized possession, use, or knowledge, or attempt thereof, and use reasonable efforts to assist the other Party in investigating or preventing the reoccurrence of any unauthorized possession, use, or knowledge, or attempt thereof, of Confidential Information;
- C. Cooperate with the other Party in any litigation and investigation against third Parties deemed necessary by such Party to protect its proprietary rights; and
- D. Promptly prevent a reoccurrence of any such unauthorized possession, use, or knowledge of Confidential Information.

SECTION 10.05 LEGAL ACTION

A party may not commence any legal action or proceeding with a third party with respect to any unauthorized possession, use, or knowledge, or attempt thereof, of the other Party's Confidential Information by any such person or entity, if that action or proceeding identifies the other Party or its Confidential Information without such Party's consent.

ARTICLE XI: REMEDIES AND DISPUTES

SECTION 11.01 UNDERSTANDING AND EXPECTATIONS

The remedies described in this Article are directed to Contractor's timely and responsive performance of the Services and Deliverables, and to the creation of a flexible and responsive relationship between the Parties.

SECTION 11.02 TAILORED REMEDIES

A. Understanding of the Parties

Contractor agrees and understands that TCCO may pursue tailored contractual remedies for noncompliance with the Contract. At any time and at its discretion, TCCO may impose or pursue one or more remedies for each action of noncompliance and will determine remedies on a case-by-case basis. TCCO's pursuit or non-pursuit of a tailored remedy does not constitute a waiver of any other remedy that TCCO may have at law or equity.

B. Notice and Opportunity to Cure for Non-Material Breach

1. TCCO will notify Contractor in writing of specific areas of Contractor performance that fail to meet performance expectations, standards, or schedules but that, in the determination of TCCO, do not result in a material deficiency or delay in the implementation or operation of the Services.
2. Contractor will, within three (3) business days (or another date approved by TCCO) of receipt of written notice of a non-material deficiency, provide TCCO a written response that:
 - a. Explains the reasons for the deficiency, Contractor's plans to address or cure the deficiency, and the date and time by which the deficiency will be cured; or

- b. If Contractor disagrees with TCCO's findings, explains its reasons for disagreeing with TCCO's findings.
 - 3. Contractor's proposed cure of a non-material deficiency is subject to the approval of TCCO. Contractor's repeated commission of non-material deficiencies or repeated failure to resolve any such deficiencies may be regarded by TCCO as a material deficiency and entitle TCCO to pursue any other remedy provided in the Contract or any other appropriate remedy TCCO may have at law or equity.
- C. Corrective Action Plan
- 1. At its option, TCCO may require Contractor to submit to TCCO a detailed written plan (the "corrective action plan") to correct or resolve a material deficiency or breach of the Contract.
 - 2. The Corrective Action Plan must provide:
 - a. A detailed explanation of the reasons for the cited deficiency;
 - b. Contractor's assessment or diagnosis of the cause;
 - c. A specific proposal to cure or resolve the deficiency; and
 - d. Contractor's timeline for cure or resolution of the deficiency.
 - 3. The Corrective Action Plan must be submitted by the deadline set forth in TCCO's request for a Corrective Action Plan. The Corrective Action Plan is subject to approval by TCCO, which will not be withheld unnecessarily.
 - 4. TCCO will notify Contractor in writing of TCCO's final disposition of TCCO's concerns regarding the Corrective Action Plan. If TCCO accepts Contractor's proposed Corrective Action Plan, TCCO may:
 - a. Condition such approval on completion of tasks in the order of priority that TCCO may prescribe;
 - b. Disapprove portions of Contractor's proposed Corrective Action Plan; or
 - c. Require additional or different corrective action(s).
 - 5. At any time during this remedial process, TCCO reserves the right to:
 - a. Suspend all, or part of, the Contract, and to withhold further payment for the suspended portions of the Contract; or
 - b. Prohibit Contractor from incurring additional obligations of funds during investigation of the pending corrective action, if necessary by Contractor or a decision by TCCO to terminate the Contract for cause.
 - 6. If TCCO rejects Contractor's written explanation or proposed Corrective Action Plan, TCCO may issue a Stop Work Order to Contractor or any of its subcontractors or suppliers. TCCO may delay the implementation of the Stop Work Order if it affects the completion of any of the Services in accordance with the approved scheduled or work plan.
 - 7. TCCO's acceptance of a Corrective Action Plan under this Section will not:
 - a. Excuse Contractor's prior substandard performance;
 - b. Relieve Contractor of its duty to comply with performance standards; or
 - c. Prohibit TCCO from assessing additional tailored remedies or pursuing other appropriate remedies for continued substandard performance.
- D. Administrative Remedies
- 1. At its discretion, TCCO may impose one or more of the following remedies for each item of noncompliance and will determine the scope and severity of the remedy on a case-by-case basis:
 - a. Assess liquidated damages in accordance with the terms of the Contract if provided in the Contract;
 - b. Conduct accelerated monitoring of the Contractor. Accelerated monitoring includes more frequent or more extensive monitoring by TCCO or its agent;

- c. Require additional, more detailed, financial or programmatic reports to be submitted by Contractor;
 - d. Decline to renew or extend the Contract;
 - e. Withhold or recoup payment for the noncompliant Service or Deliverable; or
 - f. Terminate the Contract in accordance with Section 11.03.
2. For purposes of the Contract, an item of noncompliance means a specific action of Contractor that:
 - a. Violations a provision of the Contract;
 - b. Fails to meet an agreed measure of performance; or
 - c. Represents a failure of Contractor to be reasonably responsive to a reasonable request of TCCO relating to the Services and Deliverables for information, assistance, or support within the timeframe specified by TCCO.
 3. TCCO will provide notice to Contractor of the imposition of an administrative remedy in accordance with this Section, with the exception of accelerated monitoring, which may be unannounced. TCCO may require Contractor to file a written response as part of the Tailored Remedy approach.
 4. The Parties agree that a State or Federal statute, rule, regulation, or Federal guideline will prevail over the provisions of this Section unless the statute, rule, regulation, or guidelines can be read together with this Section to give effect to both.

E. Damages

1. TCCO will be entitled to actual and consequential damages resulting from the Contractor's failure to comply with any of the terms of the Contract.
2. In some cases, the actual damage to TCCO or the State of Texas as a result of Contractor's failure to meet any aspect of the responsibilities of the Contract or to meet specific performance standards set forth in the Contract are difficult or impossible to determine with precise accuracy. Therefore, liquidated damages may be assessed in writing against and paid by the Contractor for failure to meet any aspect of the responsibilities of the Contract or to meet the specific performance standards identified by TCCO. Liquidated damages may be assessed if HHSC determines such failure is the fault of the Contractor (including the Contractor's subcontractors or consultants) and is not materially caused or contributed to by TCCO or its agents. If at any time, TCCO determines the Contractor has not met any aspect of the responsibilities of the Agreement or the specific performance standards due to mitigating circumstances, TCCO reserves the right to waive all or part of the liquidated damages. All such waivers must be in writing, contain the reasons for the waiver, and be signed by the appropriate executive of TCCO. The liquidated damages prescribed in this Section are not intended to be in the nature of a penalty, but are intended to be reasonable estimates of TCCO's projected financial loss and damage resulting from the Contractor's nonperformance, including financial loss as a result of project delays. Accordingly, in the event Contractor fails to perform in accordance with the Agreement, TCCO may assess liquidated damages as provided in this Section.
3. If Contractor fails to perform any of the Services described in the Contract, TCCO may assess liquidated damages for each occurrence of a liquidated damages event, to the extent consistent with TCCO's tailored approach to remedies and Texas Law.
4. TCCO may elect to collect liquidated damages:
 - a. Through direct assessment and demand for payment delivered to Contractor; or
 - b. By deduction of amounts assessed as liquidated damages as set-off against payments then due to Contractor for the Services or Deliverables or that become due at any time after assessment of liquidated damages. TCCO will make deductions until the full amount payable by Contractor is received by the State.

F. Equitable Remedies

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

G. Suspension of Contract

1. TCCO may suspend performance of all or any part of the Contract if:
 - a. TCCO determines that Contractor has committed a material breach of the Contract;
 - b. TCCO has reason to believe that Contractor has committed, assisted in the commission of, or failed to take appropriate action concerning fraud, abuse, malfeasance, misfeasance, or nonfeasance by any party concerning the Contract; or
 - c. TCCO determines that suspension of the Contract in whole or in part is convenient or in the best interests of the State of Texas or the TCCO Programs.
2. TCCO will notify Contractor in writing of its intention to suspend the Contract in whole or in part. Such notice will:
 - a. Be delivered in writing to Contractor;
 - b. Include a concise description of the facts or matter leading to TCCO's decision; and
 - c. Unless TCCO is suspending the contract for convenience, request a Corrective Action Plan from Contractor or describe actions that Contractor must take to avoid the contemplated suspension of the Contract.

SECTION 11.03 TERMINATION OF CONTRACT

In addition to other provisions of this article allowing termination, the Contract will terminate upon the expiration date unless extended in accordance with the terms of the Contract, or terminated sooner under the terms of the Contract. Prior to completion of the Initial Term and any extensions or renewal thereof, all or a part of the Contract may be terminated for any of the following reasons:

A. Termination by Mutual Agreement of the Parties.

The Contract may be terminated by mutual agreement of the Parties. Such agreement must be in writing.

B. Termination in the Best Interest of the State.

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

C. Termination for Cause.

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

1. Assignment for the benefit of all or substantially all of its creditors, appointment of receiver, or inability to pay debts. TCCO may terminate the Contract if Contractor:
 - a. Makes an assignment for the benefit of its creditors;
 - b. Admits in writing its inability to pay its debts generally as they become due; or
 - c. Consents to the appointment of a receiver, trustee, or liquidator of Contractor or of all or any part of its property.
2. Failure to adhere to laws, rules, ordinances, or orders. TCCO may terminate the Contract if a court of competent jurisdiction finds Contractor 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.
3. Breach of confidentiality. TCCO may terminate the Contract if Contractor breaches confidentiality obligations with respect to the Services and Deliverables provided under the Contract.
 4. Failure to maintain adequate personnel or resources. TCCO may terminate the Contract if, after providing notice and an opportunity to correct, TCCO determines that Contractor has failed to supply personnel or resources and such failure results in Contractor's inability to fulfill its duties under the Contract.
 5. Termination for gifts and gratuities.
 - a. TCCO may terminate the Contract following the determination by a competent judicial or quasijudicial authority and Contractor's exhaustion of all legal remedies that Contractor, its employees, agents or representatives have either offered or given anything of value to an officer or employee of TCCO or the State of Texas in violation of state law.
 - b. Contractor must include a similar provision in each of its subcontracts and will enforce this provision against a subcontractor who has offered or given anything of value to any of the persons or entities described in this Section, whether or not the offer or gift was in Contractor's behalf.
 - c. Termination of a subcontract by Contractor under this provision will not be a cause for termination of the Contract unless Contractor fails to replace such terminated subcontractor within a reasonable time.
 - d. For purposes of this Section, a "thing of value" means any item of tangible or intangible property that has a monetary value of more than \$50.00 and includes, but is not limited to, cash, food, lodging, entertainment, and charitable contributions. The term does not include contributions to holders of public office or candidates for public office that are paid and reported in accordance with State or Federal law.
 6. Termination for non-appropriation of funds. Notwithstanding any other provision of the Contract, if funds for the continued fulfillment of the Contract by TCCO are at any time not forthcoming or are insufficient, through failure of any entity to appropriate funds or otherwise, then TCCO will have the right to terminate the Contract at no additional cost and with no penalty whatsoever. TCCO will make best efforts to provide reasonable written advance notice to Contractor upon learning that funding for the Contract may be discontinued.
 7. Termination for lack of financial viability. TCCO may terminate the Contract if, in its sole discretion, TCCO has a good faith belief that Contractor no longer maintains the financial viability required to complete the Services and Deliverables, or otherwise fully perform the Contract.
 8. Judgment and execution.
 - a. TCCO may terminate the Contract if judgment for the payment of money in excess of \$500,000.00 that is not covered by insurance, is rendered by any court or governmental body against Contractor, and Contractor does not:
 - i. Discharge the judgment or provide for its discharge in accordance with the terms of the judgment;
 - ii. Procure a stay of execution of the judgment within 30 days from the date of entry thereof; or
 - iii. Perfect an appeal of such judgment and cause the execution of such judgment to be stayed during the appeal, providing such financial reserves as may be required under generally accepted accounting principles.
 - b. If a writ or warrant of attachment or any similar process is issued by any court against all or any material portion of the property of Contractor, and such writ or warrant of attachment or any similar process is not released or bonded within 30 days after its entry, TCCO may terminate the Contract in accordance with this Section.

9. Termination for Contractor's material breach of the Contract. TCCO will have the right to terminate the Contract in whole or in part if TCCO determines, at its sole discretion, that Contractor has materially breached the Contract.

SECTION 11.04 EFFECTIVE DATE OF TERMINATION

Except as otherwise provided in the Contract, termination will be effective as of the date specified in the notice of termination.

SECTION 11.05 EXTENSION OF TERMINATION EFFECTIVE DATE

TCCO may extend the effective date of termination one or more times as it elects, in its sole discretion.

SECTION 11.06 PAYMENT AND OTHER PROVISIONS AT CONTRACT TERMINATION

- A. If TCCO terminates the Contract, TCCO will pay Contractor on the effective date of termination (or as soon as possible thereafter taking into account appropriation and fund accounting requirements) any undisputed amounts due for all completed, approved, and accepted Services or Deliverables.
- B. TCCO further agrees to negotiate in good faith with Contractor to equitably adjust and settle any accrued or outstanding liabilities for any unaccepted Service or deliverable and Change Order Requests that:
 1. Is due or delivered prior to or upon contract termination;
 2. Is complete or substantially complete, or for which Contractor can document to the satisfaction of TCCO substantial progress; and
 3. Benefits TCCO or the State of Texas, notwithstanding its unaccepted status.
- C. Contractor must provide TCCO all reasonable access to records, facilities, and documentation as is required to efficiently and expeditiously close out the Services under the Contract.
- D. Contractor must prepare a turnover plan, which is acceptable to and approved by TCCO. That turnover plan will be implemented during the time period between receipt of notice and the termination date.

SECTION 11.07 MODIFICATION OF CONTRACT IN THE EVENT OF REMEDIES

TCCO may propose a modification of the Contract in response to the imposition of a remedy under this article. Any modifications under this Section must be reasonable, limited to the matters causing the exercise of a remedy, within the scope of the Contract, and in writing. Contractor must negotiate such proposed modifications in good faith.

SECTION 11.08 TURNOVER ASSISTANCE

Upon receipt of notice of termination of the Contract by TCCO, Contractor will provide any turnover assistance reasonably necessary to enable TCCO or its designee to effectively close out the Contract and move the work to another vendor or to perform the work by itself.

SECTION 11.09 RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT

In the event that the Contract is terminated for any reason, or upon its expiration, TCCO will, at TCCO's discretion, retain ownership of any and all associated work products, Deliverables or Documentation in whatever form that they exist.

SECTION 11.10 CONTRACTOR RESPONSIBILITY FOR ASSOCIATED COSTS

If TCCO terminates the Contract for Cause, the Contractor will be responsible to TCCO for all costs incurred by TCCO, the State of Texas, or any of its administrative agencies 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 Service in accordance with the terms of the Contract.

SECTION 11.11 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.

SECTION 11.12 LIABILITY OF CONTRACTOR

- A. Contractor bears all risk of loss or damage due to:
 - 1. Defects in products, Services or Deliverables;
 - 2. Unfitness or obsolescence of products, Services or Deliverables; or
 - 3. The negligence or intentional misconduct of Contractor or its employees, agents, subcontractors, or representatives.

- B. CONTRACTOR MUST, AT THE CONTRACTOR'S OWN EXPENSE, DEFEND WITH COUNSEL APPROVED BY THE STATE, INDEMNIFY, AND HOLD HARMLESS THE STATE AND STATE EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS AND AGENTS FROM AND AGAINST ANY LOSSES, LIABILITIES, DAMAGES, PENALTIES, COSTS, FEES, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES, AND EXPENSES FROM ANY CLAIM OR ACTION FOR PROPERTY DAMAGE, BODILY INJURY OR DEATH, TO THE EXTENT CAUSED BY OR ARISING FROM THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE CONTRACTOR AND ITS EMPLOYEES, OFFICERS, AGENTS, OR SUBCONTRACTORS.

- C. Contractor will not be liable to TCCO for any loss, damages or liabilities attributable to or arising from:
 - 1. The failure of TCCO or any state agency or TCCO Contractor to perform a service or activity in connection with the Contract; or
 - 2. Contractor's prudent and diligent performance of the Services in compliance with instructions given by TCCO in accordance with Section 1.03 (relating to implied authority) and Section 3.03 (relating to delegation of authority) of the Contract.

- D. Contractor will ship all Equipment and Software purchased and Third Party Software licensed under the Contract, freight prepaid, Free on Board Destination (FOB) TCCO's destination. The method of shipment will be consistent with the nature of the Equipment and Software and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of Deliverables, in whole or in part, ordered hereunder that occurs prior to Acceptance, except loss or damage attributable to TCCO's fault or negligence; and such loss, damage, or destruction will not release Contractor from any obligation hereunder. After Acceptance, the risk of loss or damage will be borne by TCCO, except loss or damage attributable to Contractor's fault or negligence.

ARTICLE XII: ASSURANCES AND CERTIFICATIONS

SECTION 12.01 PROPOSAL CERTIFICATIONS

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

SECTION 12.02 CONFLICTS OF INTEREST

- A. Representation. Contractor agrees to comply with applicable state and federal laws, rules, and regulations regarding conflicts of interest in the performance of its duties under the Contract. Contractor warrants that it, its subcontractors, and employees, officers, directors and agents of Contractor and Contractor's subcontractors have no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with its performance under the Contract.
- B. General duty regarding conflicts of interest. Contractor 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. Contractor will operate with complete independence and objectivity without actual, potential or apparent conflict of interest with respect to the activities conducted under the Contract with the State of Texas.

SECTION 12.03 ORGANIZATIONAL CONFLICTS OF INTEREST

- A. Definition. An organizational conflict of interest is a set of facts or circumstances, a relationship, or other situation under which a contractor, or a subcontractor has past, present, or currently planned personal or financial activities or interests that either directly or indirectly:
 - 1. Impairs or diminishes the offeror's, contractor's, or subcontractor's ability to render impartial or objective assistance or advice to TCCO; or
 - 2. Provides the contractor or subcontractor an unfair competitive advantage in future TCCO procurements.
- B. Warranty. Except as otherwise disclosed and approved by TCCO prior to the Effective Date of the Contract, Contractor warrants that, as of the Effective Date and to the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to organizational conflict of interest affecting the Contract. Contractor affirms that it has neither given, nor intends to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same, at any time during the procurement process or in connection with the procurement process except as allowed under relevant state and federal law.
- C. Continuing duty to disclose.
 - 1. Contractor agrees that, if after the Effective Date, Contractor discovers is made aware of an organizational conflict of interest, Contractor will immediately and fully disclose such interest in writing to the TCCO project manager. In addition, Contractor must promptly disclose any relationship that might be perceived or represented as a conflict after its discovery by Contractor or by TCCO as a potential conflict. TCCO reserves the right to make a final determination regarding the existence of conflicts of interest, and Contractor agrees to abide by TCCO's decision.
 - 2. The disclosure will include a description of the action(s) that Contractor has taken or proposes to take to avoid or mitigate such conflicts.

- D. Remedy. If TCCO determines that an organizational conflict of interest exists, TCCO may, at its discretion, terminate the contract. If TCCO determines that Contractor was aware of an organizational conflict of interest before the award of the Agreement and did not disclose the conflict to the contracting officer, such nondisclosure will be considered a material breach of the Agreement. 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.
- E. Flow down obligation. Contractor must include the provisions of this Section 12.03 in all subcontracts for work to be performed similar to the service provided by Contractor, and the terms "Contract," "Contractor," and "project manager" modified appropriately to preserve the State's rights.

SECTION 12.04 TCCO PERSONNEL RECRUITMENT PROHIBITION

Contractor has not retained or promised to retain any person or company, or utilized or promised to utilize a consultant that participated in TCCO's development of specific criteria of the Contract or who participated in the selection of the Contractor for the Contract.

Contractor will not recruit or employ any TCCO professional or technical 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.

SECTION 12.05 ANTI-KICKBACK PROVISION

Contractor certifies that it will comply with the Anti-Kickback Act of 1986, 41 USC §51-58 and Federal Acquisition Regulation 52.203-7.

SECTION 12.06 DEBT OR BACK TAXES OWED TO THE STATE OF TEXAS

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

SECTION 12.07 CERTIFICATION REGARDING STATUS OF LICENSE, CERTIFICATE OR PERMIT

Article IX, Section 163 of the General Appropriations Act for the 1998/1999 state fiscal biennium prohibits an agency that receives an appropriation under either Article II or V of the General Appropriations Act from awarding a Contract with the owner, operator, or administrator of a facility that has had a license, certificate, or permit revoked by another Article II or V agency. Contractor certifies it is not ineligible for an award under this provision.

SECTION 12.08 OUTSTANDING DEBTS AND JUDGMENTS

Contractor certifies that it is not presently indebted to the State of Texas, and that Contractor is not subject to an outstanding judgment in a suit by the State of Texas against Contractor for collection of the balance. For purposes of this Section, an indebtedness is any amount sum of money that is due and owing to the State of Texas and is not currently under dispute. A false statement regarding Contractor's status will be treated as a material breach of the Agreement and may be grounds for termination at the option of TCCO.

SECTION 12.09 ANTI-TRUST

In submitting a proposal, and in accepting the Contract or purchase order, Contractor certifies and agrees as follows:

- A. Neither the Contractor, nor the person represented by the Contractor, nor any person acting for the represented person has: (a) violated the antitrust laws codified by Chapter 15, Business &

Commerce Code, or the federal antitrust laws; or (b) directly or indirectly communicated the bid/offer associated with this contract to a competitor or other person engaged in the same line of business.

- B. Contractor assigns to TCCO all of Contractor's rights, title, and interest in and to all claims and causes of action Contractor may have under the antitrust laws of Texas or the United States for overcharges associated with this contract.

SECTION 12.10 CERTIFICATION CONCERNING HURRICANE RELIEF

Sections 2155.006 and 2261.053, Texas Government Code, prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster as defined by Section 418.004, Texas Government Code, occurring after September 24, 2005. Under Section 2155.006, Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

ARTICLE XIII: REPRESENTATIONS AND WARRANTIES

SECTION 13.01 AUTHORIZATION

- A. The execution, delivery and performance of the Contract has been duly authorized by Contractor and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Contractor to enter into the Contract and perform its obligations under the Contract.
- B. Contractor has obtained and will maintain all licenses, certifications, permits, and authorizations necessary to perform the Services under the Contract and currently is in good standing with all regulatory agencies that regulate any or all aspects of Contractor's performance of the Contract. Contractor will maintain all required certifications, licenses, permits, and authorizations to remain in good standing during the term of the Contract.

SECTION 13.02 ABILITY TO PERFORM

Contractor warrants that it has the financial resources to fund the capital expenditures required under the Contract without advances by TCCO or assignment of any payments by TCCO to a financing source.

SECTION 13.03 WORKMANSHIP AND PERFORMANCE

- A. All Services and Deliverables provided under the Contract will be provided in a manner consistent with standards of quality and integrity as outlined in the Contract, the Solicitation, and Contractor's proposal.
- B. All Services and Deliverables must meet or exceed the required levels of performance specified in or under the Contract and will meet or exceed TCCO's Missions and Objectives as set forth in the Solicitation.
- C. Contractor will perform the Services in a workmanlike manner, in accordance with best practices and high professional standards used in well-managed operations performing services similar to the services described in the Contract.

SECTION 13.04 WARRANTY OF DELIVERABLES

Contractor warrants that Deliverables developed and delivered under the Contract will meet the specifications as described in the Contract during the period following its acceptance by TCCO, through the term of the Contract, including any extensions as provided in the Contract that are subsequently negotiated by Contractor and TCCO. Contractor will promptly repair or replace any such deliverables not in compliance with this warranty at no charge to TCCO.

SECTION 13.05 MANUFACTURERS' WARRANTIES

Contractor assigns to TCCO all the manufacturers' warranties and indemnities relating to all products, including without limitation, Third Party Software to the extent Contractor is permitted by the manufacturers to make such assignments to TCCO. Such assignment is subject to all of the terms and conditions imposed by the manufacturers with respect thereto.

SECTION 13.06 COMPLIANCE WITH CONTRACT

Contractor will not take any action substantially or materially inconsistent with any of the terms and conditions set forth in the Contract without the written approval of TCCO.

ARTICLE XIV: INTELLECTUAL PROPERTY

SECTION 14.01 INFRINGEMENT AND MISAPPROPRIATION

- A. Contractor warrants that all Deliverables provided by Contractor will not infringe or misappropriate any right of, and will be free of any claim of, any third person or entity based on copyright, patent, trade secret, or other intellectual property rights.
- B. CONTRACTOR WILL, AT ITS EXPENSE, DEFEND WITH COUNSEL APPROVED BY TCCO, INDEMNIFY, AND HOLD HARMLESS TCCO, ITS EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS, AND AGENTS FROM AND AGAINST ANY LOSSES, LIABILITIES, DAMAGES, PENALTIES, COSTS, FEES, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND EXPENSES, FROM ANY CLAIM OR ACTION AGAINST TCCO THAT IS BASED ON A CLAIM OF BREACH OF THE WARRANTY SET FORTH IN THE PRECEDING PARAGRAPH. TCCO WILL PROMPTLY NOTIFY CONTRACTOR IN WRITING OF THE CLAIM, PROVIDE CONTRACTOR A COPY OF ALL INFORMATION RECEIVED BY TCCO WITH RESPECT TO THE CLAIM, AND COOPERATE WITH CONTRACTOR IN DEFENDING OR SETTLING THE CLAIM.
- C. In case the Deliverables, or any one or part thereof, is in such action held to constitute an infringement or misappropriation, or the use thereof is enjoined or restricted or if a proceeding appears to Contractor to be likely to be brought, Contractor will, at its own expense, either:
 1. Procure for TCCO the right to continue using the Deliverables; or
 2. Modify or replace the Deliverables to comply with the Specifications and to not violate any intellectual property rights.

If neither of the alternatives set forth in (1) or (2) above are available to the Contractor on commercially reasonable terms, Contractor may require that TCCO return the allegedly infringing Deliverable(s) in which case Contractor will refund all amounts paid for all such Deliverables and reimburse TCCO for any related direct and indirect damages incurred by TCCO due to the infringing Deliverable(s).

SECTION 14.02 EXCEPTIONS

Contractor is not responsible for any claimed breaches of the warranties set forth in Section 14.01 to the extent caused by:

- A. Modifications made to the item in question by anyone other than Contractor or its subcontractors or TCCO or its Contractors working at Contractor's direction or in accordance with the specifications; or
- B. The combination, operation, or use of the item with other items if Contractor did not supply or approve for use with the item; or
- C. TCCO's failure to use any new or corrected versions of the item made available by Contractor.

ARTICLE XV: LIABILITY

SECTION 15.01 NOTICE OF LEGAL MATTER OR LITIGATION

Contractor shall notify TCCO of any litigation or legal matter related to or affecting this Contract within seven (7) calendar days of becoming aware of the litigation or legal matter.

SECTION 15.02 PROPERTY DAMAGE

- A. Contractor will protect TCCO's real and personal property from damage arising from Contractor's, its agent's, employees' and subcontractors' performance of the Contract, and Contractor will be responsible for any loss, destruction, or damage to TCCO's property that results from or is caused by Contractor's, its agents', employees' or subcontractors' negligent or wrongful acts or omissions. Upon the loss of, destruction of, or damage to any property of TCCO, Contractor will notify the TCCO Project Manager thereof and, subject to direction from the Project Manager or her or his designee, will take all reasonable steps to protect that property from further damage.
- B. Contractor agrees to observe and require its employees and agents to observe safety measures and proper operating procedures at TCCO sites at all times.
- C. Contractor will distribute a policy statement to all of its employees and agents that directs the employee or agent to immediately report to TCCO or to Contractor any special defect or unsafe condition encountered while on TCCO premises. Contractor will immediately report to TCCO any special defect or an unsafe condition it encounters or otherwise learns about.

SECTION 15.03 RISK OF LOSS

During the period Deliverables are in transit and in possession of Contractor, its carriers or TCCO prior to being accepted by TCCO, Contractor will bear the risk of loss or damage thereto, unless such loss or damage is caused by the negligence or intentional misconduct of TCCO. After TCCO accepts a Deliverable, the risk of loss or damage to the Deliverable will be borne by TCCO, except loss or damage attributable to the negligence or intentional misconduct of Contractor's agents, employees or subcontractors.

SECTION 15.04 LIMITATION OF TCCO'S LIABILITY

TCCO WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHER LEGAL THEORY. THIS WILL APPLY REGARDLESS OF THE CAUSE OF ACTION AND EVEN IF TCCO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

TCCO'S LIABILITY TO CONTRACTOR UNDER THE CONTRACT WILL NOT EXCEED THE TOTAL CHARGES TO BE PAID BY TCCO TO CONTRACTOR UNDER THE CONTRACT,

INCLUDING CHANGE ORDER REQUEST PRICES AGREED TO BY THE PARTIES OR OTHERWISE ADJUDICATED.

SECTION 15.05 INDEMNIFICATION

A. Acts or Omissions

CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TCCO, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THIS CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

B. Infringements

1. CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TCCO, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND TCCO AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.
2. CONTRACTOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (I) USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (II) ANY MODIFICATIONS MADE TO THE PRODUCT WITHOUT CONTRACTOR'S WRITTEN APPROVAL, (III) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CONTRACTOR PURSUANT TO TCCO'S SPECIFIC INSTRUCTIONS, (IV) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TCCOS, OR (V) ANY USE OF THE PRODUCT OR SERVICE BY TCCO THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.

3. IF CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TCCO PROVIDES THE CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TCCO, SHALL), AT THE CONTRACTOR'S SOLE OPTION AND EXPENSE; (I) PROCURE FOR TCCO THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR (II) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TCCO'S USE IS NON-INFRINGEMENT.

C. Taxes/Workers' Compensation/Unemployment Insurance - Including Indemnity

1. CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL CUSTOMER.
2. CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TCCO AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

EXHIBIT D – PART 1, INSTRUCTIONS FOR MONTHLY POSITION VACANCY REPORT

Position ID Number	The permanent identification number established by the center for each position on the current staffing plan defined in the contract. This number should correspond with the Position Control Number (PCN) listing.
Position Title	The position on the current staffing plan that corresponds to the departing/replacing employee.
a. Departing Employee	Name of the employee leaving the identified position due to termination, promotion, transfer, etc.
b. Replacing Employee	Name of the employee filling the position upon the satisfactory completion of all requirements designated for the position.
1. Date Vacated	The departing employee's last day on the job in a paid status or the last day of any paid leave entitlements (i.e., vacation). This includes employees placed in Military Leave status upon exhausting all paid leave entitlements. Positions filled by employees that are in either a Workers' Compensation or Family Medical Leave (FML) status will be considered vacant once the twelve (12) week time period is exhausted per the Contract; however, these positions should be listed on the Position Vacancy Report at the time the employee's Worker's Compensation or FML status begins, notating which leave status they are in.
2. Filled Date	The date a person fully meets all Contract requirements to fill a vacant position. Positions are to be reported filled on the day following the completion of all requirements for the specific type of position (i.e. medical, clerical, etc.) based on Contract requirements. Requirements will include a clear pre-employment background check or the TCCO approval letter if criminal convictions appear on the background check; report of a satisfactory pre-employment drug test; completion of certifications, licenses and approvals as required by the Contract, TCCO Upper Level Management approval for certain positions as outlined in the Contract; completion of Pre-Service Orientation. No position should be reported as filled until all requirements are met.
3. Treatment Provider Approval Date	Date the treatment provider was approved by TCCO.
4. Date Orientation Completed	The date the replacing employee finishes Orientation based on the requirements of the position.
5. Date Background Received	The date the Contractor receives the results of a criminal background check. A copy of the TCCO approval letter shall be attached to the Position Vacancy Report.

6. **Date Pre-Emp. Drug Test Rec'd.** The date of notification that a satisfactory pre-employment drug test was received.
7. **Required Certification Complete YES or NO** Positions requiring certification must be designated as to whether the appropriate certification has been completed by either a **YES** or **NO** designation. A copy of the certification must be attached to the Position Vacancy Report. Individuals filling positions requiring certifications are **not qualified** until the specific steps for certification have been taken based on the Contract.
8. **Date of Department Approval Upper Level Management** Applicants for Upper Level Management Positions (Center Director, Program Director, etc.) require TCCO approval per the Contract. A copy of the TCCO approval letter shall be attached to the Position Vacancy Report.
9. **Number of Days Position Vacant** The calculation starts **the day after** the position has been vacated (employee's last day on job) and ends on the **day prior** to the Filled Date. The date vacated and the Filled Date are not counted in this calculation.

EXHIBIT D – PART 2, MONTHLY POSITION VACANCY REPORT

Facility Name: _____

Month of: _____

Position ID Number	Position Title	a. Departing Employee	1. Date Vacated (Last Day on Payroll)	REPORTS & ATTACHMENTS ARE DUE BY THE 10TH OF EACH MONTH. FINAL REPORTS MUST INCLUDE A POSITION CONTROL NUMBER LIST AND MONITOR OVERTIME REPORTS FOR CREDIT TO BE PROCESSED FOR THE MONTH						
		b. Replacing Employee	2. Date Filled (#3-7 must be complete if applicable)	3. Date Treatment Provider approved by TCCO	4. Date Orientation Complete	* 5. Date Bkgrd. Check Received	6. Date Pre-Empl. Drug Test Received	* 7. Required Certification Complete (YES/NO)	* 8. Date of Approval for Upper Level Mgt.	9. Number of Days Position Vacant
		a.								
		b.								
		a.								
		b.								
		a.								
		b.								
		a.								
		b.								
		a.								
		b.								
		a.								
		b.								

I hereby confirm that the above information is accurate and that the days vacant are correct and may be used in the calculation for position vacancy.

Facility Administrator

Total Positions in Staffing Pattern: _____

Signature: _____ **Date:** _____

Total Positions Remaining Vacant: _____

Prepared by: _____ **Date:** _____

* Positions filled by promotion of current staff should be indicated by writing promotion through #3-6. Copies of approval letters must be attached for all newly filled Upper Level Management positions.

EXHIBIT E – DATA USE AGREEMENT

Data Use Agreement
(Posted on the ESBD)

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EXHIBIT F – EXCEPTIONS

EXCEPTIONS (NOTE TO RESPONDENTS: COMPLETION OF THIS EXHIBIT IS NOT REQUIRED IF THERE ARE NO EXCEPTIONS. SEE SECTION 3.6.5

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

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

EXHIBIT G – PRICING SCHEDULE

Respondents shall photocopy blank pricing schedule and submit one schedule for each location proposed.

***Proposed Location (address, city, county):** _____

BASE PERIOD (Commencement – 8/31/22)

Program	Number of Beds	Daily Per Diem
Civil Commitment Residential Beds	Center (_____)	\$_____

OPTION PERIOD ONE (09/01/22) – 08/31/24)

Program	Number of Beds	
Civil Commitment Residential Beds	Center (_____)	\$_____

OPTION PERIOD TWO (09/01/24 – 08/31/26)

Program	Number of Beds	
Civil Commitment Residential Beds	Center (_____)	\$_____

EXHIBIT H – PROGRAM BUDGET AND STAFFING PLAN

Program Budget and Staffing Plan
(Posted on the ESBD)

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EXHIBIT I – HUB

HUB 1 Language
(Posted on the ESBD as part of Exhibit I)

HUB 2 HSP and Quick Checklist
(Posted on the ESBD as part of Exhibit I)

HUB 3 Sample CMBL-HUB Vendor Detail
(Posted on the ESBD as part of Exhibit I)

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EXHIBIT J – CHILD SAFETY ZONE CERTIFICATION

Please provide a separate form for each proposed location

Texas Civil Commitment Office
Contracted Civil Commitment Center

Center (or Contractor) Name and Location:

I certify that the above listed center _____ *is* (or) _____ *is not* located in a child safety zone.

Authorized Signature

Name

Title

Date

To determine if a center is in a Child Safety Zone, measurements must be taken from the property line of the center to the property line of areas identified as a Child Safety Zone in Section 1.2, Definitions.

*Respondents shall photocopy a blank Child Safety Zone Certification and submit one certification for each location proposed.

EXHIBIT K – COMPLIANCE STANDARDS

STANDARD		ACCEPTABLE	UNACCEPTABLE	PAYMENT ADJUSTMENT CALCULATION
1.	Contractor shall staff all positions with fully qualified employees, including special certification and licenses where applicable, as directed in the Contract. Section 2.2.2	Less than or equal to the number of days listed for that position on the Vacancy Assessment included within Attachment C.	Greater than the number of days listed for that position on the Vacancy Assessment included within Attachment C.	Reduce by amount equal to the base salary (including fringe benefits) for each Day a position is vacant in excess of the number of days listed on the Vacancy Assessment for that position.
2.	Prior to employment, all personnel (including consultants, independent contractors and their employees and agents, and volunteer workers who serve at the center on a routine basis) shall be required to undergo a background investigation as a requisite for initial and/or continued employment. This applies for both the initial employment and the re-hire of all staff, as directed in the Contract. Contractor shall maintain written confirmation that the background check results were acceptable to TCCO. Written TCCO approval of applicants with a misdemeanor or felony conviction shall be maintained on file at the facility. Section 2.2.2	100%	< 100%	Reduce by \$50.00 for each Working Day an employee physically worked in direct contact with SVP Clients without written confirmation that the background results were acceptable to TCCO and if convictions, the required TCCO approval letter prior to hire.
3.	Contractor shall obtain from TCCO and maintain a copy in employee files, prior written approval to hire all Upper-Level Management staff, as directed in the Contract. Section 2.2.38	100%	< 100%	Reduce by an amount equal to the base salary (including fringe benefits) for each Day the position was filled with a non-approved individual.
4.	Contractor shall maintain valid current insurance as directed in the Contract. Section 8.2	Valid current insurance policies.	Lapsed policy or policy not meeting requirements.	Reduce by \$1,000 per Day for which mandated insurance coverage was not in effect. Center has 10 working Days to cure before this becomes an Event of Default per contract terms.

5.	Notification is provided to TCCO of all SVP Client injuries, incidents or issues as identified in the contract Section 2.2.3 G	100%	<100%	Documentation of failure to act or notify is maintained by TCCO for evaluation purposes during future renewal reviews.
6.	Contractor shall complete an intake on each SVP Client within 24 hours of arrival at the Civil Commitment Center and an orientation within 3 business days of arrival, as directed in the Contract. Section 2.2.6	100%	<100%	Reduce by \$10.00 per Day per SVP Client for each Day an intake or orientation is not completed as required.
7.	Contractor shall make available the agreed upon hours of sex offender group therapy weekly to each SVP Client, as directed in Contract. Contractor's full-time employee treatment providers may miss up to five work days per contract year for approved trainings and continuing education required for licensing renewal purposes. Section 2.2.7A	100%	<100%	Reduce by \$623.00 for each sex offender group therapy session that was not held with the exception of up to five days per contract year for approved trainings or continuing education and approved holidays as specified in the contract.
8.	Contractor shall make at least one individual treatment session available to each SVP Client every 90 days or more frequently, if needed. Section 2.2.7A	100%	<100%	Reduce by \$70.00 per SVP Client for each 90-day period in which an individual treatment session was not made available to the SVP Client.
9.	Contractor shall document and scan all treatment activities into the TCCO case management automated system for treatment services by the due date established in the Contract. Section 2.2.7 & 2.2.8	100%	<100%	Reduce by \$10 per day, per SVP Client, each day for missing/late entry or scan for the SVP Client, that was not completed by the due date established in Section IV.C.10.f of the Contract.
10.	The Contractor shall process SVP Client Step 1 and Step 2 grievances in accordance with the TCCO approved Contractor policy. Section 2.2.25	100%	<100%	Reduce by \$10.00 per grievance for each day the grievance response to the SVP Client is late.

REPORTS AND DOCUMENTATION REQUIRED FROM CONTRACTOR

1. Monthly Position Vacancy reports are generated and submitted to TCCO-staff by the Contractor on the Monthly Position Vacancy Report.
2. For all positions filled by newly hired or rehired staff during that period who have a criminal conviction, a copy of the TCCO approval letter shall be attached to the Monthly Position Vacancy Report
3. For all upper level management positions filled, during the reporting period, a copy of the TCCO letter of approval shall be attached to the Monthly Position Vacancy Report.
4. Current policy updates shall be submitted immediately upon receipt to TCCO.
5. No additional report required from the Contractor.
6. No additional report required from the Contractor.
7. No additional report required from the Contractor.
8. No additional report required from the Contractor.
9. No additional report required from the Contractor.
10. Grievance Log to be submitted monthly.

From time to time throughout the Contract Term, TCCO may temporarily suspend some or all of the payment adjustments identified in the above table.

Decisions to suspend payment adjustments will be made by TCCO and will be conveyed to the Contractor by letter. Decisions and notifications to reinstate payment adjustments will be handled in a similar manner.

EXHIBIT L – REVENUE IDENTIFICATION FORM

Revenue Identification Form

INDICATE BELOW THE SOURCE OF THE RETURNED MONEY:

TELEPHONE REVENUE: \$ _____

COMMISSARY PROFITS: \$ _____

VENDING REVENUE: \$ _____

FOUND/CONFISCATED MONEY: \$ _____

OTHER (Please Specify): \$ _____

\$ _____

TOTAL: \$ _____

CONTRACTOR'S NAME: _____

CONTRACT NUMBER: _____

LOCATION (CITY): _____

COMPLETE THE FORM AND RETURN WITH YOUR MONTHLY CONTRACTOR INVOICE. DEDUCT THE TOTAL AMOUNT ON THIS FORM FROM THE INVOICE TOTAL.

Texas Civil Commitment Office
4616 West Howard Lane
Building 2, Suite 350
Austin, Texas 78728

EXHIBIT M – REPORTS REQUIRED FROM CONTRACTOR

	REPORTS AND DATA	
	REPORT ITEM	AUTHORITY
Monthly with Billing Invoice	Mileage Reimbursement Form that includes SVP Client name, SID#, date and time of pick-up or drop-off and destination with mileage	Contract, Section 2.2.17
Monthly with Billing Invoice	SVP Client Activity Report	Contract, Section 2.2.31 D
Monthly	Position Vacancy Report	Contract, Section 2.2.2 K Appendix C
Monthly	Revenue Identification Form	Contract, Sections 2.2.18 and 2.2.13 C
Monthly by 5 th Day	HUB Subcontracting Plan Prime Contractor Progress Assessment Report to Contract Administrator	Contract, Section 5.9
Quarterly	Center Self-Monitoring Report	Contract, Section 2.2.26
Annually	Certificates from local health department, fire marshal's office and building inspector's offices	Contract, Section 2.2.3
Prior to Service Commencement Date and upon renewal or replacement	Copies of Insurance Certificates	Contract, Appendix D #4 Contract, Section 8.2.1
Prior to Award Date	HIV-Related Policies and Programs	Contract, Section 2.2.9 A
With proposal and prior to implementation of changes or additions	Program Budget and Cost Allocation Plan	Contract, Appendix F
With proposal and prior to implementation of changes or additions	Operational Plan	Contract, Section 2.3.2
With proposal and upon modification	Affirmative Action Plan	Contract, Section 2.2.2 L
Upon approval by TCCO	Copy of Each Subcontract	Contract, Section 2.2.46
Within 20 Days of receipt of audit report	Corrective Action for Items of Non-Compliance Identified	Contract, Section 2.3.4 D
Upon Occurrence	Injury Report, Incident Reports	Contract, Section 2.2.28

Within 30 Days of receipt	Audit/Monitoring Reports by Other Agencies or Organizations and Response to Audit	Contract, Section 2.3.1
Weekly	Treatment Activity Report	Contract, Section 2.2.30 A
Weekly	Client Housing Report	Contract, Section 2.2.30 B
Upon Revision	Resident Alpha Roster	Contract, Section 2.2.30 C
Upon Revision	Employee Alpha Roster	Contract, Section 2.2.30 D
Weekly	Grievance Log	Contract, Section 2.2.30 H
Weekly	Sex Offender Group Report	Contract, Section 2.2.30 I
Monthly	Self-Monitoring Report	Contract, Section 2.2.30 G
Upon Revision	Policies and Procedures	Contract, Section 2.3.2

Additional reports may be required from the Contractor during the course of the Contract.

EXHIBIT N – EVALUATOR SCORE SHEET

Evaluator Score Sheet
(Posted on the ESBD)

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