

## TEXAS CIVIL COMMITMENT OFFICE



This contract, number TPE-19-0001, is entered into by and between the Texas Civil Commitment Office (TCCO) ("the Office"), an agency of the State of Texas, and Dr. Nicholas Edd ("Contractor"), a For Profit Organization, (collectively, "the Parties").

1. **Purpose of the Contract.** The Office agrees to purchase, and Contractor agrees to provide, services and/or goods to the eligible populations as described in the Notice of Open Enrollment OE #HHS0001710, Third Party Evaluations for Civilly Committed Sex Offenders in the Texas State Hospital System.

2. **Total Amount of the Contract.** The total contract amount shall not exceed \$13,200 for the term of the contract, and the payment method shall be as specified in the Open Enrollment Solicitation.

3. **Funding Obligation.** This Contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs, amendment to the Appropriations Act, or any other disruptions of current appropriated funding for this Contract, TCCO may restrict, reduce, or terminate funding under this Contract.

4. **Term of the Contract.** This Contract begins on the date of execution through August 31, 2023. TCCO may, at its sole discretion, renew a contingency contract after the initial term. Contracts may be renewed up to four additional one-year period contract terms. Renewal is contingent upon the availability of funds and the satisfactory performance of the Contractor during the contract period. TCCO is not responsible for payment under this Contract before both parties have signed the Contract.

5. **Termination.** This Contract may be terminated by mutual written agreement of both Parties. Either Party may terminate this Contract by giving the other Party thirty (30) days written notice of its intent to terminate. Written notice may be sent by any method which provides verification of receipt and the thirty (30) days will be calculated from the date of receipt. This Contract may be terminated for cause by either Party for breach or failure to perform an essential requirement of the Contract. Upon termination of all or part of this Contract, TCCO and the Contractor will be discharged from any further obligation created under the applicable terms of this Contract except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination.

6. **Authority.** TCCO enters into this Contract under the authority of Title 11, Health and Safety Code, Chapter 841. If this is a professional services contract authority is also granted through Professional Services Procurement Act, Texas Government Code, §§2254.001-2254.005, Health and Safety Code, §12.0121, and 25 Texas Administrative Code, §1.181; and Contractor shall perform "professional services" within the meaning of that term as defined in the above.

7. **Documents Forming Contract.** The Contract consists of the following:

- a. Core Contract (this document);
- b. Solicitation Document, Notice of Open Enrollment OE #HHS0001710, Third Party Evaluations for Civilly Committed Sex Offenders in the Texas State Hospital System, including Forms A through F and all appendices; and



c. Contractor's Response(s) to the Solicitation Document(s).

Any changes made to the Contract, whether by edit or attachment, do not form part of the Contract unless expressly agreed to in writing by TCCO and Contractor and incorporated herein.

8. **Conflicting Terms.** In the event of conflicting terms among the documents forming this Contract, the order of control is first the Core Contract, then the Solicitation Document and then Contractor's response to the Solicitation Documents, if any.

9. **Payee.** The Parties agree that the following payee is entitled to receive payment for services rendered by Contractor or goods received under this Contract:

**Dr. Nicholas Edd**  
11999 Katy Freeway, Suite #385  
Houston, Texas 77079-1605  
Vendor Identification Number: [REDACTED]

10. **Entire Agreement.** The parties acknowledge that this Contract is the entire agreement of the Parties and that there are no agreements or understandings, written or oral, between them with respect to the subject matter of this Contract, other than as set forth in this Contract.

By signing below, the Parties acknowledge that they have read the Contract and agree to its terms, and that the persons whose signatures appear below have the requisite authority to execute this Contract on behalf of the named Party.

**TEXAS CIVIL COMMITMENT OFFICE**

By: [Signature]  
Signature of authorized Official  
9-25-18  
Date

Marsha McLane  
Executive Director  
Texas Civil Commitment Office  
4616 West Howard Lane  
Building 2, Suite 350  
Austin, Texas 78728

Telephone: 512-341-4421

Email: [marsha.mclane@tcco.texas.gov](mailto:marsha.mclane@tcco.texas.gov)

**Dr. Nicholas Edd**

By: [Signature]  
Signature  
9-17-18  
Date

Nicholas Edd, By: D  
Print Name and Title

11999 Katy Freeway #385  
Address

Houston, TX 77079  
City, State, Zip

281 558 6231  
Telephone

ned13@red.com  
E-mail Address



**FORM A: FACE PAGE**

Texas Civil Commitment Office  
 Third Party Evaluation Open Enrollment # HHS0001710

APPLICANT INFORMATION	
1) LEGAL NAME:	Nicholas Edd
2) MAILING Address Information (include mailing address, street, city, county, state and 9-digit zip code):	11999 Katy Freeway, Suite 385 Houston Texas 77079
3) PAYEE Mailing Address, including 9-digit zip code (if different from above):	P.O. Box 66118 Houston Texas 77266-6118
4) Federal Tax ID No. (9-digit), State of Texas Comptroller Vendor ID No. (14-digit) or if an individual, Social Security Number (9-digit): DUNS Number (9-digit) required if receiving federal funds:	Tax ID # [REDACTED] Vendor ID # [REDACTED]
*The vendor acknowledges, understands and agrees that the vendor's choice to use a social security number as the vendor identification number for the contract, may result in the social security number being made public via state open records requests.	
5) TYPE OF ENTITY (check all that apply):	
<input type="checkbox"/> City	<input type="checkbox"/> Nonprofit Organization*
<input type="checkbox"/> County	<input checked="" type="checkbox"/> For Profit Organization*
<input type="checkbox"/> Other Political Subdivision	<input type="checkbox"/> HUB Certified
<input type="checkbox"/> State Agency	<input type="checkbox"/> Community-Based Organization
<input type="checkbox"/> Indian Tribe	<input type="checkbox"/> Minority Organization
	<input type="checkbox"/> Faith-based Organization
	<input type="checkbox"/> Individual
	<input type="checkbox"/> FQHC
	<input type="checkbox"/> State Controlled Institution of Higher Learning
	<input type="checkbox"/> Hospital
	<input type="checkbox"/> Private
	<input type="checkbox"/> Other (specify): _____
*If incorporated, provide 10-digit charter number assigned by Secretary of State: [REDACTED]	
6) List all counties number of SVP clients Contractor can serve	Harris County, Ft. Bend County, Montgomery County, Galveston County- Contractor is able to serve all Counties throughout the state of Texas providing service for 50 SVPs.
7) Willing to travel: <input checked="" type="checkbox"/> yes or <input type="checkbox"/> no	
7) PROJECT CONTACT PERSON	
Name: Arthur Gonzalez Phone: 281-558-6231 Fax: 281-558-6379 E-mail: eddclinic@yahoo.com	
8) AUTHORIZED REPRESENTATIVE	9) SIGNATURE OF AUTHORIZED REPRESENTATIVE
Name: Nicholas Edd Title: Doctor/owner Phone: 713-851-3182 Fax: 281-558-6379	
	10) DATE

*Texas Civil Commitment Office*  
**THIRD PARTY EVALUATIONS FOR  
CIVILLY COMMITTED SEX OFFENDERS IN THE TEXAS STATE  
HOSPITAL SYSTEM**  
Open Enrollment Number: **HHS0001710**

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E-mail: *dredd3@aol.com*

*8/13/18*

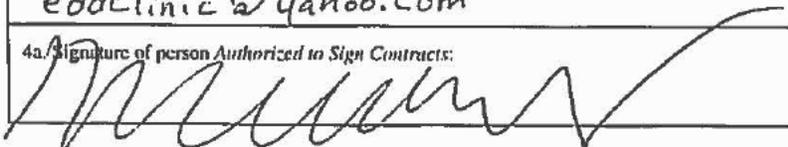
**FORM B: OPEN ENROLLMENT APPLICATION CHECKLIST**

Texas Civil Commitment Office  
 Third Party Evaluations Open Enrollment

Each Enrollment Application Must Contain the Following Completed Items:

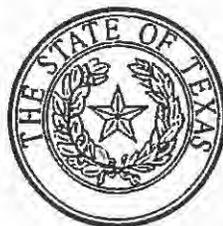
Document	Check (√), if included
FORM A: TCCO Face Page – Signature Required	✓
FORM B: Open Enrollment Application Checklist	✓
FORM C: Vendor Information Form – Signature Required	✓
FORM D: Copy of the current Sex Offender Treatment Provider License; Licensed Sex Offender Treatment Provider – Supervisor (LSOTP-S) or Licensed Sex Offender Treatment Provider (LSOTP): Documentation reflecting certification by the Council on Sex Offender Treatment	✓
FORM E: Pricing	✓
FORM F: Copy of Professional Malpractice Insurance Policy or Errors and Omissions Insurance	✓
FORM G: Resume(s)	✓
APPENDIX C: Data Use Agreement	✓

**FORM C: VENDOR INFORMATION FORM**

1a. Legal name of Other Party (OP) as it appears on documentation from IRS, Comptroller, or Secretary of State. This is the name that will appear on the contract document either as "Contractor" or by name. If using an assumed name, please attach documentation from Office of the Secretary of State or County Attorney.	
The Edd Clinic for Psychotherapy and Counseling	
1b. OP Address (Include Street and Mailing Addresses, City, County, State and Zip Code):	
11999 Katy Freeway, Suite 385, Houston Texas 77079	
1c. PAYEE Name and Mailing Address (as it should appear on financial instruments and remittances):	
The Edd Clinic for Psychotherapy and Counseling PO Box 66118, Houston Texas 77266	
1d. Federal Employer Identification No. (FEIN) (9 digit), name and Social Security Number (SSN), if individual, or State of Texas Comptroller Vendor Identification No. (14 digit). FEIN# [REDACTED] Vendor Identification# [REDACTED]	
NOTE: *The contractor acknowledges, understands and agrees that the contractor's choice to use a social security number as the vendor identification number for the contract, may result in the social security number being made public via state open records requests.	
1e. Mail code, if known (3 digits): 770	
2. TYPE OF ENTITY (enter appropriate letter in box):	
<input checked="" type="checkbox"/> F Is your entity certified as a HUB? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No A. City or County (Governmental Entity)    E. Texas Non-profit Corporation *    I. Sole Proprietor    M. Out-of-State Corp B. State Agency <input checked="" type="checkbox"/> F. Texas For Profit Corporation*    J. Individual    N. Other *** C. State Institution of Higher Learning    G. Professional Association*    K. Partnership** D. Other Political Subdivision    H. Regular Association    L. Limited Partnership**	
*Please provide 10-digit charter or file number assigned by the Secretary of State: [REDACTED]	
** Please provide the name and SSN or FEIN of each partner. Nicholas Edd FEIN# [REDACTED]	
***If "Other", specify: _____	
3a. Legal name of person or entity authorized to contract with Department of State Health Services.	
The Edd Clinic for Psychotherapy and Counseling	
3b. Typed Name & Title of Person Authorized to Sign Contracts:	3b. Telephone
Nicholas Edd - Doctor/owner	713-851-3182
3c. Typed Name & Title of Contact Person (Contract Documents and Correspondence)	3c. Telephone
Arthur Gonzalez - Office manager	281-558-6231
3d. Contact Person's E-mail Address	
eddclinic@yahoo.com	
4a. Signature of person Authorized to Sign Contracts:	4b. Date
	8/13/18

**FORM D: COPY OF THE CURRENT SEX OFFENDER TREATMENT PROVIDER  
LICENSE; LICENSED SEX OFFENDER TREATMENT PROVIDER –  
SUPERVISOR (LSOTP-S) OR LICENSED SEX OFFENDER  
TREATMENT PROVIDER (LSOTP)**

Applicant must use this space to attach a copy of a current Sex Offender Treatment Provider License; Licensed Sex Offender Treatment Provider – Supervisor (LSOTP-S) or Licensed Sex Offender Treatment Provider (LSOTP). Documentation reflecting certification by the Council on Sex Offender Treatment.



## Council on Sex Offender Treatment

DOES HEREBY CERTIFY THAT

**Nicholas Edd, Psy. D.**

meets the qualifications established under Texas Occupations Code, Chapter 110 to practice the profession of sex offender treatment and is authorized to employ the title

**Licensed Sex Offender Treatment Provider**

in the State of Texas, so long as this certificate is not revoked or suspended and is renewed according to applicable law and rules.

License Number 98922

Effective 05/25/2001

INVALID WITHOUT CURRENT  
RENEWAL CARD

A handwritten signature in black ink that reads "Aaron Pierce, Ph.D.".

Aaron P. Pierce, Ph.D.



**Council on Sex Offender Treatment**

certifies that the entity identified below is a

**Licensed Sex Offender Treatment Provider**

**Nicholas Edd, Psy. D.**

License Number 98922

Control Number 102255

Expires 10/31/2019

*Aaron Pines, PhD*

Cardholder Signature

Presiding Officer

**FORM E: PRICING**

Texas Civil Commitment Office  
Third Party Evaluation Services  
Open Enrollment Application

<b>Service Type</b>	<b>*Price</b>
Report with Client Evaluation	\$3,500.00 per report
Report without Client Evaluation	\$3,150.00 per report

\*Price shall not exceed respective service rates as listed above.

Travel Rates based on State Travel rates at: <https://fm.x.cpa.state.tx.us/fm/travel/travelrates.php>

**Nicholas Edd, Psy. D.**  
**The Edd Clinic for Psychotherapy and Counseling**  
**11999 Katy Freeway, Suite 385**  
**Houston, Texas 77079**  
**(281) 558-6231**

**LICENSURE:** Licensed Clinical Psychologist  
(Texas State Board of Examiners of Psychologists)

Licensed Sex Offender Treatment Provider  
(Council on Sex Offender Treatment)

**CERTIFICATION:** Anger Resolution Therapist  
Proficiency in Alcohol and Other  
Substance Use Disorders  
Professional Mediation  
Advanced Family Mediation  
TDPRS/CPS/CJA Mediation (Children First)  
Level II Clinician: The Monarch 21 System and  
Plethysmography.  
Trauma and Addiction Disorders, Therapist Level 1

**EDUCATION:** Doctor of Psychology (Psy. D.), Illinois School of  
Professional Psychology, 1984  
Master of Science (MS), Lamar University, 1979  
Bachelor of Science (BS), Lamar University, 1972

**THESIS (Master's Degree):** Prediction of Those Most Likely to Complete  
Treatment in a Residential Drug Abuse Program  
Based on Discriminate Function Analysis of MMPI  
Profiles

**CLINICAL RESEARCH PROJECT  
(Doctoral Degree):** Analysis of Psychotherapeutic Technique with the  
Borderline Patient Following Deterioration during  
Treatment

**DOCTORAL INTERNSHIP:**

Veterans Administration Medical Center  
Psychological Service  
2002 Holcombe Blvd.  
Houston, Texas 77211  
(713) 795-4111  
September 1980- August 1981

**PROFESSIONAL EMPLOYMENT:**

***September 1985- Present***

Private Practice- Licensed Clinical Psychologist  
Current Address:  
11999 Katy Freeway, Suite 385  
Houston, Texas 77079  
(281) 558-6231

***March 1983- December 1990***

Center for the Retarded- Psychological Consultant  
3550 W. Dallas  
Houston, Texas 77019  
(281) 528-6371  
Supervisor: Gloria Fossati  
Executive Director of Programs  
*Duties:* Individual and Group Therapy.  
Psychological testing and Evaluation with Mentally  
Retarded Population, Behavior Management  
Planning, Psychological representation in  
Interdisciplinary Team Programming

***June 1983- August 1988***

Houston Community College System  
Adjunct Faculty  
Division of Social Sciences- Psychology  
320 Jackson Hill  
Houston, Texas 77002  
*Duties:* Instructor- Psychology. Taught courses in  
general, abnormal, personality and child  
development.

**PROFESSIONAL EMPLOYMENT:**  
(Cont'd)

***September 1981- September 1985***

The Sherman Clinic- Psychological Associate  
909 Frostwood, Suite 133  
Houston, Texas 77024  
(713) 468-7647

Supervisor; Jerome N. Sherman, Ph. D.

*Duties:* Individual, family and marital and sex therapy and psychological testing with children, adolescents and adults. Included neuropsychological, forensic and sex offender evaluations.

***January 1981- September 1985***

Psychological Associate  
2128 Welsh  
Houston, Texas 77019  
(713) 527-8680

Supervisor: Donald B. Gautney, Ph. D.

*Duties:* Psychological Testing and Evaluation; Psychotherapy with children, adolescents and adults.

***January 1977- August 1980***

Jewish Vocational Service- Psychological  
Consultant  
320 N. Dearborn, Ninth Floor  
Chicago, Illinois 60610

Supervisor: Ralph K. Meister, Ph. D.

*Duties:* Intake evaluation, Group and Individual Therapy, Psychological Testing and Report Writing in rehabilitation setting with emotionally, mentally retarded and developmentally disabled population.

PROFESSIONAL EMPLOYMENT: (Cont'd)

*June 1975- June 1976*

Alternative drug Abuse Program of Vocational  
Guidance Service- Psychological Assistant  
2525 San Jacinto  
Houston, Texas 77002  
Supervisor: Donald B. Gautney, Ph.D.  
Duties: Group and Individual Therapy,  
Psychological Testing, Interviewing and Report  
Writing with adult population.

MEMBERSHIPS:

Association for the Treatment of Sexual Abusers  
(ATSA)  
American Psychological Association  
American Psychology-Law Society  
Texas Psychological Association  
Houston Psychological Association  
Council for the National Register of Health Service  
Providers in Psychology  
Attention Deficit Disorder Association- Southern  
Region  
Affiliate, National Academy of Neuropsychology  
Member: Division of Forensic Psychology,  
Member: Division of Neuropsychology, American  
Psychological Association  
Professional Mediator (General, Family, CPS)

AREAS OF  
CONCENTRATION:

Individual and Family Therapy  
Chemical Dependency  
Stress Management and Biofeedback  
Relationship Counseling  
Psychological/Neuropsychological Testing  
Sexual Abuse Issues  
Anger Management  
Mediation  
Sex Offenders  
Forensic Issues  
Gay/Gender Issues

**HOSPITAL AFFILIATIONS:**

Behavioral Hospital of Bellaire  
Hope Bridge Hospital  
Houston Behavioral Healthcare  
Sun Behavioral Houston Hospital  
Texas West Oaks Hospital

**CONTINUING  
EDUCATION:**

Ethical Challenges for the 21<sup>st</sup> Century, Texas  
Psychological Association, August 25, 1995

Attention Deficit Hyperactivity Disorder in  
Children, Adolescents and Adults; Diagnosis,  
Assessment and Treatment, Russell Barkley, Ph.D.,  
February 3, 1996

Sexual Abuse: A Violation of the Self, Houston  
Group Psychotherapy Society, May 17, 1996

Clinical Psychopharmacology, John Preston, Psy.D,  
James Johnson, M.D. (APA Approved), August,  
1997

Ethical Issues in Clinical Forensic Practice, Joan  
Anderson, Ph.D. (TPA), November 21, 1997

Achieving Expertise in Child Custody Evaluations,  
Beth Clark, Ph.D. (American Academy of Forensic  
Psychology), February 19, 1998

Cross-Examination: Maintaining Credibility,  
Handling Attacks and Answering the Critics, Diane  
Follingstad, Ph.D. (American Academy of Forensic  
Psychology), February 20, 1998

Intermediate and Advanced Forensic Practice,  
Robert Meyer, Ph.D. (American Academy of  
Forensic Psychology), February 21, 1998

CONTINUING  
EDUCATION (Cont'd):

Forensic Assessment of Sexual Discrimination and Sexual Harassment in the Workplace, Herbert Weisman, Ph.D. (American Academy of Forensic Psychology), February 22, 1998

Anger Resolution Therapy Certification Training, Center for Anger Resolution, Newton Hightower, LMSW-ACP, LMST, LPC, CCDS, March 5 and 6, 1999

Risk Assessment of Sexual Offenders, Specialized Training Services, Anna Salter, Ph.D. (APA Approved), March 22 and 23, 1999

On the Same Page as the Judge:  
Psychiatric and Psychological Evidence and Testimony Benchbook, Eric Drogin, Ph.D. and Howard Altschwager, J.D. (American Academy of Forensic Psychology), April 15, 1999

Role of the Forensic Psychologist in Death Penalty Litigation, James Eisenberg, Ph.D. (American Academy of Forensic Psychology), April 16, 1999

Personal Injury Evaluations: Ethics, Practice and Case Law, Stuart Greenberg, Ph.D. (American Academy of Forensic Psychology), April 17, 1999

Brewing a Jury: Scientific and Practical Perspectives, Brian Cutler, Ph.D. (American Academy of Psychology), April 18, 1999

Assessing and Treating Sex Offenders From Three Expert Perspectives, Gene Abel, M.D., Fred Berlin, M.D., Ph.D., and Anna Salter, Ph.D., Specialized Training Services (APA Approved), July 7, 8, and 9, 1999

CONTINUING  
EDUCATION (Cont'd):

Sex Offender Intervention: Where We Are and Where We Should Be, Jonathan Ross, M.A., the Seventh Annual Texas Conference on the Treatment and Supervision of Juvenile Sex Offenders (Correctional Management Institute of Texas, Council on Sex Offender Treatment, Texas Youth Commission, Texas Juvenile Probation Commission), July 10, 1999

Cognitive Work With Deviant Sexual Fantasies, Jonathan Ross, M.A., The Seventh Annual Texas Conference on the Treatment and Supervision of Juvenile Sex Offenders (Correctional Management Institute of Texas, Council on Sex Offender Treatment, Texas Youth Commission, Texas Juvenile Probation Commission), July 10, 1999

The Offense Specific Process Group for Adolescent Sex Offenders, Jonathan Ross, M.A., The Seventh Annual Texas Conference on the Treatment and Supervision of Juvenile Sex Offenders (Correctional Management Institute of Texas, Council on Sex Offender Treatment, Texas Youth Commission, Texas Juvenile Probation Commission), July 10, 1999

Assessing Malingering and Deception, Randy Otto, Ph.D., University of South Florida, Department of Mental Health Law and Policy, July 24, 1999

Survey of Forensic Psychology Practice: Issues and Applications, (American Academy of Forensic Psychology), September 30 thru October 3, 1999

Forensic Assessment of Child Sex Abuse Allegations, H.D. Kirkpatrick, Ph.D. (American Academy of Forensic Psychology), November 6, 1999

CONTINUING  
EDUCATION (Cont'd):

Neuropsychology for the Forensic Psychologist,  
Wolfred Van Gorp, Ph.D. (American Academy of  
Forensic Psychology), November 7, 1999

Danger: Toxic Environment in Marriage, Develop  
an Intentional Detoxication Plan, Britton Wood,  
Ph.D., Texas Association of Marriage and Family  
Therapy, January 27, 2000

Divorce Damage Control, Pat Hudson, Ph.D., Texas  
Association of Marriage and Family Therapy,  
January 27, 2000

Siblings of ADHD Kids, Emotional Intelligence and  
Family Therapy, Texas Association of Marriage  
and Family Therapy, January 28, 2000

Spirituality: The New Clinical Challenge, Harry  
Aponte, MSW, Texas Association of Marriage and  
Family Therapy, January 28, 2000

Shared Custody: What About the Children?  
Deborah Higgs, M.A., LPC, Texas Association of  
marriage and Family Therapy, January 28, 2000

Healing Strained Relationships, Kenneth Hardy,  
Ph.D., Texas Association of Marriage and Family  
Therapy, January 28, 2000

Both Feet on the Ground: Effective Couples' Work,  
Sherry Beeman, Ph.D., Texas Association of M  
Marriage and Family Therapy, January 29, 2000

Assessment of Psychopathy: An Overview of the  
Hare Scales, Stephen Hart, Ph.D., American  
Academy of Forensic Psychology, March 8, 2000

Child Custody Evaluations: A Risk Management  
Approach, David Martindale, Ph.D. American  
Academy of Forensic Psychology, March 9, 2000

CONTINUING  
EDUCATION (Cont'd):

Americans With Disabilities Act: psychological Evaluation and Consultation, William Foote, Ph.D., American Academy of Forensic Psychology, March 10, 2000

Treatment Strategies for Sexually Abused Children, Carolyn Tyndall, Ph.D., Houston Community College- Central, March 31, 2000

Anger and Aggression: Cognitive Behavioral and Short Term Intervention for Change, American Health Care Institute, James Barnhill, Ph.D., June 7, 2000

How To Be A Brain Damage Detective, Muriel Lezak, Ph.D., Houston Neuropsychological Society, VA Medical Center (Houston), September 9, 2000

Focus on the Future (Houston, Texas), Attention Deficit Disorders Association- Southern Region, Thirteenth Annual Conference, February 2-3, 2001

Ninth Annual Conference on the Treatment and Supervision Of Adult Sex Offenders (Correctional Management Institute of Texas, Council on Sex Offender Treatment, The Children's Assessment Center, Harris County Community Supervision and Corrections Department, Texas Department of Criminal Justice, Interagency Coordinating Council on Sex Offenders), Houston, Texas, February 11 thru 13, 2001

Ninth Annual Conference on Working with the Juvenile Sex Offender ( Correctional Management Institute of Texas, Council on Sex Offender Treatment, Texas Juvenile Probation Commission, Texas Youth Commission, Child Protective Services, Children's Assessment Center), Austin, Texas, July 20-22, 2001

CONTINUING  
EDUCATION (Cont'd):

Interventions with Aggressive and Resistant Youth,  
Daniel Davis, Ph. D. (Medical Education Services,  
Inc.), December 6, 2001

The Management of Families through Conflictual  
Divorce, Deborah Higgs, LPC, LMFT and Susan  
Baker, J. D. (Texas Association of Marriage and  
Family Therapy), January 25, 2002

Virtually Addicted: Diagnosing and Treating  
Internet Addiction, Deborah Corley, Ph. D., (Texas  
Association of Marriage and Family Therapy),  
January 25, 2002

Solution Focused Family of Origin Therapy,  
Deborah Corley, Ph. D. (Texas Association of  
Marriage and Family Therapy), January 25, 2002

10<sup>th</sup> Annual Conference on the Treatment and  
Supervision of the Adult Sex Offender: Tides of  
change in Treatment and Supervision Issues  
(Correctional Management Institute of Texas,  
Council on Sex Offender Treatment, Texas  
Department of Health, Nueces County Community  
Supervision and Corrections Department, Nueces  
County Juvenile Probation, Office of the Attorney  
General, Texas Department of Criminal Justice),  
February 21-23, 2002

Putting It All Together: Making Treatment Work,  
Anna C. Salter, Ph. D., February 22, 2002

Responsibility: A Key Issue in Sex Offender  
Treatment and Community Safety. Honorable J.  
Manuel Banales, Maria Molett, MA, LPC, RSOTP,  
F. Liles Arnold, LPC, RSOTP, Estella G. Gullen,  
TDCT-CJAD, Jennifer Coyle, TDCT, February 23,  
2002

CONTINUING  
EDUCATION (Cont'd):

What's wrong with a Little Pornography: A Clinical Perspective? Ezio Leite, M. Ed, LPC, RSTOP, Lawrin Dean, M. Ed, LPC, RSOTP, Becky Adams, M. Ed, LPC, RSOTP, February 23, 2002

Sex Offender and the Internet, Sgt. Robert L. MacFarland, Criminal Intelligence Division, Corpus Christi Police Dept., February 23, 2002

Public Safety Workshop: Effective and Responsible Use of Psychological Tests in Pre-Employment Selection. NCS Pearson Assessments: Mark Zelig, Ph.D., David Arnold, Ph.D., J.D., Gary Fischer, Ph.D., Youssef Ben-Porath, Ph.D., Phoenix, Arizona, February 2, 2003.

Assessment of ADHD: A Review of Empirically-Based Strategies, Stewart Pisecco, Ph.D., 15<sup>th</sup> Annual Conference, Attention Deficit Disorders Association-Southern Region and Cook Children's Medical Center, February 21, 2003.

Addressing ADHD and Related Conditions, Jefferson Prince, M.D., 15<sup>th</sup> Annual Conference, Attention Deficit Disorders Association-Southern Region and Cook Children's Medical Center, February 21, 2003.

The ABC's of ADHD, Robert Weinberger, Ph.D., 15<sup>th</sup> Annual Conference, Attention Deficit Disorders Association-Southern Region and Cook Children's Medical Center, February 21, 2003.

Impact of Adult ADD on Relationships, Richard Austin, Ph.D., 15<sup>th</sup> Annual Conference, Attention Deficit Disorders Association-Southern Region and Cook Children's Medical Center, February 21, 2003.

CONTINUING  
EDUCATION (Cont'd):

ADHD and Substance Use Disorders: Myths and Misunderstandings, Trent Everett, Ph.D., 15<sup>th</sup> Annual Conference, Attention Deficit Disorders Association-Southern Region and Cook Children's Medical Center, February 21, 2003.

The Containment Approach: Implementing the Polygraph Effectively, Kim English, M.A., 11<sup>th</sup> Annual Conference on the Treatment and Supervision of the Adult Sex Offender, Dallas, TX, February, 28, 2003.

A New Approach to Family Reunification, Kim English, M.A., 11<sup>th</sup> Annual Conference on the Treatment and Supervision of the Adult Sex Offender, Dallas, TX, February 28, 2003.

The Importance of Working Together For Community Safety: The Legal Perspective, Lynn Corsi, JD, LMSW; Judge John C. Cruzot; Judge Patricia Lykos; Reed Prospero; David Rakow; Lucinda Simons. 11<sup>th</sup> Annual Conference on the Treatment and Supervision of the Adult Sex Offender, Dallas, TX, March 1, 2003.

Victim Impact Panel, Sheri Sikes, 11<sup>th</sup> Annual Conference on the Treatment and Supervision of the Adult Sex Offender, Dallas, TX, March 1, 2003.

Ethics of Sex Offender Treatment Providers, Karen Lawson, Ph.D. and J. Ray Hays, Ph.D., 11<sup>th</sup> Annual Conference on the Treatment and Supervision of the Adult Sex Offender, Dallas, TX, March 1, 2003.

CONTINUING  
EDUCATION (Cont'd):

A Practical Guide to Risk Assessment, Mary Alice Conroy, Ph.D. (Texas Psychological Association), September 3, 2003.

Civil Commitment Outpatient Sexually Violent Predator Treatment Program, Council on Sex Offender Treatment (TDH), October 18-19- 2003.

Facing the Shadow: Dealing With Sexual Extremes, Patrick Carnes, Ph.D., Sponsored by Houston Council on Alcohol and Drug Abuse, October 23, 2003.

The Recovery Zone, Patrick Carnes, Ph.D., Sponsored by Houston Council on Alcohol and Drug Abuse, October 24, 2003.

31<sup>st</sup> Annual Conference, Texas Association of Marriage and Family Therapy, Houston, TX, January 15, 2004.

Solutions: Family Therapy and the Sexually Abusive Child, Dawn Lawless, LMSW-ACP & Michelle Wolf, MA, January 16, 2004.

Infidelity: A Systematic and Intrapsychic Perspective, Andrew Gol, Ph.D., Merle Holland, Ed.D., Robert Hochschild, Ph.D., Sarah Pllock, Ph.D. Margaret Sheely, MSW, Lec Winderman, Ph.D., January 16, 2004.

Childhood Relationships: How Family and Community Create the Early Experiences that Shape Child and Culture, Bruce Perry, M.D., Ph.D., January 16, 2004.

CONTINUING  
EDUCATION (Cont'd):

Our National Policies of Child Carelessness, Eileen Lindner, Ph.D., January 16, 2004.

Level I Clinician/Technician Training: Using the Monarch 21 PPG System. Behavioral Technology, Inc., Peter Byrne, Ph.D., February 11-12, 2004.

Level II Clinician Training: The Monarch 21 System and Plethysmography. Behavioral Technology, Inc. Peter Byrne, Ph.D., February 13-14, 2004.

Treatment Strategies with the Adult Sex Offender Special Needs Client, Roberto Moreno, Ed.D., LPC, LMFT, CFC, RSOTP and Jane Bajaj, MA, 12<sup>th</sup> Annual Conference on the Management of the Adult Sex Offender, Galveston, Texas, March 7, 2004.

Expert Testimony and the Exchange of Confidential Information, Todd Jermstad, Legal Counsel, Bell County CSCD, 12<sup>th</sup> Annual Conference on the Management of the Adult Sex Offender, Galveston, Texas, March 7, 2004.

Using Restorative Justice Programs in the Treatment of Sex Offenders, Raven Kazen, Director of Victim Services, Texas Department of Criminal Justice, and 12<sup>th</sup> Annual Conference on the Management of the Adult Sex Offender, Galveston, Texas, and March 8, 2004.

Sex History and Polygraph Preparation, Scott Siegal, MA, LPC, RSOTP, 12<sup>th</sup> Annual Conference on the Management of the Adult Sex Offender, Galveston, Texas, March 8, 2004.

CONTINUING  
EDUCATION (Cont'd):

The Clinical Use of Plethysmography in the Treatment and Management of the Sexual Offender in the Community, Ezio Leite, LPC, RSOTP, Lawrin Dean, LPC, RSOTP, Sean Braun, LPC, RSOTP, 12<sup>th</sup> Annual Conference on the Management of the Adult Sex Offender. Galveston, Texas, March 8, 2004.

Ethical Delimnas, Vivian Lewis Heinc, LMSW-ACP, RSOTP, 12<sup>th</sup> Annual Conference on the Management of the Adult Sex Offender, Galveston, Texas, March 8, 2004.

Developmentally Delayed Sex Offenders, James Havens, 12<sup>th</sup> Annual Conference on the Management of the Adult Sex Offender, Galveston, Texas, March 9, 2004.

Counseling Couples: What Works and What Doesn't, Brenda Dozier, Ph.D., Cross Country University, October 21, 2004.

Civil Commitment Outpatient Sexually Violent Predator Treatment Program, Council on Sex Offender Treatment (TDH), December 6-5, 2004.

Understanding Obesity: Psychiatric Evaluation of the Bariatric Patient, Peter Gillman, Ph D, Houston, TX, January 20, 2005.

Assessment of Suspected Child Molesters, Matthew Ferrera, Ph. D., Austin, TX, February 20, 2005.

Addressing Intimacy Deficits in Sex Offenders, James Runnels, LPC, Austin, TX, February 20, 2005.

Criminal Sexuality, Michael Napier, BSF, Austin, TX, February 21, 2005.

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EDUCATION (Cont'd):

Assessing and Managing Sexual Compulsivity, Ezio Leite, LPC, Lawrin Dean, LPC, Sean Braun, LPC, Austin, TX, February 22, 2005.

Ethics, Lyles Arnold, LPC, Austin, TX, February 22, 2005.

13<sup>th</sup> Annual Conference on the Management of the Adult Sex Offenders, Council on Sex Offender Treatment, Austin, TX, February 20-22, 2005.  
Assessing and Treating Reactive Attachment Disorder, Rhonda Lettington, Houston, TX February 24, 2005.

Clinical and Forensic Use of the Hare Psychopathy Check list- Revised and Screening Version, Carl B. Gacono, PHD (Medical Education Services, Inc.) Dallas, Texas, September 22 & 23, 2005.

Treating Compulsive Sexual Behavior Cross Country Education (Paul Simpson, Ed.D.), Houston, TX February 17, 2006.

Critical Issues in Child Sexual Abuse Evaluations, Kathryn Kuehnle, Ph.D. (American Academy of Forensic Psychology), Houston, TX February 24, 2006.

Civil Commitment: Outpatient Sexually Violent Predator Texas Program (Texas Council on Sex Offender Treatment), June 11, 2006, Austin, TX.

Urological Assessment of Male Sexual Dysfunction, American Association of Sex Educators, Counselors and Therapists, February 11, 2007.

15<sup>th</sup> Annual Conference on the Management of Adults and Juveniles with Sexual Behavior Problems, Austin, TX, February 18-20, 2007.

CONTINUING  
EDUCATION (Cont'd):

SVP Treatment, Lisa Worry (Council on Sex Offender Treatment): Austin, TX, February 18, 2007.

Completing Sex Offender Treatment: Leite, Ezio, Ph.D. ; Dean Lawrin, LPC, LSOTP; Braun, Sean, LPC, LSOTP (Council on Sex Offender Treatment), February 18, 2007.

Juveniles with Sexual Behavior Problems, Becker, Judith, Ph.D. Austin, TX, February 19, 2007.

Family Systems Issues in Treating of Managing the Adult Male Sex Offender, Nancy Steel, Ph. D., Austin, TX, February 19, 2007.

Conceptual and Empirical Developments in Adult Sex Offender Research and Practice, Seto, Michael, Ph.D., Austin, TX, February 20, 2007.

Ethics: Complaint Proofing Your Practice: Matthew Ferrara, Ph. D., Dalrymple, Kendra, J.D., Austin, TX, February 20, 2007.

Domestic Violence and Substance Abuse Assessment, Program Services, March 08, 2007.

Rorschach Training Program #RT 07102, a Program Focusing On the Fundamentals of Administration, Scoring and Interpretation of the Rorschach Test, Rorschach Training Programs (Barry Ritzler, Ph.D. and Allyson Harrison, Ph.D.), Toronto, Ontario, Canada, May 9-13, 2007.

Rorschach and MMPI-2 Integration, Roger Greene, Ph.D. and Phillip Erdberg, Ph.D. (Rorschach Training Programs), Newark, New Jersey, October 5-7, 2007

CONTINUING  
EDUCATION (Cont'd):

Use of Violence In Sexually Aggressive Acts: Etiology, Assessment and Treatment Implications for Juvenile and Adult Offenders, Andrea Teten, Ph.D.; 16<sup>th</sup> Annual Conference of Adults and Juveniles with Sexual Behavior Problems, February 10, 2008, Galveston, TX.

Evaluating Sexual Interest in Children and Adolescents, Jack Butler, Ph.D.; 16<sup>th</sup> Annual Conference on the Management of Adults and Juveniles with Sexual Behavior Problems, February 10, 2008, Galveston, TX.

Deaf and Developmentally Delayed Sex Offenders: Assessment, Supervision and Treatment, William Schmidt, Ph. D.; 16<sup>th</sup> Annual Conference on the Management of Adults and Juveniles with Sexual Behavior Problems, February 11, 2008, Galveston, TX.

Sexual Offenses and Developmentally Delayed Individuals, Jorge Carrillo, Ph.D.; 16<sup>th</sup> Annual Conference on the Management of Adults and Juveniles with Sexual Behavior Problems, February 11, 2008, Galveston, TX.

Professional Ethics: The Do's and Don'ts, David Richards and Lyles Arnold, LPC, 16<sup>th</sup> Annual Conference on the Management of Adults and Juveniles with Sexual Behavior Problems, February 12, 2008, Galveston, TX.

Asperger's Disorder and Autism: Advances in Understanding and Interventions, Celine Saulnier, Ph.D. (New England Educational Institute), Houston, TX, April 15, 2008.

CONTINUING  
EDUCATION (Cont'd):

Civil Commitment: Outpatient Sexually Violent Predator Treatment Program, Council on Sex Offender Treatment, Austin, Texas, April 25-26, 2008

Criminal Justice and Substance Abuse Programming, Kevin Knight, Ph.D. (35<sup>th</sup> Annual Conference on Addiction Studies), Houston, TX, October 3, 2008.

The X's and O's of Alternative Sentencing, Mary Covington, BBA (35<sup>th</sup> Annual Conference on Addiction Studies), Houston, TX, October 3, 2008.

The Jason Foundation: Suicide Awareness/Prevention Pgm, Dong Chan, MS, LPC-J, CART (35<sup>th</sup> Annual Conference on Addiction Studies), Houston, TX, October 3, 2008.

HIV and Aging, Octavio Vallejo, MD, MPH (35<sup>th</sup> Annual Conference on Addiction Studies), Houston, TX, October 3, 2008.

Strengthening Families and Communities, Karol Krumfer, Ph.D. (35<sup>th</sup> Annual Conference on Addiction Studies), Houston, TX, October 4, 2008.

Family Addiction Education, Robin Hesse, LCDC, CAC, ICADC (35<sup>th</sup> Annual Conference on Addiction Studies), Houston, TX, October, 4, 2008.

Don't Let HIV Get You Down, M. Lynn Selzer (35<sup>th</sup> Annual Conference on Addiction Studies), Houston, TX, October 4, 2008.

Special Sports Panel Discussion, Jay Parker, Moderator (35<sup>th</sup> Annual Conference on Addiction Studies), Houston, TX, October 4, 2008.

CONTINUING  
EDUCATION (Cont'd):

Motivational Interviewing, James Krebs, MS, LCDC, AAC, CSC (35<sup>th</sup> Annual Conference on Addiction Studies), Houston, TX, October 5, 2008.

Treatment Strategies for the Eating disordered Client, (35<sup>th</sup> Annual Conference on Addiction Studies), Houston, TX, October 5, 2008.

Rorschach Assessment of Children and Adolescents, Erdberg, Philip (Rorschach Training Programs), October 10 – 12, 2008.

Autism Spectrum Disorders. Deborah Fein, Ph.D. (Houston Neuropsychological Society), October 18, 2008.

Sex Addiction. Viewing Child Pornography, Making a Diagnosis of Pedophilia: Criteria. Indications and Problems. Barbara Levinson, Ph.D. (American Association of Sex Educators, Counselors and Therapists), October 26, 2008.

Effectively Working with Juveniles with Sexual Behavior Problems, Robert Hart, LPC (17<sup>th</sup> Annual Conference of Adults and Juveniles with Sexual Behavior Problems), March 8, 2009.

Introduction to the Use of Motivational Interviewing with People Who Have Sexually Abused, Marilyn Ross, (17<sup>th</sup> Annual Conference of Adults and Juveniles with Sexual Behavior Problems), March 8, 2009.

Development, Validity and Reliability of the Juvenile Sex Offender Recidivism Risk Assessment Tool-II (JSORRAT-II), Douglas Epperson, (17<sup>th</sup> Annual Conference of Adults and Juveniles with Sexual Behavior Problems), March 9, 2009.

CONTINUING  
EDUCATION (Cont'd):

The Basics of EMDR and It's Application to Sex Offender Treatment, Jordan Shafer, LPC, LSOTP (17<sup>th</sup> Annual Conference of Adults and Juveniles with Sexual Behavior Problems), March 9, 2009.

Get Ready, He's Coming Home: Reunification, Dan Powers, LCSW, LSOTP (17<sup>th</sup> Annual Conference of Adults and Juveniles with Sexual Behavior Problems), March 9, 2009.

Courtroom Testimony, Hank Roubicek, Ph.D. (17<sup>th</sup> Annual Conference of Adults and Juveniles with Sexual Behavior Problems), March 10, 2009.

Ethical Issues, Liles Arnold, LPC, LSOTP; Aaron Pierce, Ph.D., LSOTP (17<sup>th</sup> Annual Conference of Adults and Juveniles with Sexual Behavior Problems), March 10, 2009.

Performance Validity and Test Validity in Neuropsychology: From Malingering to the Ability Focused Neuropsychological Battery, Glenn Larrabee, Ph. D. (17<sup>th</sup> Annual Symposium of the Houston Neuropsychological Society), Houston, TX, October 17, 2009.

Treatment of the Developmentally Delayed Sex Offender, James Haaven (Outpatient Sexually Violent Predator Treatment Program, Council on Sex Offender Treatment), Austin, TX, November 6-7, 2009.

Understanding, Assessing and Managing Dementia, Steven Rubin, MD (Health Education Network), Houston, TX, November 13, 2009.

Ethical Issues, Emily Laubach, Ph.D., Leadership Seminars), Houston, TX, February 4, 2010.

Civil Commitment Contractor Training, Council on Sex Offender Treatment, Austin, TX, August 20-22, 2010.

CONTINUING  
EDUCATION (Cont'd):

An Ounce of Prevention: Mental Health Ethics and the Law, Michael Flynn, JD, PhD (Cross Country Education), Houston, TX, April 8, 2011.

SASSI Clinical Interpretation: David Helton, LCDC, Houston, TX, August 19, 2011.

Advanced Issues in Psychological Fitness-for-Duty Evaluations: (American Academy of Forensic Psychology) David Corey, Ph.D., ABPP, Boston, MA, September 8, 2011.

Ethical Issues in Providing Testimony on Risk Assessment: Mary Alice Conroy, Ph.D. (Texas Psychological Association), Houston, TX, September 23, 2011.

Violence Risk Assessment: Mary Alice Conroy, Ph.D. (Texas Psychological Association), Houston, TX, September 23, 2011.

Civil Commitment Training: Lisa Worry (Office of Violent Sex Offender Management), Fort Worth, TX, December 3, 2011.

What Works and What Doesn't Work in Adult Sex Offender Treatment: Robert McGrath, Ph.D. (20<sup>th</sup> Annual Conference on the Management of Adults and Juveniles with Sexual Behavior Problems), Galveston, TX, March 4, 2012.

Technology and the Explosion of Domestic Minor Sex Trafficking: Deena Graves, ABC (20<sup>th</sup> Annual Conference on the Management of Adults and Juveniles with Sexual Behavior Problems), Galveston, TX, March 4, 2012.

Youth with Illegal Sexual Behaviors: A Developmental Approach-Juveniles Are Not Adults: Sue Rightland, Ph.D. (20<sup>th</sup> Annual Conference on the Management of Adults and Juveniles with Sexual Behavior Problems), March 5, 2012.

CONTINUING  
EDUCATION (Cont'd):

Testifying as an Expert in Sex Offense Trials: Matthew Ferrara, Ph.D., Robert Cramer, Ph.D., Amy Wevodau, M.A. (20<sup>th</sup> Annual Conference on the Management of Adults and Juveniles with Sexual Behavior Problems), March 5, 2012.

Fundamentals of Forensic Assessment, David Shapiro, Ph.D., July 13, 2012.

New Developments in Ethics and the Law, David Shapiro, Ph.D., August 24, 2012.

Evaluation of Sex Offenders, Phillip Witt, Ph.D. (American Academy of Forensic Psychology, San Francisco, CA), September 9, 2012.

Child Sexual Abuse Interview Protocol (CSAIP) For Use in Forensic Videotaped Interviews, Monit Cheung, Ph.D., LCSW and Jacquelynn Duron, LCSW, February 28, 2013.

Rorschach-Performance Assessment System (R-PAS): Introduction and Case Illustration, Donald Viglione, Ph.D. (DePelchin Children's Center), Houston, TX, June 28-29, 2013.

Outpatient Sexually Violent Predator Treatment Program Training, Matthew Ferrara, Ph.D., Allison Taylor (Office of Violent Sex Offender Management), Austin, TX, August 23-24, 2013.

Using the DSM-5 for Revolutionizing Diagnosis and Treatment (Thomas A. Smith, P.D., LMHC, NCP, FAPA, BCCP, CMI Education Institute), Houston, TX, November 8, 2013.

Dynamic Risk Supervision Protocol (Static/Stable/Acute), (Shelley Graham, Ph.D., LPC, LSOTP, Tx Association for Treatment of Sexual Abusers), Austin, TX, May 2-3, 2014.

CONTINUING  
EDUCATION (Cont'd):

Without Conscience: Psychopathy and its Implications for Criminal Justice and Psychology, Texas A&M University, Robert Hare, Ph.D., Matt Logan, Ph.D., Mary Ellen O'Toole, Ph.D.), Austin, TX, May 13-14, 2014.

Working with Arab and Middle Eastern Populations: Cultural and Clinical Considerations, TZK Seminars, June 7, 2014.

Mild Cognitive Impairment: A Concept in Need of More Input from Neuropsychology, Mark Bondi, Ph.D., ABPP (12th Annual Conference of the American Association of Clinical Neuropsychology, New York, New York), June 26, 2014.

Forensic Neuropsychological Assessment with the WAIS-IV/WMS-IV/ACS, Scott Millis, Ph.D., ABPP (12th Annual Conference of the American Association of Clinical Neuropsychology, New York, New York), June 26, 2014.

Neuropsychologist Experts and Neurolaw: Cases, Controversies and New Admissibility Challenges, Paul Kaufmann, J.D., Ph.D., ABPP (12th Annual Conference of the American Association of Clinical Neuropsychology, New York, New York), June 27, 2014.

Update on the Frontotemporal Syndromes: Lessons for Neuropsychology, Joel Kramer, Psy.D., ABPP(12th Annual Conference of the American Association of Clinical Neuropsychology, New York, New York), June 28, 2014.

Restoring Life After Sexual Trauma, Melissa Bradley-Ball, MS, NCC, BCETS, FAAETS (Cross Country Education), Houston, TX, July 9, 2014.

Hot Topics in Ethics and Risk Management in Psychological Practice, Jeffrey Younggren, Ph.D., Eric Harris, Ed.D., Joe Scropo, Ph.D., Daniel Taube, J.D., Ph.D. (The Trust), August 6, 2014.

CONTINUING  
EDUCATION (Cont'd):

Risk Matrix 2000, David Thornton, Ph.D., Austin, TX, August 15, 2014.

Advances in Clinical Psychiatry 2014: Addictive Behavior (Gambling, Food, Sex, Internet), Baylor College of Medicine and The Menninger Foundation, Houston, TX, October 10, 2014.

Understanding and Treating the Cybersexually Addicted (Webinar), Charles Zeitler, Psy. D. (TZK Seminars), December 6, 2014.

Star Wars and Addiction Medicine: A Meaningful Day of Learning on the Future of Addiction Treatment and Recovery, Texas Society of Addiction Medicine and The Right Step, February 21, 2015.

Hare Psychopathy Checklist-Revised (PCL-R) Training Program. Robert Hare, Ph.D., Matt Logan, Ph.D.), Austin, TX, May 5-6, 2015.

Without Conscience: Psychopathy and Its Implications for Criminal Justice and Mental Health. Robert Hare, Ph.D., Matt Logan, Ph.D., Mary Ellen O'Toole, Ph.D., Michael Woodworth, Ph.D., Stephen Porter, Ph.D., Austin, TX, May 7-8, 2015.

A Manualized Cognitive-Behavioral Therapy Group for Diverse Addictive Behaviors. Greg Neimeyer, Ph.D., APA Office of Continuing Education, June 20, 2015.

2015 Autism Identification and Follow-Up Training, Amerigroup, 10-22-15.

Advances in Clinical Psychiatry 2015: Impairments in Cognition. Baylor College of Medicine and The Menningerr Foundation, Houston, TX., October 23, 2015.

Capacity for Justice Forensic Evaluation 2015, Texas Psychological Asso., October 29, 2015.

CONTINUING  
EDUCATION (Cont'd):

Sex Offenders' Risk Assessment: A Case Law Review, Jay Singh, Ph.D. (Global Institute of Forensic Research), December 3, 2015.

Evaluation of Competence to Stand Trial, Candyce Shields, Ph.D., ABPP (American Academy of Forensic Psychology), New Orleans, LA., February 27, 2016.

Evidence-Based Evaluations of Criminal Responsibility, Terry Kukor, Ph.D., ABPP (American Academy of Forensic Psychology), New Orleans, LA., February 28, 2016.

The Offending Narrative: How Sex Offenders Think and How They Get into the Minds of Victims, Anna Salter, Ph.D. (24<sup>th</sup> Annual Conference on the Management of Adult Sex Offenders and Juveniles Who Commit Sexual Offenses), March 6, 2016, San Antonio, TX.

An Overview: Treatment Standards, Rules, Changes, Licensing Issues and Ethics, Aaron Pierce, Ph.D., Celeste Lunceford, M.S., LPC-S and Ronnie Fanning, CSCD (24<sup>th</sup> Annual Conference on the Management of Adult Sex Offenders and Juveniles Who Commit Sexual Offenses), March 6, 2016, San Antonio, TX.

Interviewing Victims of Child Sexual Abuse: Review of Coaching and Suggestibility Research, Anna Salter, Ph.D. (24<sup>th</sup> Annual Conference on the Management of Adult Sex Offenders and Juveniles Who Commit Sexual Offenses), March 6, 2016, San Antonio, TX.

Understanding Autism Spectrum Disorder and Neurodevelopmental Disorders in the DSM 5, Greg Neimeyer, Ph.D., Office of Continuing Education in Psychology (APA), May 9, 2016.

CONTINUING  
EDUCATION (Cont'd):

Case Law: Competency to Stand Trial and Criminal Responsibility, Robert Cochrane, Ph.D., ABPP (American Academy of Forensic Psychology), Scottsdale, AZ., May 19, 2016.

What We Know About Paraphilic Disorders, Timothy Foley, Ph.D. (TZK Seminars), May 20, 2016.

Resolving Sexual Trauma, Heather Reynolds, MA, LPC (Institute for Rapid Resolution Therapy), May 21, 2016.

Emotional and Cultural Competence In the Trauma-Aware Therapist, Laura Brown, Ph.D. ABPP, July 15, 2016

Level of Service Inventory-Revised (LSI-R) Certified Training, Global Institute of Forensic Research (Ralph Fretz, Ph.D.), September 13, 2016.

Update on Neuropsychological Validity Testing, National Academy of Neuropsychology (Patrick Armistead-Jehle, Ph.D., ABPP-CN), September 14, 2016.

Dementia: Behavioral Health Assessments and Interventions for Practitioners, (Cross Country Education), James Beauregard, Ph.D., October 22, 2016.

Executive Dysfunction in Brain Disorders, Elkhonon Goldberg, Ph.D., ABPP (Luria Nebraska Institute), November 2, 2016.

Inside the Mind of the Predator and Psychopath, Matthew Logan, Ph.D., RCMP, (25<sup>th</sup> Annual Conference on the Management of Adult Sex Offenders and Juveniles Who Commit Sexual Offenses), San Marcos, TX, February 19, 2017.

Extracting Information: Interviewing 201, Matthew Logan, Ph.D., RCMP, (25<sup>th</sup> Annual Conference on the Management of Adult Sex Offenders and Juveniles Who Commit Sexual Offenses), San

Marcos, TX, February 19, 2017.

How to Testify, Matthew Ferrara, Ph.D., LSOTP (25<sup>th</sup> Annual Conference on the Management of Adult Sex Offenders and Juveniles Who Commit Sexual Offenses), San Marcos, TX, February 19, 2017.

Sex Offender Laws and Policies: The Road to Reform, Mary Sue Molnar, Texas Voices for Reason and Justice, (25<sup>th</sup> Annual Conference on the Management of Adult Sex Offenders and Juveniles Who Commit Sexual Offenses)., San Marcos, TX, February 20, 2017.

Treating Trauma in the Sex Offender Population, Bridget Kennedy, MA, LPC, LSOTP, (25<sup>th</sup> Annual Conference on the Management of Adult Sex Offenders and Juveniles Who Commit Sexual Offenses)., San Marcos, TX, February 20, 2017.

Static 99 Risk Tools: Revisions and Updates, Shelley Graham, Ph.D., LPC-S, LSOTP-S (25<sup>th</sup> Annual Conference on the Management of Adult Sex Offenders and Juveniles Who Commit Sexual Offenses), San Marcos, TX, February 20, 2017.

Ethical Challenges and Trying to Please Everyone, Dan Power, ACSW, LCSW, LSOTP, (25<sup>th</sup> Annual Conference on the Management of Adult Sex Offenders and Juveniles Who Commit Sexual Offenses), San Marcos, TX, February 21, 2017.

Screening, Brief Intervention and Referral for Treatment (SBIRT) for Substance Use Disorders and Addictions, Greg Neimeyer, PhD (American Psychological Association), February 24, 2017.

Understanding People with Substance Use Disorders and Addictions, Jennifer Read, Ph.D. (American Psychological Association), March 3, 2017.

Evidence Based Clinical Practice Guidelines for the Management of Substance Use Disorder, David Kivlahan, Ph.D. (American Psychological

Association), March 10, 2017.

Treatment of Substance Use Disorders in the Real World, Jessica Peirce, Ph.D. (American Psychological Association), March 17, 2017.

Kenneth Sher, Ph.D. Overview of Substance Use Disorders and Addictions, (American Psychological Associations), April 14, 2017.

Successfully Implementing Risk Needs Responsivity Principles in Your Treatment Program, Sandy Jung, Ph.D. (Global Institute of Forensic Research), April 19, 2017.

Post-Conviction Sex Offender Polygraph Tests, Jay Holden; Rick Holden, MA, LPC (Global Institute of Forensic Research), May 24, 2017.

Clinical Work with Older Adults, Heather M. Hartman-Hall, Ph.D. (TZK Seminars), July 12, 2017.

2016 Static-99R Booster Training, Leslie M. Helmus, Ph.D. (Global Institute of Forensic Research), August 26, 2017.

Sex Offender Treatment Intervention and Progress Scale Training, Bob McGrath (Global Institute of Forensic Research), September 20, 2017.

Civil Capacities in Neuropsychological Assessment, Freeman Chakara, Psy.D. (National Academy of Neuropsychology), December 6, 2017.

Suicide: Detection, Clinical Intervention, and Risk Management, David Jobe, Psy.D., ABPP, (National Register of Health Service Providers), December 7, 2017.

SIRS-2 On-Demand Training, Richard Rogers, Ph.D., ABPP, Global Institute for Forensic Research), March 16, 2018.

Complying with Subpoenas and Court Orders While Minimizing Your Risk, Amanda D. Zelechowski, JD,

PhD, ABPP (National Register), June 6, 2016.

Frontotemporal Dementia: The Behavioral Phenotype, Bruce Miller, M.D. (National Academy of Neuropsychology), June 13, 2018.

Cognitive Therapy and Compulsive Sexual Behaviors, William Brock, Ph.D. (Association for Addiction Professionals, NADAAC), July 11, 2018.

Risk Management in Psychology, David Shapiro, Ph.D. (TZK Seminars), July 13, 2018.

Working with Arab American Sexual Minorities: Considerations for Increasing Competence Home Study, Mary N. Iskarous, Psy.D., Eastern State Hospital (TZK Seminars), July 17, 2018.

Getting Reimbursed: Changes Coming to Testing Codes, Antonio Puente, Ph.D., Neil Plisken, Ph.D., Diane Pedulla, Ph.D. (APA Practice Organization), July 19, 2018.



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

**Open Enrollment  
For**

***THIRD PARTY EVALUATIONS FOR  
CIVILLY COMMITTED SEX OFFENDERS IN THE TEXAS STATE  
HOSPITAL SYSTEM***

**Procurement Number: HHS0001710**

**Enrollment Period Opens: June 25, 2018**

**Enrollment Period Closes: August 31, 2023**

**NIGP Class/Item Code: 952-21, 948-76, 918-76**

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*Texas Civil Commitment Office*  
**THIRD PARTY EVALUATIONS FOR  
CIVILLY COMMITTED SEX OFFENDERS IN THE TEXAS STATE  
HOSPITAL SYSTEM**

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## 1. GENERAL INFORMATION

### 1.1. Scope

The State of Texas, by and through the Texas Civil Commitment Office (TCCO) with the administrative support of Texas Health and Human Services Commission (HHSC), seeks *to provide third party evaluations for civilly committed sex offenders in the Texas State Hospital System* in accordance with the specifications contained in this open enrollment.

### 1.2. Point of Contact

The Point of Contact for inquiries concerning this open enrollment is:

Tiffany Maybank  
TCCO Special Projects Coordinator  
Phone: 512-341-4421  
Fax: 512-341-4645  
Email address: [Tiffany.Maybank@tcco.texas.gov](mailto:Tiffany.Maybank@tcco.texas.gov)

Applicants must direct all procurement communications and questions relating to this open enrollment to the Point of Contact named above.

### 1.3. Procurement Schedule

All dates are subject to change at HHSC's discretion. Applications must be received by the enrollment closing date provided in the Procurement Schedule below. Late applications will be deemed non-responsive and will not be considered.

Procurement Schedule	
Open Enrollment Period Opens	06/22/2018
Open Enrollment Period Closes	08/31/2023
Anticipated Contract Start Date	<i>Upon Contract Execution</i>

### 1.4. Background

#### 1.4.1. Overview of the Texas Civil Commitment Office (TCCO) and Health and Human Services Commission (HHSC)

The TCCO is an independent state agency responsible for providing supervision and treatment to sex offenders that have been civilly committed pursuant to Chapter 841, of the Texas Health and Safety Code. TCCO is administratively supported by HHSC. Since 1991, the HHSC has overseen

and coordinated the planning and delivery of health and human service programs in Texas. HHSC is established in accordance with Texas Government Code Chapter 531 and is responsible for the oversight of all Texas health and human service agencies (HHS Agencies). HHSC's chief executive officer is Charles Smith, Executive Commissioner of Health and Human Services.

As a result of the consolidation pursuant to the 78th Texas Legislature, Regular Session (2003), House Bill 2292, some of the contracting and procurement activities for the HHS Agencies have been assigned to the Procurement and Contracting Services (PCS) Division of HHSC. As such, PCS will administer the initial stages of the procurement process, including enrollment announcement and publication.

Senate Bill 613 passed during the 85th Legislative Session clarifies Section 841.0835 of the Health and Safety Code to specifically require HHSC to provide inpatient mental health care to Sexually Violent Predator (SVP) Clients whose mental illness prevents them from effectively participating in the TCCO sex offender treatment program.

## **1.5. Eligible Applicants**

The Texas Civil Commitment Office (TCCO) seeks qualified vendors that will conduct comprehensive third party evaluations to determine whether Sexually Violent Predator (SVP) Client's mental illness has improved such that the SVP Client is able to effectively participate in sex offender treatment. SVP Clients are sex offenders who have been civilly committed pursuant to Title 11, Health and Safety Code, Chapter 841. SVP Clients have been found to be a repeat sexually violent predator suffering from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence. Pursuant to Section 841.0835 of the Health and Safety Code, HHSC is required to provide inpatient mental health treatment to SVP Clients whose mental illness prevents them from effectively participating in the TCCO sex offender treatment program. TCCO is interested in awarding multiple contracts to well-qualified Contractors for the provision of SVP Client third party evaluations to determine whether the SVP Client's mental illness prevents the SVP Client from effectively participating in the TCCO sex offender treatment program.

The purpose of the third party evaluation is to determine whether the SVP Client's mental illness has improved such that the SVP Client is now able to effectively participate in sex offender treatment programming utilizing the admission criteria as set forth in Section II.A.1-4 of the TCCO Policy 4.3 "Inpatient Treatment for Civilly Committed Sex Offenders Who Are Unable to Effectively Participate in the Sex Offender Treatment Program."

Eligible applicants include individuals with a primary mental health or medical license that are also licensed by the Council on Sex Offender Treatment (CSOT) as a Licensed Sex Offender Treatment Provider - Supervisor (LSOTP-S) or Licensed Sex Offender Treatment Provider (LSOTP) who currently provide sex offender treatment and have a minimum of ten (10) years' experience. Applicants with experience working with SVP Clients and in conducting sex offender clinical evaluations are preferred.

**1.5.1.** Applicants must have a primary mental health or medical license and must also be licensed by CSOT as a LSOTP-S or LSOTP as described in the paragraph above, under state statutes and must have the authority and be in good standing to do business in Texas and to conduct the activities described in the Open Enrollment.

**1.5.2.** Applicant must have a Texas address.

**1.5.3.** The Applicant shall conduct the evaluation at the hospital or inpatient mental health facility where the SVP Client is receiving treatment. The Applicant must be willing to travel within the State of Texas to conduct third party evaluation services.

**1.5.4.** Applicant must be free to participate in federal contracts with the System of Award Management (SAM). Applicant is ineligible to apply for funds under this Open Enrollment if currently debarred, suspended, or otherwise excluded or ineligible for participation in Federal or State assistance programs. Search the federal excluded list at the following website: <https://www.sam.gov/portal/public/SAM>

**1.5.5.** Applicant must be an entity/individual free to participate in state contracts and not be debarred by the Texas Comptroller of Public Accounts: [http://comptroller.texas.gov/procurement/prog/vendor\\_performance/debarred/](http://comptroller.texas.gov/procurement/prog/vendor_performance/debarred/)

**1.5.6.** Applicant must be listed on the following list if they are Professional Corporations, Professional Associations, Texas Corporations, and/or Texas Limited Partnership Companies. Secretary of State (SOS) at: <https://direct.sos.state.tx.us/acct/acct-login.asp>

**1.5.7.** The Applicant must provide a copy of each evaluator's current primary mental health or medical license and LSOTP-S or LSOTP license. Both the primary mental health or medical license and LSOTP-S or LSOTP license shall remain in effect through the contract period and any renewal period.

**1.5.8.** Applicants must provide a copy of a current resume reflecting experience conducting sex offender treatment to include number of sex offender clients served in the most recent calendar year and average number of sex offender clients served per year. Additionally, Applicant must detail any experience working with SVP Clients.

**1.5.9.** Applicant must maintain professional malpractice insurance in accordance with the current standards established by the provider's applicable professional licensing board. Professional malpractice insurance must be maintained by all evaluators during the term of this contract; refer to Form F. The Applicant shall disclose to the TCCO the amount of professional malpractice insurance the evaluator maintains and the insurance company with whom they carry the policy. The Applicant shall submit to TCCO a copy of the declaration page of each evaluator's "Professional Malpractice Insurance" policy or "Errors and Omissions Insurance" policy.

The Applicant must submit to the TCCO changes to the policy of professional malpractice insurance including, but not limited to, insurance renewal information or policy expiration or termination information and the reasons for such expiration or termination of the policy.

Except as expressly provided in section 1.5 above, applicant is not considered eligible to apply unless the applicant meets the eligibility requirements to the stated criteria listed above at the time the enrollment application is submitted. Applicant must continue to meet these conditions throughout the selection and funding process. TCCO expressly reserves the right to review and analyze the documentation submitted and to request additional documentation, and determine the applicant's eligibility to compete for the contract award.

## **1.6. Strategic Elements**

### **1.6.1. Contract Type and Term**

The TCCO intends to award multiple contracts as a result of this Open Enrollment. The TCCO anticipates that the initial term of any contract resulting from this Open Enrollment shall be from the date of execution through August 31, 2023.

Any award is contingent upon availability of funds and approval of the TCCO.

### **1.6.2. Contract Elements**

The term "Contract" means the Contract awarded as a result of this enrollment and all exhibits thereto. The term "Contractor" means a successful applicant.

At a minimum, the following documents will be incorporated into the Contract: this Open Enrollment and all attachments and exhibits; any modifications, addendum or amendments issued in conjunction with this Open Enrollment; TCCO Inpatient Treatment for Civilly Committed Sex Offenders Who Are Unable to Effectively Participate in the Sex Offender Treatment Program outlined in Appendix B; the Data Use Agreement outlined in [Appendix C](#); TCCO Terms and Conditions outlined in [Appendix D](#); and the successful Applicant's application.

### **1.6.3 Data Use Agreement**

The Applicant must submit the Data Use Agreement with their Application to this open enrollment. By entering into a Contract, or purchase order with the TCCO as a result of this enrollment, the Applicant agrees to be bound by the terms of the Data Use Agreement attached as [Appendix C](#).

### **1.6.4. Right to Amend or Withdraw Open Enrollment**

The TCCO reserves the rights to alter, amend, or modify any provisions of this Open Enrollment or to withdraw this Open Enrollment at any time prior to the execution of a contract if it is in the best interest of TCCO and the State of Texas. The decision of TCCO is administratively final. Amendment or notice of withdrawal of the Open Enrollment will be posted to the HHS Enrollment Opportunities Page.

### **1.6.5 Authority to Bind the TCCO**

For the purposes of this Open Enrollment, the TCCO Board and Executive Director are the only individuals who may legally commit the TCCO to the expenditure of public funds under the contract. No costs chargeable to the proposed contract will be reimbursed before the contract is fully executed.

### **1.6.6 Exceptions**

Any exceptions to the requirements in the Open Enrollment will be specifically detailed in writing by the Contractor. The TCCO will accept or reject each proposed exception. The TCCO reserves the right to adjust the funding allocation to Contractors pursuant to the terms of the contract.

## **1.7. Amendments and Announcements Regarding this Open Enrollment**

HHSC will post all official communication regarding this open enrollment on the HHS Enrollment Opportunities web page (<https://apps.hhs.texas.gov/pcs/openenrollment.cfm>). HHSC reserves the right to revise the open enrollment at any time and to make unilateral amendments to correct grammar, organization and clerical errors. It is the responsibility of each Applicant to comply with any changes, amendments, or clarifications posted to the HHS Enrollment Opportunities page. Applicant must check the HHS Enrollment Opportunities page frequently for changes and notices of matters affecting this open enrollment.

Applicant's failure to periodically check the HHS Enrollment Opportunities page will in no way release the Applicant from "addenda or additional information" resulting in additional costs to meet the requirements of the open enrollment.

All questions and comments regarding this open enrollment should be sent to the TCCO Point of Contact identified in subsection 1.2. Questions must reference the appropriate page and section number. HHSC will post subsequent answers to questions to the HHS Enrollment Opportunities page as appropriate. HHSC reserves the right to amend answers prior to the open enrollment closing date.

Applicants should notify HHSC of any ambiguity, conflict, discrepancy, omission or other error in the open enrollment.

## **1.8. Delivery of Notices**

Any notice required or permitted under this announcement by one party to the other party must be in writing and correspond with the contact information noted in subsection 1.2 of this open enrollment. At all times, Applicant will maintain and monitor at least one active email address for the receipt of Application-related communications from TCCO. It is the Applicant's responsibility to monitor this email address for Application-related information.

## **2. STATEMENT OF WORK**

### **2.1. Scope of Work**

**2.1.1.** TCCO clients are sex offenders that have been civilly committed pursuant to the Texas Health and Safety Code, Title 11, Chapter 841. The clients have been adjudicated to be sexually violent predators (SVPs) that suffer from a behavioral abnormality, which makes it likely that the client would engage in repeated predatory acts of sexual violence. The clients have a history of at least two convictions for a sexually violent offense and have been released from prison to TCCO's supervision and treatment.

**2.1.2.** TCCO requires a qualified third party evaluator to conduct Third Party Evaluation Services, hereinafter referred to as Services, for civilly committed SVP Clients that have been determined to have a mental illness that prevents the SVP Client from understanding and internalizing the concepts of the sex offender treatment program utilized by the TCCO or the SVP Client is unable to effectively participate in treatment that would assist in the rehabilitation of the SVP Client's behavioral abnormality by working through the tiered treatment program utilized by the TCCO.

**2.1.3.** The purpose of the Third Party Evaluation is to determine whether the SVP Client has improved such that the SVP Client is now able to effectively participate in sex offender treatment programming utilizing the admission criteria as set forth in Section II.A.1-4 of the TCCO Policy 4.3 "Inpatient Treatment for Civilly Committed Sex Offenders Who Are Unable to Effectively Participate in the Sex Offender Treatment Program."

**2.1.4.** The Contractor shall maintain a working knowledge of the sex offender treatment program utilized by the TCCO.

**2.1.5.** The TCCO will refer SVP Clients to the Contractor for evaluation.

**2.1.6.** The Contractor shall maintain his/her own transportation, auto liability insurance, cellular telephone, and have Windows 7 or above operating system with desktop version of Microsoft Word and Excel and access to the Internet via Internet Explorer.

**2.1.7.** The Contractor shall conduct a review of the SVP Client's treatment history and psychiatric history, which may include a review of file material and discussion with the SVP Client's treatment team.

**2.1.8.** The Contractor shall conduct the evaluation at the hospital or inpatient mental health facility where the SVP Client is receiving treatment. The Contractor must be willing to travel within the State of Texas to conduct third party evaluation services.

**2.1.9.** The Contractor shall coordinate the date and time of the evaluation with designated TCCO staff.

**2.1.10.** The Contractor shall conduct a face-to-face evaluation of the SVP Client utilizing appropriate assessments and techniques to determine the SVP Client's ability to understand and internalize the concepts presented by the TCCO's sex offender treatment program and the SVP Client's ability to effectively participate in treatment to assist in the rehabilitation of the SVP Client's behavioral abnormality by working through the tiered treatment program.

**2.1.11.** The Contractor shall use at minimum the following methods of testing:

- Mini-Mental Status Exam, 2<sup>nd</sup> Edition (MMSE-2);
- Wechsler Adult Intelligence Scale, 4<sup>th</sup> Edition (WAIS-4) or Wechsler Abbreviated Scale of Intelligence, 2<sup>nd</sup> Edition (WASI-II);
- Wide Range Achievement Test, 4<sup>th</sup> Edition (WRAT-4);
- Rey Auditory-Verbal Learning Test;
- The Dot Counting Test or Test of Memory Malingering (TOMM);
- Paulhus Deception Scales (PDS);
- Minnesota Multiphasic Personality Inventory, 2<sup>nd</sup> Edition (MMPI-2); and
- Rorschach Psychodiagnostic Technique including inquiry (comprehensive system).

**2.1.12.** The Contractor shall submit a written report to the TCCO within thirty (30) days of the evaluation. The report shall be submitted electronically to the designated TCCO staff member. The report shall include, at a minimum:

- The SVP Client's name;
- State Identification (SID) number;
- Date of evaluation;
- Methods of testing;
- Analysis of test data;
- Relevant background history;
- Psychiatric history;
- Current psychiatric symptoms;
- Mental status examinations;
- Any diagnosis of mental illness deemed appropriate as per the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V);
- A determination of whether the SVP Client is able to effectively participate in sex offender treatment programming utilizing the definition pursuant to Section 841.0835 of the Texas Health and Safety Code and TCCO Policy 4.3;
- The evaluator's signature;
- Typed name of the evaluator; and
- The title of the evaluator.

**2.1.13.** In the event that an SVP Client refuses to participate in the evaluation, the Contractor shall submit a written report based upon review of file material, discussion with the SVP Client's treatment team, and any interactions that the Contractor had with the SVP Client.

**2.1.14.** The Contractor shall obey all municipal, county, state, and federal laws.

**2.1.15.** The Contractor shall not violate client's legal or civil rights.

**2.1.16.** The Contractor shall immediately notify the TCCO and/or a law enforcement agency, within the proper bounds of the law, whenever Vendor has a good faith belief that the life, safety, or property of any member of the public may be endangered.

**2.1.17.** The Contractor shall comply with the TCCO's policies and procedures.

**2.1.18.** The Contractor shall not engage in any activity which creates an actual conflict of interest or has the appearance of a conflict of interest or dual relationships with clients or family members of the client.

**2.1.19.** The Contractor shall permit entry at all times by the Office's authorized employees/agents and the Governor, members of the Legislature, and all other members of the Executive and Judicial departments of the State for inspections and any other official purpose.

**2.1.20.** Any re- evaluations require the approval of the TCCO prior to performing the service.

**2.1.21.** The Applicant shall maintain a working knowledge of the sex offender treatment program utilized by the TCCO.

## **2.2. Administrative Duties and Obligations**

**2.2.1.** The Contractor must provide the 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 must comply with TCCO policies, procedures, and regulations during the term of the contract. There will be additional policies/procedures/requirements upon award of a contract, which will be provided to Contractors during the contracting phase. The Contractor will be allowed time to review prior to signing the contract.

**2.2.2.** The Contractor shall have a working knowledge and understanding of the current statutes governing the sex offender civil commitment program.

**2.2.3.** The Contractor shall conduct the evaluation at the hospital or inpatient mental health facility where the SVP Client is receiving treatment. The Contractor must be willing to travel within the State of Texas to conduct third party evaluation services.

**2.2.4.** The Contractor shall review available mental health and sex offender treatment records on the TCCO automated case management system.

**2.2.5.** Contractor shall testify in court and administrative hearings as needed and shall respond immediately to all subpoenas. A copy of all subpoenas received regarding SVP Clients shall be forwarded via email to the TCCO General Counsel immediately upon receipt.

**2.2.6.** The Contractor shall maintain his/her own cellular telephone and have Windows 7 or above operating system with desktop version of Microsoft Word and Excel and access to the Internet via Internet Explorer.

**2.2.7.** The Contractor shall coordinate the date and time of the third party evaluation services with designated TCCO staff.

**2.2.8.** The Contractor shall meet criteria established by the Health and Human Services Regulatory Division pursuant to requirements set forth in the Texas Administrative Code, Title 22 Part 36 Chapter 810 Sub-Chapter A for Licensed Sex Offender Treatment Providers, Title 22 Part 36 Chapter 810 Sub-Chapter C Standards of Practice, Title 22 Part 36 Chapter 810 Sub-Chapter D Code of Professional Ethics, and certification shall remain in effect through the contract period and any renewal period. Upon renewal of either license, the Contractor shall provide a copy to TCCO.

### **2.3. Security of Records and Disclosure of Information**

**2.3.1.** The Contractor shall be responsible for maintaining accurate and complete records related to the Contractor's evaluation of the SVP Client. These records shall not be disclosed to any person other than authorized Office staff and the case management team.

**2.3.2.** The Contractor shall require that staff providing Services specified meet sufficient standards of integrity to ensure that:

**2.3.2.1.** The confidentiality of client records is not compromised.

**2.3.2.2.** Unauthorized access to client records is not allowed and no information is disclosed to any third party without written authorization from TCCO.

**2.3.3.** The Contractor shall not divulge or make known, in any manner to any person, any personal information concerning clients, except as may be necessary in the performance of the Contract. The Contractor shall ensure that all individuals who have access to or custody of records sign a statement containing the confidentiality requirements of this Contract.

**2.3.4.** The Contractor shall notify the TCCO immediately upon receipt of any legal process requiring disclosure of participant records. The Contractor shall provide TCCO notification and a copy of any subpoena served. Any release of client records shall be coordinated through TCCO.

**2.3.5.** The Contractor shall notify the TCCO immediately upon receipt of a subpoena to submit an affidavit and/or appear and provide testimony in any legal proceedings convened by a court of competent jurisdiction. The Contractor shall provide TCCO notification and a copy of any

subpoena served. Affidavits and/or Contractor court appearances shall be coordinated with TCCO. Failure to comply with notification and coordination requirements may result in non-payment of any services performed in response to any subpoena served.

## **2.4. Program Requirements**

Contractors are required to conduct Services in accordance with federal and state laws prohibiting discrimination. Guidance for adhering to non-discrimination requirements can be found on the Health and Human Services Commission (HHSC) Civil Rights Office website at: [http://www.hhsc.state.tx.us/about\\_hhsc/civil-rights/laws-policies.shtml](http://www.hhsc.state.tx.us/about_hhsc/civil-rights/laws-policies.shtml)

Upon request, a Contractor must provide the HHSC Civil Rights Office with copies of all the Contractor's civil rights policies and procedures. Contractors must notify HHSC's Civil Rights Office of any civil rights complaints received relating to performance under the contract no more than 10 calendar days after receipt of the complaint. Notice must be directed to:

HHSC Civil Rights Office  
701 W. 51st Street, Mail Code W206  
Austin, TX 78751  
Phone Toll Free (888) 388-6332  
Phone: (512) 438-4313  
TTY Toll Free (877) 432-7232  
Fax: (512) 438-5885

A Contractor must ensure that its policies do not have the effect of excluding or limiting the participation of persons in the Contractor's programs, benefits or activities on the basis of national origin, and 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.

## **2.5 Performance Measures**

The TCCO shall assess payment or service adjustments for failure to maintain acceptable compliance with the following performance standards.

<b>STANDARD</b>	<b>PAYMENT ADJUSTMENT</b>
The Contractor shall provide the third party evaluation report to the designated TCCO staff within 30 days of the evaluation.	Reports received between the 31st and 41st day – 10% reduction in payment per late report. Reports received after the 41st day - 25% reductions based on the reduced amount.

The Contractor shall maintain a current LSOTP-S/LSOTP license.	Fee of each exam performed without an LSOTP-S/LSOTP license and suspension of service until such license is renewed.
The Contractor shall maintain professional malpractice insurance.	Fee of each exam performed without insurance and suspension of service until such insurance is renewed.

Contractor's failure to meet the standard will result in a deduction to the Contractor payment. The TCCO will assess compliance with performance measures. In the event a standard is found to be non-compliant, a payment adjustment may be made to Contractor's billing. TCCO shall notify the Contractor in writing of any payment adjustments made and indicate the reason for the adjustment.

TCCO may request a corrective action plan to address numerous or repeat instances of non-compliance. TCCO may consider contract termination for numerous and ongoing instances of non-compliance.

## **2.6 Termination**

This Contract may be terminated by mutual agreement of both Parties. Either Party may terminate this Contract by giving the other Party ninety (90) days written notice of its intent to terminate. Written notice may be sent by any method, which provides verification of receipt, and the ninety (90) days will be calculated from the date of receipt. This Contract may be terminated for cause by either Party for breach or failure to perform an essential requirement of the Contract. Upon termination of all or part of this Contract, TCCO and the Contractor will be discharged from any further obligation created under the applicable terms of this Contract except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination.

**The remainder of this page is intentionally left blank.**

### **3. PAYMENT**

#### **3.1. Payment**

##### **3.1.1. Availability of Funds**

Contract awards resulting from this announcement are contingent upon the availability of state funds.

If funds for these Contracts become unavailable during any budget period, TCCO may immediately terminate or reduce the amount of the resulting Contract(s) at the discretion of TCCO. Contractor will have no right of action against TCCO if TCCO cannot perform its obligations under this Contract due to a lack of funding for any activities or functions outlined within the Scope and Statement of Work Sections of this open enrollment.

**3.1.1.1.** TCCO does not guarantee funding at any level and may increase or decrease funds at any time during the term of a Contract resulting from this open enrollment.

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

**3.1.1.3.** Contractor may not use funds received from TCCO to replace any other federal, state, or local source of funds awarded under any other contract.

##### **3.1.2. Contract Amount**

TCCO will pay for services in accordance with Form E. In consideration of the services required by this contract, TCCO hereby agrees to pay to Contractor a maximum fee not to exceed fifteen thousand dollars (\$15,000.00) per state fiscal year (September through August). TCCO does not guarantee any minimum number of clients referred for third party evaluation services or amount of compensation under this Contract.

### **3.1.3. Reimbursable Expenses**

TCCO shall compensate Contractor for authorized travel expenses, when traveling outside of their base county, at the state rates in effect at the time of travel and in accordance with the Texas Comptroller of Public Accounts guidelines at <https://fmx.cpa.state.tx.us/fmx/travel/index.php> and TCCO travel policies. Reimbursements for travel shall be per trip and not per SVP Client receiving services. The Contractor shall accurately document travel expenses.

### **3.2. Invoices**

The Contractor must submit a properly completed invoice and supporting documentation that meets the requirements of the TCCO and as set forth in the State Comptroller's Vendor Guide ([www.window.state.tx.us/procurement/pub/vendor\\_guide.pdf](http://www.window.state.tx.us/procurement/pub/vendor_guide.pdf)).

Invoices must be submitted to the TCCO within 60-days after the evaluation. The TCCO shall not pay an invoice if a report has not been completed, submitted and received. Payment will be made after all services are rendered, required reports have been received and accurate and complete invoices have been received.

Services performed by the Contractor that cannot be verified will be disallowed for reimbursement. Illegible or incomplete documentation, which cannot be verified, will be disallowed for reimbursement. Payment shall be made within thirty (30) days of receipt of a correct invoice for services satisfactorily provided to TCCO. Interest shall accrue in accordance with Texas Government Code §2251.025 on late payments.

Invoices must contain, at a minimum: the contract number, the Contractor name, address, telephone number and email, the client's name, the amount billed for the service, date of the third party evaluation. All invoices shall be sent to:

The Texas Civil Commitment Office  
4616 W. Howard Lane  
Building 2, Suite 350  
Austin, Texas 78728  
[billing@tcco.texas.gov](mailto:billing@tcco.texas.gov)

It is recommended that the Contractor receive payments via electronic funds transfer (EFT), also known as direct deposit. If the Contractor elects to be set up for Direct Deposit, a vendor direct deposit authorization form must be completed by the Contractor and be submitted to the following address:

The Texas Civil Commitment Office  
4616 W. Howard Lane  
Building 2, Suite 350  
Austin, Texas 78728

#### **4. HISTORICALLY UNDERUTILIZED BUSINESSES (HUB)**

This open enrollment does not require Applicants to complete a HUB Subcontracting Plan. For more information about the HUB program at HHSC, contact the HHSC HUB Coordinator at [HHSCHUB@hhsc.state.tx.us](mailto:HHSCHUB@hhsc.state.tx.us).

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## **5. INFORMATION AND SUBMISSION INSTRUCTIONS**

### **5.1 Open Enrollment Cancellation/Partial Award/Non-Award**

At its sole discretion, HHSC may cancel this open enrollment, make partial award, or no awards.

### **5.2 Right to Reject Applications or Portions of Applications**

At its sole discretion, HHSC may reject any and all responses or portions thereof.

### **5.3 Joint Applications**

HHSC will not consider joint or collaborative responses that require it to contract with more than one Applicant in a single contract.

### **5.4 Withdrawal of Applications**

Applicants have the right to withdraw their Application from consideration at any time prior to Contract award, by submitting a written request for withdrawal to the HHSC Point of Contact, as designated in subsection 1.2.

### **5.5 Costs Incurred**

Applicants understand that issuance of this open enrollment in no way constitutes a commitment by HHS or TCCO to award a Contract or to pay any costs incurred by an Applicant in the preparation of an Application in response to this open enrollment. HHS and TCCO are not liable for any costs incurred by an Applicant prior to issuance of, or entering into a formal agreement, Contract, or purchase order. Costs of developing applications, preparing for or participating in oral presentations and site visits, or any other similar expenses incurred by an Applicant are entirely the responsibility of the Applicant, and will not be reimbursed in any manner by the State of Texas.

### **5.6 Application Submission Instructions**

Applicant must submit all required documents as scanned versions (.pdf) to the PCS Bid Coordinator at [pcsbids@hhsc.state.tx.us](mailto:pcsbids@hhsc.state.tx.us) by the due date and time listed in the Procurement Schedule in section 1.3 of this open enrollment.

PCS will date and time-stamp all submissions when received. The clock in the PCS office is the official timepiece for determining compliance with the deadlines in this procurement. HHSC reserves the right to reject late submissions. It is the Applicant's responsibility to appropriately mark and deliver the Application to HHSC by the specified time and date. HHSC will not accept Applications by any other method or delivery (e.g., telephone, facsimile, hand delivery, courier, or mail).

Applicants must ensure there are no encryptions on the email, so as to prevent HHSC from opening the documents. The electronic Application submission must be organized as directed in this Open

Enrollment. If Applicant is having difficulty providing an electronic Application submission, contact the HHSC Point of Contact identified in subsection 1.2 of this Open Enrollment for hard copy submittal accommodations.

All Applications become the property of HHSC after submission. Submission of an Application does not execute a contract.

## **5.7 Organization of (Electronic or Paper) Submission of Application**

Applicant must organize its scanned and signed Application packets in the following order and format. Each E-mail submission of the Application packet must include the following listed documents below, and the documents must be in the following order, and numbered and labeled accordingly.

- FORM A: Face Page
- FORM B: Open Enrollment Application Checklist
- FORM C: Vendor Information Form
- FORM D: Copy of the current LSOTP-S/LSOTP License
- FORM E: Pricing
- FORM F: Copy of Professional Malpractice Insurance Policy or Errors and Omissions Insurance
- FORM G: Resume(s)
- APPENDIX A: General Provisions
- APPENDIX B: Inpatient Treatment for Civilly Committed Sex Offenders Who Are Unable to Effectively Participate in the Sex Offender Treatment Program
- APPENDIX C: Data Use Agreement
- APPENDIX D: TCCO Terms and Conditions

**5.7.1.** The subject line of the Email submission must include the following information:

- Name of the Applicant;
- Applicant's telephone number and Email address; and
- HHSC Procurement number of this Open Enrollment: HHS0001710

**5.7.2.** Applicant shall submit all documents required in this Open Enrollment. An Application must be complete to be considered. TCCO expressly reserves the right to review and analyze the documentation submitted and determine the Applicant's eligibility for the Open Enrollment. All enrollment Applications remain with TCCO and will not be returned to the Applicant.

**5.7.3** Applicant shall submit all documents required in this Open Enrollment. An Application must be complete to be considered. HHSC and TCCO expressly reserve the right to review and analyze the documentation submitted and determine the Applicant's eligibility for the Open Enrollment. All enrollment Applications remain with HHSC and TCCO and will not be returned to the Applicant.

**5.7.4.** Applications must contain original signatures on all forms requiring signatures. Please scan and make them part of email submittal. Electronic signatures will not be accepted.

**5.7.5.** A complete Application consists of responses to all required forms and information listed above.

**The remainder of this page is intentionally left blank.**

## **6. ELIGIBILITY DETERMINATION**

### **6.1 Initial Compliance Screening**

HHSC will perform an initial screening of all Applications received. Unsigned Applications and Applications that do not include all required forms and sections are subject to rejection without further evaluation.

If the Application passes the initial screening, the contract manager will contact the Applicant for further instructions or actions.

### **6.2 Unresponsive Applications**

Unless Applicant has taken action to withdraw the Application for this open enrollment, an Application will be considered unresponsive and will not be considered further when any of the following conditions occurs:

- 6.2.1.** The Applicant fails to meet major open enrollment specifications, including:
  - 6.2.1.1.** The Applicant fails to submit the required Application, supporting documentation, or forms.
  - 6.2.1.2.** The Applicant is not eligible under subsection 1.5 of this open enrollment.
  - 6.2.1.3.** Applicant does not accept the payment rate established in this open enrollment.
- 6.2.2.** The Application is not signed.
- 6.2.3.** The Applicant's response is not clearly legible. Typewritten is preferred.
- 6.2.4.** The Application is not received by the closing of the open enrollment period provided in subsection 1.3 of this open enrollment.

### **6.3 Corrections to Application**

Applicants have the right to amend their Application at any time prior to an unresponsive decision or Contract award decision by submitting a written amendment to the HHSC Point of Contact, as designated in subsection 1.2. HHSC may request modifications to the Application at any time.

### **6.4 Additional Information**

By submitting an Application, the Applicant grants HHSC the right to obtain information from any lawful source regarding the Applicant's, its directors', officers', and employees:

- 6.4.1.** Past business history, practices, and conduct;
- 6.4.2.** Ability to supply the goods and services; and

**6.4.3.** Ability to comply with Contract requirements.

By submitting an Application, an Applicant generally releases from liability and waives all claims against any party providing HHSC information about the Applicant. HHSC may take such information into consideration in screening or the validation of information on Applications or supporting documentation.

**6.5. Method of Allocation**

TCCO will utilize a rotation schedule to select Open Enrollment Licensed Sex Offender Treatment Provider - Supervisor (LSOTP-S) or Licensed Sex Offender Treatment Provider (LSOTP). A TCCO client identified as requiring a third party evaluation will be referred to an approved Open Enrollment third party evaluation services based on the following:

**6.5.1.** Geographic proximity to the client's residence

**6.5.2.** Contractor's availability

**6.5.3.** Contractor's last exam date with the client

**6.5.4.** Past Contractor performance

**6.6. Debriefing**

Any Applicant who is not awarded a Contract may request a debriefing by submitting a written request to the HHSC Point of Contact as provided in subsection 1.2 of this open enrollment. The debriefing provides information to the Applicant on the strengths and weaknesses of their Application.

**6.7. Protest Procedures**

The protest procedure for an Applicant, who is not awarded a Contract to protest an award or tentative award made by any HHS agency, is allowed for competitive Procurements. This Procurement is non-competitive and cannot be protested as provided in [Texas Administrative Code \(TAC\) Rule §391.403](#).

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## 7. GLOSSARY

TERM	DEFINITION
Appendix	Additional information and/or forms that are available in the back of this solicitation document.
Applicant	Any individual or entity that submits an application for enrollment pursuant to this open enrollment.
Application	An Application submitted by an Applicant in response to this Open Enrollment.
Behavioral Abnormality	A congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent that the person becomes a menace to the health and safety of another person.
Evaluation	Ongoing process through which the counselor collaborates with the client and others to gather and interpret information necessary for developing and revising a treatment plan and evaluating client progress toward achievement of goals identified in the treatment plan, resulting in comprehensive identification of the client's strengths, weaknesses, and problems/needs.
Case Manager	A person employed full-time or part-time with TCCO to perform duties related to the treatment and supervision of a person civilly committed pursuant to Title 11, Health and Safety Code, Chapter 841.
Client	Sexually violent predators (SVPs) that suffer from a behavioral abnormality which makes it likely that the client would engage in repeated predatory acts of sexual violence. The clients have a history of at least two convictions for a sexually violent offense.
Contingency Contract	Also called a "contract" in this Open Enrollment, a written agreement referring to promises or agreements for which the law establishes enforceable duties and remedies between a minimum of two parties. A TCCO contract is assembled using a core contract (base), one or more program attachments, and other required exhibits (general provisions, etc.).

TERM	DEFINITION
Contract	A promise or a set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. It is an Agreement between two or more parties creating obligations that are enforceable or otherwise recognizable by law. The term also encompasses the written document that describes the terms of the Agreement. For State Contracting purposes, it generally describes the terms of a purchase of goods or services from a vendor or service provider.
Contractor	Any Applicant who is awarded a contract pursuant to this open enrollment or who has an existing contract to provide third party evaluation services to civilly committed sex offenders.
Contract Term	The period of time during which the contract or program attachment will be effective from begin date to end, or renewal date. The contract term may or may not be the same as the budget period.
Days	Calendar days, unless otherwise specified.
Debarment	An exclusion from contracting or subcontracting with state agencies on the basis of cause set forth in Title 34, Texas Administrative Code Chapter 20, Subchapter C, §20.105 et seq.
Deliverables	Goods or services contracted for delivery or performance.
Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V)	The handbook used by health care professionals as the authoritative guide to the diagnosis of mental disorders. It contains descriptions, symptoms, and other criteria for diagnosing mental disorders.
Due Date	Established deadline for submission of a document or deliverable.
Effective Date	The date the contract term begins.
Fee For Service	Payment mechanism for services that are reimbursed on an agreed rate per unit of service.
Fiscal Year	The duration of the fiscal year (stated in the number of months the contract will reflect from begin date to end date of the term of the contract). Each renewal will have its own fiscal year. State fiscal year is from September 1 through August 31 of each year.
Fully Executed	A contract is signed by each of the parties to form a legal binding contractual <u>relationship</u> . No costs chargeable to the proposed contract will be reimbursed before the contract is fully executed.

TERM	DEFINITION
Licensed Sex Offender Treatment Providers (LSOTP)	A mental health professional who provides services for the treatment of sex offenders. An LSOTP must hold a mental health license as a physician, psychiatrist, psychologist, professional counselor, marriage and family therapist, clinical social worker, or advanced nurse practitioner recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner. In addition to fulfilling education and training requirements for the primary license, an LSOTP must also complete a minimum of 1,000 hours of clinical experience and 40 hours of continuing education in sex offender assessment and treatment.
Licensed Sex Offender Treatment Providers – Supervisor (LSOTP-S)	An LSOTP who has at minimum 5 years’ experience as a LSOTP and a LSOTP-Supervisor license.
Mental Illness	An illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency, that substantially impairs a person's thoughts, perception of reality, emotional processes, or judgment, or grossly impairs behavior as demonstrated by recent disturbed behavior.
Payments	The amount(s) agreed to be paid by TCCO to Contractor for services under this Contract.
Procurement and Contracting Services (PCS)	The division within the Health and Human Services Commission (HHSC) that provides direction and support of purchasing, contracting and HUB services. PCS oversees, coordinates, and assists TCCO with procurement needs, issues open enrollments and competitive procurements. PCS maintains the official contract file from procurement to contract closeout.
Project	All work to be performed as a result of a contract or solicitation.
Project Manager	TCCO employee responsible for being the liaison between this contract and PCS. The project manager partners with PCS in the development, management and logistical coordination of a solicitation and the resultant contracts.
Psychiatric	Relating to mental illness or its treatment.
Quarter	Unless specifically noted otherwise, references to quarters and quarterly activities relate to TCCO’s Fiscal Year, with quarters beginning September 1, December 1, March 1, and June 1.

TERM	DEFINITION
Scope of Work	A description of the services and/or goods, if any, for each service type, to be obtained as a result of this solicitation for a project period. The scope of work is a document written in the early stages of procurement to explain what TCCO plans to purchase.
Services	Delivery by the Contractor of third party evaluation services in accordance with the terms and conditions of the Contract.
Sexually Violent Predator (SVP)	A repeat sexually violent offender that suffers from a behavioral abnormality which makes it likely that he/she would engage in repeated predatory acts of sexual violence.
Special Provisions	Modifications and additions to the General Provisions for a funded program activity; which are usually customized for TCCO's requirements and contain provisions specific to the contract.
Statement of Work	A part of the contract that describes the services and/or goods to be delivered by TCCO Contractor specifying the type, level and quality of service, that directly relate to program objectives.
Subcontractor	A written agreement between the Contractor and a third party to provide all or a specified part of the services, goods, work, and materials required in the original contract.
Supplemental Report	A report to be completed upon request to provide targeted information and a recommendation regarding a specific area of the client's life, condition, behavior and/or need. This type of report builds upon a clinical evaluation completed by the evaluator within a specific time frame and may include a telephonic interview with the client, treatment provider, TCCO case management staff and other collaterals as needed.
TCCO	Texas Civil Commitment Office.
TCCO Policies	All written policies, procedures, standards, guidelines, directives, and manuals of TCCO applicable to providing the services specified under this Contract.
Texas Identification Number (TIN)	The TIN is required for an entity requesting to contract with, or to receive payment from, the State of Texas. The TIN components are the prefix, base, and self-check digit. The base is the core nine digits that can be a Comptroller-assigned number (as with State agencies), or the Federal Tax ID Number. The prefix digit is a 1, 3, or a 7 and the self-check digit is computer generated.

TERM	DEFINITION
Unit Rate	Payment mechanism for services that are reimbursed at a set rate per unit of service; for example, treatment services at a prescribed rate per hour. Also known as fee-for-service.
Vendor	<p>A type of Contractor or subcontractor that provides services, and goods, if any, that assist in, but are not the primary means of, carrying out TCCO-funded program. Under a vendor contract, the vendor will have few if any administrative requirements. (For example, a vendor might be required only to submit a summary report of services delivered and an invoice.) A vendor generally will deliver services to TCCO-funded clients in the same manner the vendor would deliver those services to its non-TCCO funded clients.</p> <p>A vendor Contractor generally has most of the following characteristics: a) provides goods and services within normal business operations, b) provides similar goods and services to many different purchasers, c) operates in a competitive environment, d) is not subject to compliance requirements of the federal or state program, e) provides goods and services that are ancillary to the operation of the program. Note: Characteristics a, b, c, and d do not apply to vendor Contractors that are universities.</p>
Vendor Identification Number (Vendor ID No.)	Fourteen-digit number needed for any entity, whether vendor or sub recipient, to contract with the State of Texas and which must be set up with the State Comptroller’s Office. It consists of a ten-digit identification number (IRS number, state agency number, or social security number) +check digit + three-digit mail code. The Vendor ID No. includes all the numbers in the TINs (defined above), including a three-digit mail code for a total of 14-digits.
Year	Fiscal Year, the purpose of this contract the fiscal year begins on September 1 and ends on August 31.

## **8. ATTACHMENTS AND FORMS**

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**FORM A: FACE PAGE**

Texas Civil Commitment Office  
 Third Party Evaluation Open Enrollment # HHS0001710

<b>APPLICANT INFORMATION</b>																			
<b>1) LEGAL NAME:</b>																			
<b>2) MAILING Address Information</b> (include mailing address, street, city, county, state and 9-digit zip code):																			
<b>3) PAYEE Mailing Address, including 9-digit zip code</b> (if different from above):																			
<b>4) Federal Tax ID No. (9-digit), State of Texas Comptroller Vendor ID No. (14-digit) or if an individual, Social Security Number (9-digit) :</b> <b>DUNS Number (9-digit) required if receiving federal funds:</b> <small>*The vendor acknowledges, understands and agrees that the vendor's choice to use a social security number as the vendor identification number for the contract, may result in the social security number being made public via state open records requests.</small>																			
<b>5) TYPE OF ENTITY (check all that apply):</b> <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> City</td> <td><input type="checkbox"/> Nonprofit Organization*</td> <td><input type="checkbox"/> Individual</td> </tr> <tr> <td><input type="checkbox"/> County</td> <td><input type="checkbox"/> For Profit Organization*</td> <td><input type="checkbox"/> FQHC</td> </tr> <tr> <td><input type="checkbox"/> Other Political Subdivision</td> <td><input type="checkbox"/> HUB Certified</td> <td><input type="checkbox"/> State Controlled Institution of Higher Learning</td> </tr> <tr> <td><input type="checkbox"/> State Agency</td> <td><input type="checkbox"/> Community-Based Organization</td> <td><input type="checkbox"/> Hospital</td> </tr> <tr> <td><input type="checkbox"/> Indian Tribe</td> <td><input type="checkbox"/> Minority Organization</td> <td><input type="checkbox"/> Private</td> </tr> <tr> <td></td> <td><input type="checkbox"/> Faith-based Organization</td> <td><input type="checkbox"/> Other (specify): _____</td> </tr> </table> <small>*If incorporated, provide 10-digit charter number assigned by Secretary of State:</small>		<input type="checkbox"/> City	<input type="checkbox"/> Nonprofit Organization*	<input type="checkbox"/> Individual	<input type="checkbox"/> County	<input type="checkbox"/> For Profit Organization*	<input type="checkbox"/> FQHC	<input type="checkbox"/> Other Political Subdivision	<input type="checkbox"/> HUB Certified	<input type="checkbox"/> State Controlled Institution of Higher Learning	<input type="checkbox"/> State Agency	<input type="checkbox"/> Community-Based Organization	<input type="checkbox"/> Hospital	<input type="checkbox"/> Indian Tribe	<input type="checkbox"/> Minority Organization	<input type="checkbox"/> Private		<input type="checkbox"/> Faith-based Organization	<input type="checkbox"/> Other (specify): _____
<input type="checkbox"/> City	<input type="checkbox"/> Nonprofit Organization*	<input type="checkbox"/> Individual																	
<input type="checkbox"/> County	<input type="checkbox"/> For Profit Organization*	<input type="checkbox"/> FQHC																	
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<input type="checkbox"/> State Agency	<input type="checkbox"/> Community-Based Organization	<input type="checkbox"/> Hospital																	
<input type="checkbox"/> Indian Tribe	<input type="checkbox"/> Minority Organization	<input type="checkbox"/> Private																	
	<input type="checkbox"/> Faith-based Organization	<input type="checkbox"/> Other (specify): _____																	
<b>6) List all counties number of SVP clients Contractor can serve</b>																			
<b>7) Willing to travel:</b> <input type="checkbox"/> yes or <input type="checkbox"/> no																			
<b>7) PROJECT CONTACT PERSON</b>																			
Name: Phone: Fax: E-mail:																			
<b>8) AUTHORIZED REPRESENTATIVE</b>	<b>9) SIGNATURE OF AUTHORIZED REPRESENTATIVE</b>																		
Name: Title: Phone: Fax:																			
	<b>10) DATE</b>																		

*Texas Civil Commitment Office*  
**THIRD PARTY EVALUATIONS FOR  
CIVILLY COMMITTED SEX OFFENDERS IN THE TEXAS STATE  
HOSPITAL SYSTEM**

Open Enrollment Number: **HHS0001710**

E-mail:

### GENERAL INSTRUCTIONS FOR THE FACE PAGE

This form provides basic information about the applicant and the proposed project with the Texas Civil Commitment Office, including the signature of the authorized representative. It is the cover page of the enrollment application and is required to be completed. Signature affirms that the facts contained in the applicant's response are truthful and acknowledges that continued compliance is a condition for the award of a contract. Please follow the instructions below to complete the face page form and return with the applicant's enrollment application.

- 1) **LEGAL NAME** - Enter the legal name of the applicant.
- 2) **MAILING ADDRESS INFORMATION** - Enter the applicant's complete street and mailing address, city, county, state, and 9-digit zip code.
- 3) **PAYEE MAILING ADDRESS** - Payee – Entity involved in a contractual relationship with applicant to receive payment for services rendered by applicant and to maintain the accounting records for the contract; i.e., fiscal agent. Enter the PAYEE's name and mailing address, including 9-digit zip code, if PAYEE is different from the applicant. The PAYEE is the corporation, entity or vendor who will be receiving payments.
- 4) **FEDERAL TAX ID/STATE OF TEXAS COMPTROLLER VENDOR ID/SOCIAL SECURITY NUMBER**  
- Enter the Federal Tax Identification Number (9-digit) or the Vendor Identification Number assigned by the Texas State Comptroller (14-digit). \*The vendor acknowledges, understands and agrees that the vendor's choice to use a social security number as the vendor identification number for the contract, may result in the social security number being made public via state open records requests.
- 5) **TYPE OF ENTITY** - The type of entity is defined by the Secretary of State and/or the Texas State Comptroller. Check all appropriate boxes that apply.

HUB is defined as a corporation, sole proprietorship, or joint venture formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more persons who have been historically underutilized (economically disadvantaged) because of their identification as members of certain groups: Black American, Hispanic American, Asian Pacific American, Native American, and Women. The HUB must be certified by the Texas Building and Procurement Commission or another entity.

MINORITY ORGANIZATION is defined as an organization in which the Board of Directors is made up of 50% racial or ethnic minority members.

If a Non-Profit Corporation or For-Profit Corporation, provide the 10-digit charter number assigned by the Secretary of State.

- 6) **WILLING TO TRAVEL** - Identify if the contractor is willing to travel to counties not identified in this Open Enrollment.
- 7) **ALL TEXAS COUNTIES CONTRACTOR CAN SERVE** - Enter the Texas counties the Applicant can serve.
- 8) **CONTACT PERSON** - Enter the name, phone, fax, and e-mail address of the person responsible for the contract.
- 9) **AUTHORIZED REPRESENTATIVE** - Enter the name, title, phone, fax, and e-mail address of the person authorized to represent the applicant. Check the "Check if change" box if the authorized representative is different from previous submission to TCCO.
- 10) **SIGNATURE OF AUTHORIZED REPRESENTATIVE** - The person authorized to represent the applicant must sign in this blank.
- 11) **DATE** - Enter the date the authorized representative signed this form.

**FORM B: OPEN ENROLLMENT APPLICATION CHECKLIST**

Texas Civil Commitment Office  
 Third Party Evaluations Open Enrollment

Each Enrollment Application Must Contain the Following Completed Items:

<b>Document</b>	<b>Check (√), if included</b>
FORM A: TCCO Face Page – Signature Required	
FORM B: Open Enrollment Application Checklist	
FORM C: Vendor Information Form – Signature Required	
FORM D: Copy of the current Sex Offender Treatment Provider License; Licensed Sex Offender Treatment Provider – Supervisor (LSOTP-S) or Licensed Sex Offender Treatment Provider (LSOTP): Documentation reflecting certification by the Council on Sex Offender Treatment	
FORM E: Pricing	
FORM F: Copy of Professional Malpractice Insurance Policy or Errors and Omissions Insurance	
FORM G: Resume(s)	
APPENDIX C: Data Use Agreement	

**Texas Civil Commitment Office**  
**THIRD PARTY EVALUATIONS FOR**  
**CIVILLY COMMITTED SEX OFFENDERS IN THE TEXAS STATE**  
**HOSPITAL SYSTEM**

Open Enrollment Number: **HHS0001710**

**FORM C: VENDOR INFORMATION FORM**

1a. Legal name of <b>Other Party (OP)</b> as it appears on documentation from IRS, Comptroller, or Secretary of State. This is the name that will appear on the contract document either as "Contractor" or by name. If using an assumed name, please attach documentation from Office of the Secretary of State or County Attorney.	
1b. <b>OP Address</b> (Include Street and Mailing Addresses, City, County, State and Zip Code):	
1c. <b>PAYEE Name and Mailing Address</b> (as it should appear on financial instruments and remittances):	
1d. Federal Employer Identification No. [FEIN] (9 digit), name and Social Security Number (SSN), if individual, or State of Texas Comptroller Vendor Identification No. (14 digit).	
NOTE: *The contractor acknowledges, understands and agrees that the contractor's choice to use a social security number as the vendor identification number for the contract, may result in the social security number being made public via state open records requests..	
1e. <b>Mail code</b> , if known (3 digits):	
2. TYPE OF ENTITY (enter appropriate letter in box): <input style="width: 30px; height: 20px; border: 1px solid black;" type="text"/> Is your entity certified as a HUB? <input type="checkbox"/> Yes <input type="checkbox"/> No A. City or County (Governmental Entity)      E. Texas Non-profit Corporation *      I. Sole Proprietor      M. Out-of-State Corp B. State Agency      F. Texas For Profit Corporation*      J. Individual      N. Other *** C. State Institution of Higher Learning      G. Professional Association*      K. Partnership** D. Other Political Subdivision      H. Regular Association      L. Limited Partnership**	
*Please provide 10-digit charter or file number assigned by the Secretary of State: _____	
** Please provide the name and SSN or FEIN of each partner. _____	
***If "Other", specify: _____	
3a. Legal name of person or entity authorized to contract with Department of State Health Services.	
3b. Typed <b>Name &amp; Title of Person Authorized to Sign Contracts</b> :	3b. Telephone
3c. Typed <b>Name &amp; Title</b> of Contact Person (Contract Documents and Correspondence)	3c. Telephone
3d. Contact Person's E-mail Address	
4a. Signature of person <i>Authorized to Sign Contracts</i> :	4b. Date

**FORM D: COPY OF THE CURRENT SEX OFFENDER TREATMENT PROVIDER  
LICENSE; LICENSED SEX OFFENDER TREATMENT PROVIDER –  
SUPERVISOR (LSOTP-S) OR LICENSED SEX OFFENDER  
TREATMENT PROVIDER (LSOTP)**

Applicant must use this space to attach a copy of a current Sex Offender Treatment Provider License; Licensed Sex Offender Treatment Provider – Supervisor (LSOTP-S) or Licensed Sex Offender Treatment Provider (LSOTP). Documentation reflecting certification by the Council on Sex Offender Treatment.

**FORM E: PRICING**

Texas Civil Commitment Office  
Third Party Evaluation Services  
Open Enrollment Application

<b>Service Type</b>	<b>*Price</b>
Report with Client Evaluation	\$3,500.00 per report
Report without Client Evaluation	\$3,150.00 per report

\*Price shall not exceed respective service rates as listed above.

Travel Rates based on State Travel rates at: <https://fmx.cpa.state.tx.us/fm/travel/travelrates.php>

**FORM F: PROFESSIONAL MALPRACTICE INSURANCE POLICY OR ERRORS  
AND OMISSIONS INSURANCE**

Applicant must use this space to attach a copy of Professional Malpractice Insurance Policy or Errors and Omissions Insurance.

**FORM G: RESUME(S)**

Texas Civil Commitment Office  
Third Party Evaluation Services  
Open Enrollment Application

Applicant must use this space to attach a copy of resume(s) reflecting experience conducting sex offender treatment to include number of sex offender clients served in the most recent calendar year and average number of sex offender clients served per year. Additionally, Applicant must detail any experience working with SVP Clients.

## **9. APPENDICES**

**The remainder of this page is intentionally left blank.**

## **APPENDIX A: GENERAL PROVISIONS**

- A. Contractor Status.** Contractor certifies by the execution of this Contract that it is not ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. Contractor further certifies that it has not been debarred from the receipt of an agency contract by any action taken by the State of Texas. A false statement regarding Contractor's status will be treated as a material breach of contract and may be grounds for termination.
- B. Compliance with Statutes and Rules.** Contractor shall comply with all applicable federal and state laws, rules, regulations, standards and guidelines in effect on the beginning date of this Contract unless amended, including but not limited to all child abuse reporting requirements in Chapter 261 of the Texas Family Code.
- C. Breach of Contract Claim.** Any claims for breach of this Contract by Contractor that the Parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Government Code. To initiate the process, Contractor shall submit written notice, as required by Subchapter B, to the Office of General Counsel, Texas Civil Commitment Office 4616 West Howard Lane, Building 2, Suite 350, Austin, Texas 78728. Said notice shall also be given to all other representatives of HHSC and Contractor otherwise entitled to notice under this contract. Compliance by Contractor with Subchapter B is a condition precedent to the filing of a contested case proceeding under Government Code, Chapter 2260, Subchapter C and department rules.
- D. Subcontractors.** Contractor shall comply, and shall require its subcontractor(s) to comply, with the requirements set forth in this Contract and the Department's rules of general applicability and other applicable state and federal statutes and rules as such statutes and rules currently exist and as they may be lawfully amended.
- E. Reporting.** Contractor shall submit reports, if required, in accordance with the reporting requirements established by the Department.
- F. Applicable Contracts Law and Venue for Disputes.** Regarding all issues related to contract formation, performance, interpretation, and any issues that may arise in any dispute between the Parties, the Contract shall be governed by, and construed in accordance with, the laws of the State of Texas. In the event of a dispute between the Parties, venue for any suit shall be Travis County, Texas.
- G. Assurances.** As required by Texas Government Code §2252.903, Contractor certifies by the execution of this Contract that it is not prohibited from entering into a contract because of indebtedness to the state, including but not limited to, tax delinquency, student loan delinquency, or child support delinquency. If the Contractor is indebted to the state or becomes indebted to the state during the terms of this Contract, Contractor agrees that any

payments under the Contract will be applied directly toward eliminating the debt until it is paid in full.

As required by Texas Family Code, §231.006, a child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25% is not eligible to receive payments from state funds under a contract to provide property, materials, or services or receive a state-funded grant or loan. Contractor agrees to comply with these provisions, certifies that is not ineligible to receive the payments specified in this Contract, and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this Contract under Texas Government Code § 2155.004 (concerning financial participation by a person who received compensation from HHSC related to this transaction) or Texas Government Code §§ 2155.006 or 2261.053 (concerning certain federal disaster-related contracts) and acknowledges that this Contract may be terminated and payment withheld if these certifications are inaccurate. Contractor further certifies that neither Contractor nor its principals is disqualified or ineligible for participation in a federal or state assistance program; neither Contractor nor its principals is debarred, suspended, or voluntarily excluded from participation in this transaction by federal or state department or agency.

Contractor certifies by execution of this Contract to the following:

- a. it is not disqualified under 2 CFR § 376.935 or ineligible for participation in federal or state assistance programs;
- b. neither it, nor its principals, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency in accordance with 2 CFR Parts 376 and 180 (parts A-I), 45 CFR Part 76 (or comparable federal regulations);
- c. it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;
- d. it is not subject to an outstanding judgment in a suit against Contractor for collection of the balance of a debt;
- e. it is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with Contractor;
- f. that no person who has an ownership or controlling interest in Contractor or who is an agent or managing employee of Contractor has been convicted of a criminal offense related to involvement in any program established under Medicare, Medicaid, or a federal block grant;
- g. neither it, nor its principals have within the three (3)-year period preceding this Contract, has been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private or public (federal, state or local) transaction or contract under a private or public transaction, violation of federal or state antitrust

statutes (including those proscribing price-fixing between competitors, allocation of customers between competitors and bid-rigging), or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or false claims, tax evasion, obstruction of justice, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of Contactor or its principals;

- h. neither it, nor its principals are presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with the commission of any of the offenses enumerated in subsection g) of this section; and
- i. neither it, nor its principals within a three (3)-year period preceding this Contract has had one or more public transaction (federal, state or local) terminated for cause or default.

Contractor shall include these certifications in this Contract, without modification (except as required to make applicable to the subcontractor), in all subcontracts and solicitations for subcontracts. Where Contractor is unable to certify to any of the statements in this Contract, Contractor shall submit an explanation to the contract manager assigned to the Program Attachment. If Contractor's status with respect to the items certified in this Contract changes during the term of this Contract, Contractor shall immediately notify the contract manager assigned to the Program Attachment.

**H. Acceptance as Payment in Full.** Contractor shall accept reimbursement or payment from HHSC as payment in full for services or goods provided to clients. Contractor agrees to not seek additional reimbursement or payment for services or goods from clients.

**I. Records Retention.** Contractor shall retain records in accordance with the HHSC Records Retention Schedule, located at <http://www.dshs.state.tx.us/records/schedules.shtm>, Department rules and any other applicable state and federal statutes and regulations governing medical, mental health, and substance abuse information. At a minimum Contractor shall retain and preserve all records, including financial records that are generated or collected by Contractor under the provisions of this Contract, for a period of four (4) years after the termination of the Contract.

**J. Survival of Obligations.** The obligations of Contractor to retain records and maintain confidentiality of information shall survive this Contract.

**K. Access.** In addition to any right of access arising by operation of law, Contractor, and any of Contractor's affiliate or subsidiary organizations or subcontractors shall permit the Department or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, including the Office of the Inspector General at HHSC (OIG) and the State Auditor's Office (SAO), unrestricted access to and the right to examine any site where business is conducted or services are performed and all records (including client and patient records, if any), books, papers or documents related to the Contract.

- L. Gifts and Benefits Prohibited.** Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, present or future employment, gift, loan, gratuity, special discount, trip, favor, or service to a HHSC or TCCO official or employee in connection with this Contract.
- M. Program Site.** All Contractors shall ensure that the location where services are provided is in compliance with all applicable local, state and federal zoning, building, health, fire and safety standards.
- N. Independent Contractor.** Contractor is an independent Contractor. Contractor shall direct and be responsible for the performance of its employees, subcontractors, joint venture participants or agents. Contractor is not an agent or employee of the Department or the State of Texas for any purpose whatsoever.
- O. Licenses, Certifications, Permits, Registrations, and Approvals.** Contractor shall obtain and maintain all applicable licenses, certifications, permits, registrations and approvals to conduct its business and to perform the services under this Contract. Any revocation, surrender, expiration, non-renewal, inactivation or suspension of any such license, certification, permit, registrations or approval shall constitute grounds for termination of this Contract or other remedies the Department deems appropriate. Contractor shall ensure that all its employees, staff and volunteers maintain in active status all licenses, certifications, permits, registrations and approvals required to perform their duties under this Contract and shall prohibit any person who does not hold a current, active required license, certification, permit, registration or approval from performing services under this Contract.
- P. Immunity Not Waived.** THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY DEPARTMENT OR THE STATE OF TEXAS OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT DEPARTMENT OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.
- Q.** By entering a contract with TCCO, you agree to be bound by the terms of the HHS Data Use Agreement, found at <https://hhs.texas.gov/doing-business-hhs/business-contracting-opportunities>.
- R. Special Provisions:**

### **Availability of Funding**

This Contract is expressly conditioned upon the availability of state and federal appropriated funds. Contractor will have no right of action against TCCO in the event TCCO is unable to perform its obligations under this Contract as a result of the suspension, termination, withdrawal, or failure of funding to the TCCO or lack of sufficient funding of TCCO for any activities or functions contained in the scope of this Contract.

TCCO will use all reasonable efforts to ensure that such funds are available and will negotiate in good faith with Contractor to resolve any claims for payment that represented accepted services or deliverables that are pending at the time funds became unavailable. TCCO shall make best efforts to provide reasonable written notice to Contractor upon learning that funding may be discontinued. If funds for the continued fulfillment of this 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 this Contract at no additional cost and with no penalty whatsoever by giving prior written notice documenting the lack of funding.

### **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.

### **Indemnification**

Contractor shall indemnify and save the TCCO, the State of Texas, and its officers, agents, and employees ("the State") harmless from and against:

- A. Any and all claims arising from the conduct, management, or performance of this Contract by Contractor, its agents, subcontractors, or employees, including without limitation, any and all claims arising from:
  - i. Any breach or default on the part of Contractor in performance of any covenant or agreement on its part to be performed pursuant to the terms of this Contract;
  - ii. Any act or negligence of Contractor or any of its agents, subcontractors, servants, employees, or licensees; and
  - iii. Any accident or injury, or damage whatsoever caused to any person, firm, or corporation.
- B. All costs, reasonable attorney's fees, expenses and liabilities incurred in or about any such claim, action, or proceeding brought thereon.
- C. Nothing herein is intended to deprive the State or Contractor of the benefits of any law limited exposure to liability and/or setting a ceiling on damages, or any laws establishing defenses for them. By entering into this Contract, the State does not waive its right of sovereign immunity, nor does Contractor waive any immunity that may extend to it by operation of law. The aforementioned indemnification shall not be affected by a claim that negligence of the State or its respective agents, Contractors, employees, or licensees contributed in part to the loss or damage indemnified against.

D. The parties agree that the terms, covenants, and provisions of this provision shall survive the termination of this Contract.

### **Compliance with Applicable Rules, Regulations, Procedures, and Laws**

Contractor must comply with all laws, regulations, requirements, and guidelines applicable to a Contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. TCCO reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for TCCO's or Contractor's compliance with all applicable State and federal laws, and regulations.

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 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 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 of 1970; Texas Family Code Section 231.006; Texas Government Code Chapters 783, 2254, 2259, and 2260; Health and Safety Code Chapter 841; Texas Administrative Code Title 37, Part 16, Chapter 810; 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 the TCCO regarding the operations of CRF facilities.

### **Criminal History Record Information Compliance**

The parties hereto acknowledge and agree that in order for the Contractor to perform the services contemplated herein, the 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 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 the 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. The 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 the 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.

#### **Authority to Audit**

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.

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.

Contractor shall reimburse the State of Texas for all costs associated with enforcing this provision.

#### **Fraud, Waste or Abuse**

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 <http://www.window.state.tx.us/ssv/ethics.html>.

## **Buy Texas**

In accordance with Texas Government Code, Section 2155.4441, the State of Texas requires that during the performance of a contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the State.

## **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.

## **Confidentiality and Public Information Act**

Notwithstanding any provisions of this 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 the State of Texas. 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. Contractor will 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 will 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. The Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information, particularly, but not limited to social security numbers.

## **Dispute Resolution**

The dispute resolution process provided for in Texas Government Code, Chapter 2260 shall be used by TCCO and Contractor to resolve any dispute arising under the Contract.

The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve a claim for breach asserted by Contractor. If the Contractor's claim for breach cannot be resolved by the parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by Chapter 2260 to the Deputy Comptroller or his or her

designee. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by the Contractor with Chapter 2260 is a condition precedent for the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach by the TCCO if the parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practice and Remedies Code. Neither the execution of this Contract by the TCCO nor any other conduct of any representative of the TCCO relating to the Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach claims or disputes under the Contract, the TCCO and the Contractor shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the TCCO and the Contractor within fifteen (15) days after written notice by one of them demanding mediation under this Section. Contractor shall pay all costs of the mediation unless the TCCO in its sole good faith discretion approves its payment of all or part of such costs. By mutual agreement, the TCCO and the Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this section is to reasonably ensure that the TCCO and the Contractor shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The TCCO participation in or, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by the TCCO of 1) any rights, privileges, defenses, remedies or immunities available to the TCCO as an agency of the State of Texas or otherwise available to the TCCO; 2) the TCCO termination rights; or 3) other termination provisions or expiration dates of the Contract.

Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the TCCO the Contractor shall continue performance and shall not be excused from performance during the period of any breach of contract claim or dispute is pending under either of the above processes; however, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

### **Force Majeure**

Neither Contractor nor TCCO shall be liable to the other from any delay in, or failure or performance, of any requirement resulting from this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform.

Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure or otherwise waive this right as a defense.

### **Ownership/Intellectual Property, including Rights to Data, Documents, and Computer Software**

For the purposes of this Contract, the term “work” is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research, materials, intellectual property, or other property developed, produced, or generated, in connection with this Contract.

All work performed pursuant to this Contract is made the exclusive property of TCCO. All right, title, and interest in and to said property shall vest in TCCO upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such work may not, by operation of law, vest in TCCO, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to TCCO. TCCO shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give TCCO and/or the State of Texas, as well as any person designated by TCCO and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for the services rendered under this Contract.

Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other record relating to this Contract and the State’s property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Work as defined above. Contractor and any subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing or evaluating by TCCO and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

**APPENDIX B: INPATIENT TREATMENT FOR CIVILLY COMMITTED SEX OFFENDERS WHO ARE UNABLE TO EFFECTIVELY PARTICIPATE IN THE SEX OFFENDER TREATMENT PROGRAM**

<b>TEXAS CIVIL COMMITMENT OFFICE</b>	
 <p><b>POLICY AND PROCEDURE</b></p>	<p><b>NUMBER: 4.3</b></p> <p><b>EFFECTIVE DATE: 09/01/2017</b></p> <p><b>SUPERCEDES: NONE</b></p>

**SUBJECT: INPATIENT TREATMENT FOR CIVILLY COMMITTED SEX OFFENDERS WHO ARE UNABLE TO EFFECTIVELY PARTICIPATE IN THE SEX OFFENDER TREATMENT PROGRAM**

**PURPOSE:** The purpose of this policy is to establish procedures for the implementation of Health and Safety Code, Section 841.0835. This policy establishes criteria and procedures for inpatient admission to the Texas State Hospital System and discharge of a sexually violent predator client to the Texas Civil Commitment Center when they are able to effectively participate in the sex offender program.

**DEFINITION:**

**“Unable to Effectively Participate in the Sex Offender Treatment Program”** means the person’s mental illness prevents the person from understanding and internalizing the concepts or is unable to participate in treatment that would assist in the rehabilitation of the person’s behavioral abnormality by working through the tiered program.

**“Treatment Team”** for purposes of this policy the team consist of the client’s Case Manager, Treatment Provider, Clinical Director and other members such as facility staff with an interest in the client’s mental health services.

**“Interdisciplinary Treatment Team” (IDT)** means a team made up of the TCCC Clinical Director, the TCCO Case Manager, and the client’s State Hospital attending physician and clinical staff whose purpose is to review the client’s progress toward his ability to effectively participate in sex offender treatment through the ability to understand and internalize the concepts presented in sex offender treatment groups.

**PROCEDURES:**

**I. Referral for State Hospital Admission**

- A.** Any member of the treatment team may refer a client for a psychiatric evaluation if the client exhibits behaviors which lead the treatment team member to believe the client is unable to effectively participate in treatment due to the client's inability to understand and internalize the concepts presented in the sex offender treatment groups.
- B.** The treatment team shall staff the case to ensure all members are in agreement to move forward with the referral.
- C.** The referring member shall use a Decision Memorandum to be routed through The Texas Civil Commitment Center (TCCC) management and the Texas Civil Commitment Office (TCCO) management.
- D.** The Decision Memorandum shall include the following information:
  - 1. Client name and State Identification Number (SID#);
  - 2. Date of arrival at the TCCC;
  - 3. Current tier level assigned;
  - 4. Summary of the client's mental health history, including any hospitalizations for mental health reasons;
  - 5. Any diagnoses that are documented and associated treatment(s);
  - 6. Client's behavior in group or individual treatment; and
  - 7. Client's history of progression or lack thereof.
- E.** The Decision Memorandum shall be routed through the TCCC Clinical Director and Facility Administrator then to TCCO's management.
- F.** TCCO will request that the provider of psychiatric services at the TCCC arrange for a psychiatric evaluation by a psychiatrist experienced with sex offender treatment that has an understanding of the sex offender treatment program utilized at the TCCC. As part of his or her evaluation, the psychiatrist shall discuss the client's behavior and progress in treatment with the client's assigned Clinical Therapist, assigned Case Manager, and the Clinical Director.
- G.** A report shall be written by the evaluating psychiatrist which will be reviewed by TCCC clinical staff and TCCO management.
- H.** If, based on the evaluation and assessment information and recommendation of the treatment team, TCCO determines the client is unable to effectively participate in the sex

offender treatment program, TCCO may coordinate with HHSC to initiate inpatient mental health services.

## **II. Admission and Treatment Process**

- A.** TCCO will notify the State Hospital System Continuity of Care (COC) Coordinator of the client referral based on the criteria below.
- 1.** Recurrent disruptive behavior that interferes with effective participation in programming resulting in a less than 50% attendance over a five (5) day period;
  - 2.** Lack of substantial ability to understand, process, relate and/or retain information demonstrated by inability to discuss material content of programming with therapist over a five (5) day period;
  - 3.** Lack of ability to accurately perceive surroundings that substantially interferes with a major element of programming over a five (5) day period; or
  - 4.** Continued psychiatric symptoms that have persisted for more than 30 days after the initiation of appropriate clinical intervention and the symptoms substantially interfere with the individual's ability to effectively participate in the TCCO sex offender treatment program.
- B.** TCCO shall provide an intake packet to the State Hospital COC Coordinator which includes but is not limited to:
- 1.** The client's criminal history;
  - 2.** The client's civil commitment order;
  - 3.** The client's civil commitment rules;
  - 4.** The client's Parole Certificate, if applicable;
  - 5.** The State Hospital Admission Instructions (TCCO-15-17) signed by the client;
  - 6.** The client's mental health records;
  - 7.** The client's contact sheet which contains contact information for the TCCC, the TCCO Case Manager and approved contacts; and
  - 8.** The client's medication records.
- C.** Upon notification of the admission date, the TCCO Civil Commitment Manager (CCM) shall coordinate the transport with the TCCC for the client's admission.
- D.** On the date of transfer, the assigned Case Manager shall review Form TCCO-15-17, State Hospital Admission Instructions with the client and obtain the client's signature. The assigned Case Manager shall send an electronic copy of the State Hospital Admission Instructions to the CCM, Deputy Director and General Counsel and upload the signed form to the case management automated database within two (2) working days.

- E.** While the client is hospitalized in a State Hospital, the client's status shall be reviewed by an interdisciplinary team (IDT), each month, at a minimum. The IDT shall consist of the TCCC Clinical Director, the TCCO Case Manager, and the client's attending physician and clinical staff from the State Hospital.
- F.** TCCO shall utilize the IDT reviews to determine whether the client's mental illness has sufficiently improved such that the client is able to effectively participate in treatment.

### **III. Discharge from the State Hospital**

- A.** When the IDT agrees that the client no longer meets any of the admission criteria listed in this policy and client's mental illness has sufficiently improved such that the client may be able to effectively participate in sex offender treatment, TCCO management will be notified of the recommendation.
- B.** If the IDT is not in agreement for the discharge from the State Hospital, TCCO shall arrange for a third party evaluation. The third party evaluator shall determine whether the client meets any of the admission criteria listed above and make a recommendation to TCCO whether the client is able to effectively participate in sex offender treatment.
- C.** If, based upon the third party evaluation or information from the IDT, TCCO determines the client's mental illness has sufficiently improved such that the client is able to effectively participate in treatment, TCCO and HHSC shall coordinate to make arrangements for the client to be returned to the TCCC.
- D.** The State Hospital will coordinate the client's discharge plan with the IDT to include all modifications being recommended for participation in the sex offender treatment program.
- E.** The State Hospital shall notify the TCCO at least three (3) working days prior to the scheduled discharge date to coordinate transport. The TCCO Case Manager shall be on site at the day of discharge to install the Wearable Mini Tracking Device (WMTD) on the client and the TCCC staff shall transport the client back to the TCCC.

**IV. Parties Unable to Agree on the Client's Discharge from the State Hospital**

In the event there is a disagreement regarding an SVP client's discharge, the client information will be staffed with the TCCO Deputy Director and the HHSC Director of State Hospitals. The TCCO Executive Director may confer with the HHSC Chief Deputy Executive Commissioner or Executive Commissioner when making a final determination.

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Marsha McLane  
Executive Director

Attachment:

- TCCO-15-17 State Hospital Admission Instructions
- HHSC-TCCO Joint Policy

## **APPENDIX C: DATA USE AGREEMENT**

**Please see next page.**

*Texas Civil Commitment Office*  
**THIRD PARTY EVALUATIONS FOR  
CIVILLY COMMITTED SEX OFFENDERS IN THE TEXAS STATE  
HOSPITAL SYSTEM**

Open Enrollment Number: **HHS0001710**

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**APPENDIX D: TCCO TERMS AND CONDITIONS**

**Texas Civil Commitment Office Terms & Conditions**

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**THIRD PARTY EVALUATIONS FOR**  
**CIVILLY COMMITTED SEX OFFENDERS IN THE TEXAS STATE**  
**HOSPITAL SYSTEM**

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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 the 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 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.”
2. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
3. 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 Department of State Health Services, a Health and Human Services Commission (HHSC) agency under Chapter 841 of the Texas Health and Safety Code and the authority of the 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.

**Article II: Definitions**

“**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 formal, written, and legally enforceable agreement and amendments between the parties.

**“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.

**“Solicitation”** means the written invitation for bids, request for offers, request for proposals or similar instrument that is posted seeking responses from qualified vendors for needed goods and services. This term also includes “price requests” and “pricing requests” sent to Department of Information Resources vendors to get pricing, based on a specific scope of work, through a cooperative contract or DBITS contract and any addendums under which the Contract was awarded and is executed.

“**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.

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

“**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.

“**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. Reprocurement 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 Reprocurement**

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 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, the 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. The 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.

## **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 the 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. Pract. & 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. The 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 the TCCO has given written consent to the delegation. The TCCO shall approve all subcontractors and require the Contractor to replace any subcontractor found, in the opinion of the 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. The TCCO shall not direct payments for deliverables acquired in connection with the contract other than to the Contractor, nor shall the 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 obligation.
- 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 the laws of the State of Texas and interpreted in accordance with Texas law. Provided Contractor first complies with the procedures set forth in Section 11.11, Dispute Resolution, proper venue for a claim arising from the Contract will be in a court of competent jurisdiction in Travis County, Texas.

#### **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 the 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 the TCCO. Contractor's written request for deviations from said policies shall originate from the Authorized Representative of the Contractor and shall be forwarded to the 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 <http://www.window.state.tx.us/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 Texas Administrative 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 Volume 1 Tex. Admin. Code Chapter 206.(c) 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 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 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 United States; and
2. All information obtained by Contractor or a subcontractor under this Contract must be maintained within the 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 United States except as specifically authorized or approved by TCCO.

**C. Meaning of “within the United States” and “outside the United States”**

1. As used in this Section, the term “within the United States” means any location inside the territorial boundaries comprising the republic of the United States of America, including of any of the 48 coterminous states in North America, the states of Alaska and Hawaii, and the District of Columbia.
2. Conversely, the phrase “outside the United States” means any location that is not within the territorial boundaries comprising the republic of the United States of America, including of any of the 48 coterminous states in North America, the states of Alaska and Hawaii, and 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 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 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 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 United States or hardware that is generically configured outside the 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 United States, provided such products or supplies are commercially available within the 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 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, the 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 the 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:

- E. The 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.
- F. The Contractor agrees to limit the use of such information for the purposes set forth herein.

- G. 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.
- H. 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 the 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: Service Levels and Performance Measurement**

### **Section 6.01 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.

### **Article X: Disclosure and Confidentiality of Information**

#### **Section 10.01 HHSC Data Use Agreement**

The HHSC Data Use Agreement 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. The Data Use Agreement is available at: [http://www.hhsc.state.tx.us/about\\_hhsc/BusOpp/data-use-agreement.pdf](http://www.hhsc.state.tx.us/about_hhsc/BusOpp/data-use-agreement.pdf)

**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

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- 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**

The dispute resolution process provided for in Texas Government Code, Chapter 2260 shall be used by TCCO and Contractor to resolve any dispute arising under the Contract.

The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve a claim for breach asserted by Contractor. If the Contractor's claim for breach cannot be resolved by the parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by Chapter 2260 to the Deputy Comptroller or his or her designee. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by the Contractor with Chapter 2260 is a condition precedent for the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach by the TCCO if the parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practice and Remedies Code. Neither the execution of this Contract by the TCCO nor any other conduct of any representative of the TCCO relating to the Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach claims or disputes under the Contract, the TCCO and the Contractor shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the TCCO and the Contractor within fifteen (15) days after written notice by one of them demanding mediation under this Section. Contractor shall pay all costs of the mediation unless the TCCO in its sole good faith discretion approves its payment of all or part of such costs. By mutual Contract, the TCCO and the Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this section is to reasonably ensure that the TCCO and the Contractor shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The TCCO participation in or, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by the TCCO of 1) any rights, privileges, defenses, remedies or immunities available to the TCCO as an agency of the State of Texas or otherwise available to the TCCO; 2) the TCCO termination rights; or 3) other termination provisions or expiration dates of the Contract.

Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the TCCO the Contractor shall continue performance and shall not be excused from performance during the period of any breach of contract claim or dispute is pending under either of the above processes; however, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

#### **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**

In accordance with Section 403.055 of the Government Code, Contractor agrees that any payments due to Contractor under the Contract will be first applied toward any debt or back taxes Contractor owes the State of Texas. Contractor further agrees that payments will be so applied until such debts and back taxes are paid in full.

**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 an 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 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 15.02 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 15.03 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 15.04 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 THE 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 THE TCCOS, OR (V) ANY USE OF THE PRODUCT OR SERVICE BY THE 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 THE TCCO PROVIDES THE CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST THE TCCO, SHALL), AT THE CONTRACTOR'S SOLE OPTION AND EXPENSE; (I) PROCURE FOR THE 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 THE 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 THE TCCO AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.