

VENDOR CONTRACT
(Goods and Services)

THIS VENDOR CONTRACT FOR GOODS AND SERVICES ("this Contract") is made as of the date written below between FRONTLINE TECHNOLOGIES GROUP, LLC d/b/a FRONTLINE EDUCATION (the "Vendor") on behalf of itself and its subsidiaries and affiliates including esped.com Incorporated, and the EL PASO INDEPENDENT SCHOOL DISTRICT (the "District"). For and in consideration of the mutual covenants herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. **Term.**

1.1 **Term.** The term of this Contract shall be for a period from July 1, 2020 through June 30, 2021 [with up to four 1-year renewal(s)], unless earlier terminated in accordance with this Contract. Annual renewals, if any, shall be at the sole discretion of the District.

1.2 **Non-Appropriation.** In the event that the Contract is awarded for a term greater than one year or extending beyond the District's current budget period, it will be subject to approval at the commencement of each of the District's budget years. Vendor agrees that the District has the continuing right to terminate this Contract without notice at the end of a District budget period in which funds for this Contract are not appropriated. In such event the Contract may be terminated as soon as practicable after the event of non-appropriation or upon 30-days' prior written notice whichever provides the longest notice.

2. **Cancellation/Termination.**

2.1 **Termination.** This Contract may be terminated as follows: (a) by either party in the event of material breach of this Contract by the other party which continues more than thirty (30) days after written notice of default from the non-breaching party to the breaching party; or (b) by the District at its option: (i) if Vendor becomes insolvent, files or has filed against it a petition in bankruptcy, proposes or accomplishes any dissolution, liquidation, composition, financial reorganization or recapitalization with creditors; (ii) if a receiver, trustee, custodian, or similar agent is appointed or takes possession of any property or business of Vendor; (iii) if, at the expiration of each District budget period occurring during the term of this Contract, funds for this Contract are not appropriated as provided in Section 1.2 above; or (iv) with or without cause upon sixty days prior written notice from the District to Vendor. In the event of early termination of the Contract for any reason, the total compensation which may be claimed by Vendor under this Contract shall be limited [subject to other limitations in this Contract or applicable law] to the payment for the conforming Goods and/or Services timely provided by the date of termination.

2.2 **Effect.** Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Contract, Vendor shall submit to District its claims, in detail, for the monies owed by District through the effective date of termination relating to SHARS/SPED Mgmt. Services as described on Exhibit "A". Notwithstanding the foregoing, any claims for monies owed to the Vendor due to SHARS reimbursement funds received after the effective date of completion, or termination or expiration of this Contract but attributed to services provided by the Vendor as described on Exhibit "A" during the contract period shall be submitted to the District within forty-five (45) calendar days of receipt of these SHARS reimbursement funds by the District. **Failure by Vendor to submit its claims within forty-five (45) calendar days shall negate any liability on the part of District and constitute a waiver by Vendor of any and all right or claims to collect monies that Vendor may rightfully be otherwise entitled to for SHARS/SPED Mgmt. Services provided under this Contract.** Regardless of how this Contract is terminated, Vendor shall effect an orderly transfer to District or to such person(s) or firm(s) as the District may designate, at no additional cost to District. Upon the effective date of expiration or termination of this Contract, Vendor shall cease all operations of Services or delivery of Goods being performed by Vendor, or any of its subcontractors, pursuant to this Contract. Vendor agrees to provide to the District information and materials necessary to effectuate an orderly transition of the SHARS/SPED Mgmt. Services, including

but not limited to all data needed for Medicaid billing in a comma, separated values, Excel format, within thirty (30) calendar days of the termination date and at its sole cost and expense.

3. **Right to Assurance.** Whenever the District in good faith has reason to question the Vendor's intent to perform, the District may demand that the Vendor give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within ten (10) business days, the District may treat this failure as an anticipatory repudiation of the Contract.

4. **Remedies.** In the event of default of this Contract by Vendor, the District shall have all of, and may exercise one or more of, the following rights and remedies: (a) the right to recover damages; (b) the right to seek injunctive relief; (c) the right to seek declaratory relief; (d) the right to terminate this Contract as provided herein; and (e) any of its rights and remedies in law or equity. In no event shall District's action of terminating this Contract, whether for cause or otherwise, be deemed an election of District's remedies, nor shall such termination limit, in any way, at law or at equity, District's right to seek damages from or otherwise pursue Vendor for any default hereunder or other action.

5. **Force Majeure.** If by reason of Force Majeure (i.e. acts of God, strikes, lockouts, or other industrial disturbances, etc.), either party hereto shall be rendered unable, wholly or in part, to carry out its obligations under this Contract, then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the Party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

6. **Goods and Services to Be Delivered.**

6.1 **Intentionally Deleted.**

6.2 **Delivery of Services and Standard of Care.**

A. **Delivery.** Vendor agrees to provide the Goods, as well as the Services, listed and described in Exhibit "A" (respectively, the "Goods" and the "Services", and collectively, the "Goods and Services").

B. **Standard of Care.** If the Services are performed by a non-professional Vendor, Vendor represents, covenants, and warrants that it will devote its good faith, best efforts in provision of the Services and will provide the Services with reasonable care and skill and in a good and workmanlike manner. If the Services are considered Professional Services, the Vendor further represents, covenants and warrants that it will provide the Services using the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in the same local. Services will be provided in a manner consistent with industry standards and will conform to the required specifications set out herein, and shall be delivered in compliance with all applicable laws, rules, regulations, procedures and consistent with industry standards.

6.3 **Warranties for Goods and Services.**

A. **Intentionally Deleted.**

B. **Intentionally Deleted.**

C. **Safety Warranty and Provision of Material Safety Data Sheets.** The Goods supplied to the District under this Contract shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act ("OSHA") of 1970. In the event the Goods do not conform to OSHA standards, the District will be permitted to refuse or return the non-conforming Goods for correction or replacement at the Vendor's expense. Where Goods to be delivered under this Contract require the maintenance of Material Safety Data Sheets ("MSDS"), a copy of the

relevant MSDS will be made available to the District's representative prior to delivery of the relevant Goods.

6.4 **No Warranties by District.** No review, consent, or approval by the District of any documents prepared by Vendor shall constitute a representation or warranty by the District of the legality, suitability, or quality of the same or content thereof.

6.5 **Reservation of Rights.** The District reserves the right to use its own staff or any other third-party to provide the same or similar Goods and/or Services to the Goods and/or Services described herein.

7. **Tax Exemption.** The District is exempt from Federal Excise, State or City Sales Tax under State Law and such obligations are included in the price under this Contract. The District will furnish a tax exemption certificate, if required.

8. **Invoicing and Payment.** Compensation to Vendor is set forth on Exhibit "B", attached hereto and incorporated herein. Except as otherwise provided in Exhibit "B", Vendor shall invoice the District on or before the thirtieth (30th) day of each month, for the portions of the Goods delivered and accepted and/or Services performed during the preceding month at rates set forth on Exhibit "B". Reimbursable Expenses are included in the hourly rate or not to exceed pricing for Services unless specifically excluded. If excluded, Reimbursable Expenses will be itemized separately and documented by receipts for invoicing purposes. Invoices for Goods and/or Services shall not include Federal Excise, State or City Sales Tax for which an Independent School District is exempt under State Law. The District shall furnish a tax exemption certificate, if required. The aggregate compensation from the District to Vendor for the Goods and/or Services shall not exceed the maximum figures stated in Exhibit "B". Vendor shall not be entitled to receive payments or amounts under the Contract in excess of the amounts appropriated for the then-current budget period of the District. The District shall make payment to the Vendor for amounts determined to be properly due, not later than thirty (30) days after its receipt of the Vendor's invoice or as required by the Texas Prompt Payment Act (Chapter 2251 of the Texas Government Code) or its successor. The maximum interest rate on any past due payments by the District to Vendor shall be limited to the rate provided by Section 2251.025 of the Texas Government Code or its successor. The District shall not be required to make any payments to Vendor at any time Vendor is in default under this Contract.

9. **Confidential/Proprietary Information.**

9.1 **Confidential Information/Materials.** During the term of this Agreement, each Party will use the same degree of care to protect the other Party's Confidential Information as it uses to protect its own confidential information of like nature, but in no circumstances less than reasonable care. "**Confidential Information**" means any information that is marked or otherwise indicated as confidential or proprietary, in the case of written materials, or, in the case of information that is disclosed orally or written materials that are not marked, by notifying the other Party of the proprietary and confidential nature of the information, such notification to be done orally, by email or written correspondence, or via other means of communication as might be appropriate. Notwithstanding the foregoing, (a) Confidential Information of Vendor shall include the Software, and (b) Confidential Information of the District shall include Personal Data regarding the District's users provided in connection with the Software and Services. Confidential Information does not include information which: (i) was known to the receiving Party or in the public domain before disclosure; (ii) becomes part of the public domain after disclosure by a publication or other means except by a breach of this Agreement by the receiving Party; (iii) was received from a third party under no duty or obligation of confidentiality to the disclosing Party; or (iv) was independently developed by the receiving Party without reference to Confidential Information, or (v) with respect to Confidential Information of Vendor, information that is not protected from disclosure under the Texas Public Information Act. Aggregated data that does not contain personally identifiable information regarding Customer's users provided in connection with the Software and Services will be Confidential Information and property of Vendor. The receiving Party will not be liable for disclosures of Confidential Information that are required to be disclosed by law or legal process, so long as (if permitted by law) the recipient

notifies the disclosing Party, provides it with an opportunity to object and uses reasonable efforts (at the expense of the disclosing Party) to cooperate with the disclosing Party in limiting disclosure. Vendor further agrees that, if it receives information or records concerning any student, it shall not disclose the same, except as permitted by the Family Educational Rights and Privacy Act a/k/a FERPA and, for records provided for the purpose of Medicaid billing and reimbursement, as permitted by the Health Insurance Portability and Accountability Act (HIPAA). Vendor further shall take all steps necessary to prevent disclosure of Confidential Information of the District by any other person or entity under its control, during the term of this Contract and at all times thereafter, without the prior written consent of the District.

9.2 Intentionally Deleted.

10. **Vendor Records and Retention.** On an annual basis and otherwise as agreed by the parties, the District or its authorized representative shall be afforded reasonable access to and be permitted to inspect and copy the Vendor's records relating to this Contract. Unless records are provided to the District, the Vendor shall preserve all such records for a period of six (6) years, after the District makes final payment and all other pending matters are closed, or for such longer period as may be required by law, after final payment under this Contract, including any extension thereof. To the extent that the requirements of 2 CFR § 200.333 apply to the Contract, financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award, must be retained for the Vendor for only the period required by 2 CFR § 200.333 and the six (6) year requirement of this provision shall apply to all other documents. If no federal funds are expended by the District for the Contract, the six (6) year retention requirement provided herein will apply.

11. Compliance with HHSC Subcontractor Requirements.

11.1. For purposes of Medicaid-billing services only, Vendor agrees to comply with, and be bound by, all of the provisions applicable to EPISD's sub-contractors as contained in the HHSC Uniform Terms and Conditions – Grant, Version 2.16, as amended (attached hereto as Addendum "C" and incorporated herein as if set forth in full) and HHSC MAC Supplemental Conditions (attached hereto as Addendum "D" and incorporated herein as if set forth in full).

11.2. Affirmations. By entering into this Contract, Vendor represents and warrants that, with respect to Medicaid-billing services only, the Contract Affirmations between EPISD and HHSC contained in Addendum "E" hereto apply to Vendor and its subcontractors.

11.3. Data Use Agreement. For purposes of Medicaid-billing services only, Vendor agrees to be bound by the disclosure and use limitations pertaining to the Confidential Information, as defined in and required by the Data Use Agreement between EPISD and HHSC, attached hereto as Addendum "F" and incorporated herein by reference, and Vendor agrees to execute Attachment 1 to Addendum "F" at the same time Vendor executes this Contract.

12. **Indemnification.**

12.1 Intentionally Deleted.

12.2 **Indemnification.** Vendor shall **INDEMNIFY, DEFEND, AND HOLD HARMLESS** the District, its elected officials, employees, officers, and representatives harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) directly or indirectly arising from: (a) infringement of any patent, copyright or similar property right including, but not limited to, misappropriation of trade secrets and any infringement by Vendor and its employees and consultants, in connection with any license provided, any deliverable or any Service furnished hereunder, and used by either the District or Vendor within the scope of this Contract (unless said infringement results directly from Vendor's compliance with District's written standards or specifications); and/or (b) any failure to properly perform any of the Services, EXCEPT to the extent caused by the gross negligence or intentional misconduct of the District.

12.3 Intentionally Deleted.

12.4 Indemnity Survival. The provisions of this Section 12 are solely for the benefit of the parties hereto, and not intended to create or grant any rights, contractual or otherwise, to any other person or entity and the obligations herein shall survive the termination or expiration of this Contract.

13. Limitations of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, OF ANY KIND WHATSOEVER (INCLUDING LOST PROFITS) ARISING FROM OR RELATING TO THIS AGREEMENT OR THE USE OR NON-USE OF THE SOFTWARE OR SERVICES. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL VENDOR'S TOTAL LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER BASED ON INDEMNIFICATION, WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EXCEED \$1,000,000.00. IN NO EVENT SHALL THE DISTRICT'S TOTAL LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER BASED ON INDEMNIFICATION, WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EXCEED THE GREATER OF \$1,000,000.00 OR THE COMPENSATION DUE IN EXHIBIT "B". Each Party acknowledges and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material, bargained for provisions of this Agreement and that fees and consideration payable hereunder reflects these disclaimers and limitations.

13. Work On School District Campuses.

13.1 Notice Before Entry During School Hours and Decorum on District Campuses. Vendor acknowledges that the Work may be performed in connection with an educational facility that is currently occupied and in use. It is imperative that Vendor's deliveries and/or performance of services not interfere with, interrupt, disturb, or disrupt District's normal operations or facilities. During school hours, when entry is not made on an emergency basis, Vendor shall notify the District in advance and arrange an escort for Vendor's representative.

13.2 Compliance with Campus Rules. Vendor agrees to and shall comply with all rules, regulations and requirements of the District and the school campus on which work is to be performed, and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of District. Vendor recognizes that the ongoing school activities in proximity with its onsite activities shall result in the need for prompt and effective coordination of its Services with those involved in the ongoing utilization of the premises. The Vendor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Vendor shall be responsible for the actions of its employees and its Vendors. The Vendor recognizes that the site is a public-school campus, and will prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the site and shall require adequate dress of the Vendor's forces consistent with the nature of the work being performed.

14. Criminal Background Checks. Vendor shall comply at its sole expense with the requirements of Section 22.0834 of the Texas Education Code, "Criminal History Record Information Review of Certain Contract Employees," any applicable rule(s) adopted by the Texas Commissioner of Education, District Board Policy CH (Legal) and (Local), and other policies and administrative requirements relating to or arising from such statute and rule(s); shall ensure that no covered employee of Vendor or of any subcontractor [if authorized] with a disqualifying criminal history performs services under the award at or for the District; and shall timely provide written certifications thereunder in such form and substance as requested by the District. Vendor understands that any failure to comply with the requirements of this section may be grounds for termination of its Contract with the District.

15. Relationship. This Contract does not constitute a joint venture or partnership of any kind between the parties hereto. In addition, the parties expressly understand and agree that the provision

of Goods and/or Services are and shall be considered independent contractor work performed by Vendor, using Vendor's own talents, contacts, tools, vehicles, and equipment, and that nothing in this Contract in any way creates an express or implied contract of employment between the District and Vendor. Vendor is not and shall not be an employee of the District for any purpose. Vendor is exclusively responsible for all administrative matters relating to its status hereunder or the Goods and/or Services, including without limitation, travel, lodging, and other expenses, any withholding and payment of all federal, state and local income taxes, FICA, FUTA, or other employment-related taxes, workers' compensation insurance, fringe benefit programs, or other benefits of any kind. Vendor represents that it is an independent contractor providing Goods and/or Services for hire similar to the Goods and/or Services to the general public, that it has full authority and capacity to enter into this Contract and provide the Goods and/or Services, and that execution or performance of this Contract by Vendor shall not violate any other agreement or covenant or any law.

16. **Federal Edgar Provisions.** Vendor acknowledges in the event federal funds are utilized to fund the Goods and/or Services delivered under the Contract, Vendor will abide by all applicable federal laws, rules, and regulations, executive orders, and policies, procedures and directives applicable to the Contract, including but not limited to the following:

16.1 **Contractual Remedies.** Vendor agrees that it will comply with all administrative, contractual, legal remedies sanctions and penalties for violation or breach which are included in this Contract

16.2 **Wage and Hour Requirements.** To the extent that this Contract involves the employment of mechanics or laborers, Vendor agrees to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5), which requires Vendor to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. This provision will not apply to the District's purchases from Vendor of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

16.3 **Clean Air Act and EPA.** Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401 -7671q) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387) and agrees to promptly notify the District of any violation.

16.4 **Debarment and Suspension.** Vendor has certified that neither the Vendor nor its principals were listed on the government-wide exclusions in the System for Award Management ("SAM"), that neither the Vendor nor its principals are debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549 at the time this Contract was executed. Vendor further agrees on behalf of itself and its principals, to immediately provide written notification to the District if, at any time following execution of this Contract, Vendor or one of its principals learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, or if Vendor or one of its principals is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. Failure to notify the District of erroneous information within five (5) business days of change in circumstances shall be grounds for immediate termination, but termination of Vendor shall not be an election of remedy by the District.

16.5 **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352.** Vendor confirms its certification to the District that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of Vendor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making

of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. Vendor further certifies that if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Vendor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Vendor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., providing administrative remedies for false statements, apply to this certification and disclosure, and that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Finally, Vendor agrees that it will require that the language of this certification be included in the award documents for all lower-tier contractors it hires, and that it will ensure that all subcontractors make the same certification in connection with work done under the Contract. The certification in this Section is a material representation of fact upon which the District has placed its reliance.

16.6 Compliance with Mandatory Provisions of State Energy Conservation Plan. Vendor shall comply with the all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201), if any.

16.7 Compliance with Solid Waste Disposal Act. If the District purchased the same item or items from the Vendor under this Contract, which were purchased by the District during the preceding fiscal year, and the prior purchase exceeded \$10,000, Vendor agrees that it will comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, where applicable, and that it will provide information and certifications required by the District confirming estimates and otherwise evidencing such compliance.

16.8 Equal Employment Opportunity Clause. Vendor represents, warrants and certifies that, during the performance of the Contract:

A. it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination;

B. it will, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin;

C. it will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the

compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Vendor's legal duty to furnish information;

D. it will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

E. it will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor;

F. it will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders;

G. in the event of Vendor's non-compliance with the nondiscrimination clauses of the Contract or with any of such rules, regulations, or orders, the Contract may be canceled, terminated or suspended in whole or in part and the Vendor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law; and

H. it will include the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Vendor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Vendor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Vendor may request the United States to enter into such litigation to protect its interests.

16.9 Termination for Convenience. Notwithstanding any provision to the contrary contained in this Contract if federal funds are used to fund the purchase represented by this Contract, the District, reserves the right to terminate this Contract for convenience. In such event, the District agrees, that it will be responsible, all legitimate charges with respect to periods prior to the termination.

17. Miscellaneous.

17.1 Assignment/Delegation. Without the prior written consent of the other party or as expressly provided herein, no party shall have right or power to assign this Contract in whole or in part, or to delegate or sub-contract any duties hereunder in whole or part; provided, however, that consent to any subcontracting or delegation shall not be unreasonably withheld or delayed and no consent shall be required in the event of a sale of all or substantially all of Vendor's assets so long as written notice thereof is immediately given to the District upon such sale. Any attempted assignment or delegation by Vendor shall be wholly void and ineffective for all purposes unless made in the conformity with this paragraph.

17.2 Governing Law and Venue. **THIS CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND IS PERFORMABLE IN EL PASO COUNTY, TEXAS.**

17.3 No Waiver of Immunity. The District reserves, and does not waive, its rights of sovereign/governmental immunity and similar rights, immunities and rights of its officials and employees, under the Texas Tort Claims Act. Nothing herein shall be a consent to suit.

17.4 No Third-Party Beneficiaries. This Contract, and every provision thereof, shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. No term or provision of this Contract shall benefit or obligate any person or entity not a party to it. The parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release or other consideration under this Contract.

17.5 Context. Wherever the context shall require, the singular shall include the plural, and the male gender shall include the female gender and the neuter, and vice versa.

17.6 Intentionally Deleted.

17.7 Waiver. No waiver, change, modification or discharge by either party hereto of any provision of this Contract shall be deemed to have been made or shall be effective, unless expressed in writing and signed by the party to be charged. A waiver by either party of a breach of any of the terms, conditions, covenants or guarantees of this Contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this Contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

17.8 Severability. Any provision, or part thereof, of this Contract held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Contract and the effect thereof shall be confined to the provision, or part thereof, so held to be invalid or unenforceable.

17.9 Time of Essence. Time is of the essence with respect to Vendor's obligations hereunder.

17.10 Public Records. Records relating to this Contract may be subject to disclosure pursuant to the Texas Public Information Act f/k/a Open Records Act, Section 552.001 et. seq. of the Texas Government Code. To the extent any of the Goods and/or Services under this Contract involve the exchange or creation of Public Information as defined by such Act, the Vendor shall make any such information, not otherwise exempted from disclosure under such Act, available in writing and electronically in Microsoft Word, Microsoft Excel and or Adobe Acrobat.

17.11 Notices. All notices to a party under this Contract shall be provided by certified mail, return receipt requested, to the address set forth for the respective party beneath its signature block in this Contract, or such other address as later provided by a party through written notice to the other party.

17.12 Advertising. Vendor shall not advertise or publish, without the District's prior consent, the fact that the parties have entered into this Contract, except to the extent necessary to comply with proper requests for information from a representative of the federal, state, or local government.

17.13 Right to Audit and Records Access. The District, or its authorized representative (including Texas Education Agency and the Comptroller General), shall be given reasonable access to records and rights to perform audits by The District's own personnel and/or an outside firm of consultants/auditors, in order to investigate the District's claims administration and Services, and evaluate the performance of the Vendor. The Vendor agrees to provide full cooperation during this process. Performance of these functions shall be conducted with proper notification per customary industry standards. Vendor agrees to maintain all required records seven (7) years after the District makes final payment and all other pending matters are closed.

17.14 Israel Certification. Vendor certifies by execution of this document, that it does not and will not refuse to deal with, terminate business activities with, or otherwise take any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, unless the action is taken for ordinary business purposes.

17.15 Addenda. Addendums E, F and G, which are attached hereto, form part of the Contract. To the extent that any of the terms or conditions of such Addenda contradict or conflict with any other terms or conditions in the Contract, it is expressly understood and agreed: as follows: (a) for Medicaid billing services only, Addenda E and F shall take precedence and supersede conflicting provisions and (b) for the software license, the terms of Addendum G shall take precedence and supersede.

17.16. Entire Contract/Modification. **THIS CONTRACT, INCLUDING ALL EXHIBITS AND ADDENDA (being Exhibit "A", Exhibit "B", and Addendum "C" through Addendum "G"), IS THE FINAL, COMPLETE, AND ENTIRE CONTRACT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER AND SUPERSEDES ALL PRIOR COMMUNICATIONS, ORAL OR WRITTEN, BETWEEN THE PARTIES RELATING TO MATTERS HEREIN. THIS CONTRACT MAY BE MODIFIED OR RESCINDED ONLY BY A WRITTEN INSTRUMENT SIGNED BY BOTH PARTIES TO THE CONTRACT BY AND THROUGH THEIR DULY AUTHORIZED AGENTS. Changes to this Contract may only be made by mutual written agreement of the parties, which must contain the authorized signature of the District's Superintendent or the President of the District's Board of Trustees.** No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. In the event of any conflict between the General Terms and Conditions of the Contract attached to the solicitation document, the terms of this Contract shall control.

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EXECUTED as of the ____ day of _____, 2020.

EL PASO INDEPENDENT SCHOOL
DISTRICT

By: _____
Juan E. Cabrera, Superintendent

APPROVED AS TO FORM



By: _____
Jeanne C. Collins, General Counsel for District

~~Signed: Tuesday, May 12, 2020~~

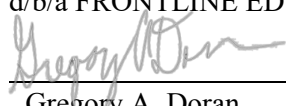
ADDRESS FOR NOTICE:

El Paso Independent School District
Attn: Superintendent
6531 Boeing Drive
El Paso, Texas 79925

With Copy to:
General Counsel
El Paso Independent School District
6531 Boeing Drive
El Paso, Texas 79925

VENDOR:

FRONTLINE TECHNOLOGIES GROUP, LLC
d/b/a FRONTLINE EDUCATION

By:  _____
Gregory A. Doran
(Printed Name and Title)

ADDRESS FOR NOTICE

Frontline Technologies Group, LLC
d/b/a Frontline Education
1400 Atwater Drive
Malvern, PA 19355

**EXHIBIT “A”
Goods and Services**

Place(s) of Provision of Services:

El Paso, Texas

Date(s)/Period of Provision of Services:

July 1, 2020 through June 30, 2021, subject to renewal.

Description of Goods and Services:

1. **eSTAR**.

eSTAR - Special Education software subscription, with unlimited usage for District employees, with version 3 of such software at the outset, along with all subsequent upgrades thereto.

The core functional areas to be addressed by eSTAR include:

- Referral/Evaluation process
- Notices/Consent
- Individualized Educational Program (IEP) development
- Admission, Review, and Dismissal (ARD), Related Services and PEIMS tracking
- Student data collection/management
- Dyslexia
- Section 504
- Behavior Management
- Report Query and Generation
- SHARS/Medicaid

eSTAR is a comprehensive, Cloud-based special population management solution built specifically to meet the rigorous requirements and evolving needs of Texas school districts. Designed and continually monitored in conjunction with Texas Special Education experts, eSTAR assures ongoing conformance to the Legal Framework for the Child-Centered Process.

eSTAR was architected from the ground up as a true, Cloud-based application. It is based on a centralized district database model with all user access performed through the Web browser. Vendor's fully integrated application automates every facet of the educator's workload from referral to dismissal. Key functional areas include:

- FIE and all Evaluations
- 504 Plans
- Texas ARD/IEP Management
- Texas Notices & Forms
- ARD Compliance Monitor
- Customizable Goals & Objectives with integrated TEKS
- IEP Progress Reports
- Transition Plans
- Assessment Histories

- Behavior Management -- FBA & BIP
- Medicaid Services Log
- Administrative Ad Hoc Reporting
- Complete On--Line Electronic Document Portfolio
- PDF and Scan/Email/Upload Archiving
- Secure encrypted document transmission via email & receipt
- Spanish Notices & Forms
- Student Information System Integration
- PEIMS Collection
- Special Population Document Language Translation Services
- Parent Portal
- SIF Compliant & Certified
- Child Find

Efficiency and simplicity of use are core design concepts evident throughout Vendor's applications. eSTAR will save staff time and increase the accuracy of your data. Information is entered only once and then automatically shared throughout the Vendor application, fostering collaboration among staff at all levels and locations. Short, well organized data entry screens provide quick and intuitive navigation for even novice users, and allow staff to work with only the portions of a student's file or forms that are relevant. Data is automatically saved from screen to screen and page turns are under 2 seconds.

The centralized database model provides a complete electronic district repository containing all special education documents and student data. Vendor's unique on-line and scan/email archiving system helps reduce the time and cost burdens of file management, document retrieval and storage. As IEP's, evaluations or reports are completed, they can be saved in read-only Adobe Acrobat format as part of each student's permanent document portfolio. To facilitate uninterrupted service delivery when students transfer between schools, all information is instantly available on-line to authorized users in electronic or printed form.

Vendor will assign an Implementation Manager to work in concert with the District's own in-house Project Manager. The Vendor Implementation Manager will coordinate all necessary tasks with the District and oversee the project from initial planning through the "go live" phase. A final implementation plan will be jointly developed that incorporates the District's specific preferences and needs. Progress will be continually monitored, measured and managed throughout the implementation period.

Vendor shall configure and create the District's eSTAR database, establish ftp site as needed for the District, and provide interface services. Vendor shall supply student data file specifications; coordinate all tasks with ISD, including initial student data load, administration and security configuration, SIS integration and training of school/district personnel. Vendor shall assist with population of administration tables, definition of roles and security levels, and registration of users. Vendor shall conduct training of identified personnel. Vendor will work with the District to develop a timeline schedule and will provide on time delivery of all special education program management software.

Vendor's technical support is available to all District representatives with unlimited access to a toll-free support hotline and on-line support services. Support is provided from 8:00 a.m. – 6:30 p.m. EDT and email support is monitored until 11:00 p.m. EDT and during weekends.

Vendor has an incident tracking system available for customers to create and track all technical support contacts and system problems. Vendor's service goal is to respond to customers when they call the technical support number. If all representatives are busy at the time, Vendor generally makes contact with

the customer within two hours of the original call. Depending on the nature of the call, client service representatives will schedule a follow-up conference call with appropriate resources if they are unable to resolve an issue. If the problem is ultimately determined to be the result of a software bug, Vendor will identify both the resolution and schedule for production release to resolve the issue and to remediate any harm caused by the software bug.

After all District staff are trained during the implementation phase, training opportunities for staff will be ongoing as Vendor will provide new user and administrative refresher trainings throughout the year via onsite and Web-based interactive learning opportunities.

A Sample Overview for Successful Train the Trainer Seminars:

- Set Ground Rules
- Introductions/Icebreaker
- Review Training Agenda
- See 1, Do 1
- Interactive training
- Q&A opportunities at end of each module or several modules
- Team brainstorming on how to rollout training by module
- Post training homework assignment
- Parking Lot flip chart
- Team training roles
- Reference material handout
- Closing: Framing Their Mission

Vendor training staff will work closely with the District to provide necessary training materials, outline and strategies for successful end user staff training. Vendor will provide ongoing train the trainer specialized support to maximize end user learning outcomes. In order to keep users current on the system, Vendor offers complimentary Webinar training sessions on a number of topics for users to review content that relates to them.

eSTAR is a fully integrated application consisting of a number of related components organized by functional area. Data is entered once and automatically available to all authorized users. The components of the eSTAR system include:

Administration

- Setup of District preferences
- Setup of schools
- Creation of District standardized set--up lists and data entry choices
- Deleted student maintenance
- Case Management and Staff Roster Maintenance
- District specific legend for progress monitoring
- Add district specific objectives
- Bundle Builder allows District to design customized ARD packets

User Enrollment, Security and Roles

- Enrollment of users

- Definition of customized roles and permissions
- Maintenance of user accounts
- Report selection option

Texas eSTAR ARD Forms

Data entry, maintenance, printing and archiving of all ARD/IEP data. All forms are available in both completed and blank versions. Screens based on Legal Framework and Document Toolbox requirements

- Full ARD
- Brief ARD
- Does Not Qualify
- Non--Consensus ARD
- IEP Amendment
- Temporary Placement of Transfer Student
- Draft Record
- Out of District Placement
- Student Profile
- PEIMS Data Validation
- Consent to Access SHARS for Medicaid Students
- Medicaid Billing Data Collection
- Annual Medicaid Consent Form
- REED – Review of Existing Evaluation Data
- Evaluation Data & Eligibility
- Student Vision
- Development of IEP (PLAAFP)
- Standards Based Goals
- Accommodations
- State/District Required Assessment
- STAAR Alternate 2 Participation Requirements
- STARR Accommodations
- Assessment and Examinations (TELPAS)
- Consideration of LRE
- Service Alternatives
- Schedule of Services
- Related Services
- IEP Services/Supports
- Placement of Services
- Committee Members including electronic signature capability
- Prior Written Notice
- Transition Services
- Summary of Performance
- Transfer of Parental Rights at Age of Majority
- Manifestation Determination
- Functional Behavior Assessment
- Behavior Intervention Plan (three different options)
- Restraint Documentation Log

- Supplements:
 - Auditory Impairment
 - Autism Spectrum Disorder
 - ESY
 - Foundation High School Program Endorsement Opt--Out Agreement
 - Graduation
 - In-Home Training
 - Medically Fragile
 - Parent Training
 - Personal Care
 - RDSPD
 - Skilled Nursing Services
 - Transportation
 - Visual Impairment
- Child Outcome Summary Form
- Data Collection Report
- IEP Progress Report
- IEP Progress Report for Objectives
- IEP Progress Report – All Progress
- IEP Progress Report for Objectives – All Progress
- IEP Progress Report for Objectives – All Progress with Graphs
- PEIMS data report
- Indicator Forms: 7, 11, 12, 13, 14

Texas eSTAR FIE

All data entry and forms related to the Full and Individual Evaluation:

- FIE / Determination
- Adapted PE
- Assistive Technology
- Auditory Impairment
- Autism
- Deaf-Blindness
- Emotional Disturbance
- Health Screening
- Homebound Agreement
- Homebound Needs Evaluation
- Intellectual Disability
- Multiple Disabilities
- Non-Categorical Early Childhood
- Other Health Impairment
- Orthopedic Impairment
- Physician's Letter
- Related Services
- Learning Disabilities Eligibility
- Speech Impairment

- Traumatic Brain Injury
- Visual Impairment
- Blank Assessment Grids
- Reevaluation Report

Notices

- Committee Member Not Required to Attend Meeting
- Committee Members
- Consent/Release Records/Residential Care
- Consent for Disclosure of Confidential Information
- Consent for Release Visual, Deaf-blind
- Consent to Invite an Outside Agency
- Educational Screening/Initial Referral for Evaluation
- Educational Screening/Information from Parent/Adult Student
- Educational Screening/Health Information
- Educational Screening/Classroom Observation
- Evaluation Consent
- Informed Consent for Psychological Services
- Notice of ARD Meeting
- Notice of ARD Meeting: Record of Contact Attempts
- Notice of Action
- Notice of Full Individual Evaluation
- Notice of Proposal or Refusal to Provide Services
- Notice of Proposal to Evaluate
- Notice of Revocation of Consent
- Receipt – Procedural Safeguards Rights
- Receipt – Procedural Safeguards IEP Process
- Receipt – Procedural Safeguards Distribution Log
- Transfer of Parental Rights at Age of Majority
- Uniform Transfer Agreement
- Parent Consent to Access SHARS contact attempts

504 Plans

- Student Information
- Entire 504 Plan
- 504 Amendment
- Committee Referral
- Consent for Evaluation
- Consent for Release Visual, Deafblind
- Notice Letter
- Parent/Teacher Input Forms
- Procedural Rights
- Receipt of Rights
- Manifestation Determination
- Behavior Intervention Plan
- Dyslexia Documentation

- General Education Homebound
- STAAR Accommodations and STAAR A Eligibility Requirements
- Transportation Eligibility

Private School Forms

- Notice of Service Plan Meeting
- Parentally Placed Child (Private School)
- Student Goals

Spanish Forms/Notices

- Accommodations
- Adapted PE
- Annual Goals and Objectives
- Annual Medicaid Consent Form
- Assessment and Examinations (TELPAS)
- Assistive Technology
- Assurances
- Auditory Impairment A, B & C
- Auditory Impairment Supplement
- Autism
- Autism Spectrum Disorder
- Behavior Intervention Plan
- Brief ARD
- Committee Members
- Consent for Full and Individual Evaluation
- Consent for Release Visual
- Consent to Access SHARS for Medicaid Students
- Consideration of LRE
- Determination
- Determination of Eligibility
- Does Not Qualify
- Educational Screening Information from Parent/Adult Student
- ESY Supplement
- Full ARD
- Functional Behavior Assessment
- Goals & Objectives for ESY
- Graduation Supplement
- Health Care Needs Supplement
- IEP Amendment
- IEP Progress Report
- Informed Consent for Psychological Services
- Intellectual Disability
- Manifestation Determination
- Medicaid Billing
- Notice of ARD Meeting
- Notice of Proposal or Refusal to Provide Services

- Notice of Proposal to Evaluate
- Parent In-Home Training
- Parent-Transfer of Parental Rights at Age of Majority
- Physical Fitness Assessment Initiative
- Placement of Services
- Progress Report for Objectives
- Progress Report for Objectives – All Periods
- Receipt – Procedural Safeguards
- Receipt – Procedural Safeguards ARD Process
- Receipt – Procedural Safeguards Distribution Log
- Receipt – Procedural Safeguards Right
- REED (Short & Long Form Versions)
- Reevaluation
- Schedule of Services
- Service Alternatives
- State Required Assessment
- Student Progress – All Periods
- Student Vision
- Student-Transfer of Parental Rights at Age of Majority
- Summary of Special Ed. Status/Eligibility
- Temporary Placement of Transfer Student
- Transition Information
- Transportation Supplement
- Visual Impairment Supplement

Administration Reports

- On-line Ad Hoc report generation
- Reports can be filtered by: Date Range, School, Grade Level, Primary, Secondary & Tertiary Disability, Home Language, Ethnicity, CATE, Gifted, Instructional Setting, At Risk and other criteria
- Accommodations/Modifications
- Annual Review
- At Risk
- Archived Documents report
- Audit Log (tracks access to student records – user, date/time, changes made)
- Avery Labels in multiple formats for Student, Contact 1, Contact 2, To the Parent of
- Behavior Intervention Plan list
- Computer Data Entry Sheet
- Contact List
- District Objectives
- Disability & Related Services
- DNQ Report
- Economically Disadvantaged Students
- Eligible Disabled Students
- Transition Services
- Extended School Year List
- FERPA Log
- Graduation Supplement

- Instructional Setting
- Legal Guardian
- LEP List
- PEIMS 163 Summary
- PEIMS Data Validation
- Phone List
- PPCD Report
- Primary Disability
- Primary Language
- Related Services (by Student)
- Related Services (by Type of Service)
- Schedule of Services
- Special Education Historical Data
- Speech Students
- Student Alphabetical Listing
- Student Profile
- Transportation
- Indicator Reports – 7, 11, 12, 13, 14

eSTAR Archive – Upload/Scan/Email Archive Documents

- Automatically converts any paper or electronic document to PDF format for archiving with the student's electronic portfolio
- May contain signature pages, copies of evaluator reports, samples of student work, or any other document
- Documents can be scanned, emailed or directly uploaded.

eSTAR Translation

- Special Population document translation for over 50 languages
- Integrated data exchange within eSTAR
- Confidential, speedy, accurate, and reliable

Data Exchange

- Student Demographics ASCII Import/Nightly updates from SIS
- Microsoft Access Download (download district data on demand)
- Export Builder -- Download to Excel for additional ad hoc reporting
- XML translator

eSTAR Medicaid Data Collection Services

Individual student Daily Service log including the following fields:

Student Name
 DOB
 Sub-site
 Medicaid ID No.
 Alternate ID No
 PEIMS ID

Date of service
Procedure
Activity notes
Start time
End time
Total Quantity
Units
Event Type
Student present.

Printed reports:

- All Service Logs
- Daily Service Log

Export files:

- Medicaid Services
- Provider Information

2. **SHARS/SPED Mgmt.**

Vendor will provide a comprehensive electronic Special Education Management System with an integrated SHARS Billing Management System that streamlines and integrates the work flow of data collection and document preparation from Special Education Referral to evaluation to IEP development and tracking to SHARS billing. Vendor shall provide the following described services and items.

Vendor will timely, accurately, and properly complete all Medicaid billing for the District under SHARS.

Vendor will streamline and improve the effectiveness and efficiency of the District's Special Education Department's operations.

Vendor will streamline and improve the effectiveness and efficiency of the District's Academic Language Programs.

Vendor will automate workflow processes where feasible.

Vendor will implement a web-based SEMS to avoid the need to install client software on user workstations.

Vendor will eliminate duplicate databases and decrease the number of "stand alone" systems.

Vendor will implement timeline driven SEMS that will enable users to receive automated notices and alerts of pending and non-compliant ARDs.

Vendor will provide for the efficient and secure transfer of critical data to and from other districts' Student Information Systems (SIS).

Vendor will utilize current data communications and data management software/hardware technology.

Vendor will utilize software that can be fully integrated with the District's current Student Information System (SIS) and has the ability to expand and meet the District's future needs.

Vendor will reduce the amount of manual and repetitive data entry via pre-population of fields.

Vendor will achieve faster entry of data and quicker access to data and information.

Vendor will utilize software for generating both standardized and ad hoc reports.

Vendor will generate standardized and ad hoc reports without the need for extensive report generation training, or continual internal support/vendor support via intuitive program user interface.

Vendor will utilize software applications that adhere to industry-standard security and encryption policies to ensure data confidentiality.

Vendor will provide the software and all necessary consulting support to install, test, train, and implement the new system.

Vendor will provide electronic management of all documents and processes related to SHARS billing.

Vendor will provide electronic management of all documents and processes related to IEP management.

Vendor will provide electronic management of all documents and processes related to 504 management.

Vendor will provide electronic management special education referral data.

Vendor will provide electronic management and development of the FIE.

Vendor will provide an integrated bank of standards-based goals and objectives for the electronic development of the IEP.

Vendor will provide electronic management and tracking of transportation services compatible with current District systems.

Vendor will provide electronic method for the identification of students who are eligible for free and reduced meals.

Vendor will provide electronic method for tracking students who are not enrolled in the District, but are receiving special education services from the District.

Vendor will provide each of the following reports, even if prepared and due after the end of this Contract:

- (a) Annual SHARS Cost Report (for the year October 1, 2020 - September 30, 2021 due in 2022 for the primary term, the year October 1, 2021 - September 30, 2022 due in 2023 for the first renewal term, the year October 1, 2022 - September 30, 2023 due in 2024 for the second renewal term, the year October 1, 2023 -

September 30, 2024 due in 2025 for the third renewal term, and the year October 1, 2024 - September 30, 2025 due in 2026 for the fourth renewal term)

- (b) Monthly Revenue Report
- (c) R & S Report
- (d) Yearly Summary Report
- (e) Quarterly Report
- (f) Medicaid Eligibility Lists of all SPED students for determination of IEP ratio.
- (g) PEIMS Report
- (h) Caseload Report
- (i) Timeline Data Report
- (j) ARD Compliance Report
- (k) Service Provision Report
- (l) User Access Report
- (m) Years in US Schools Report
- (n) Vendor will provide custom reports related to SHARS and IEP management as requested by the District.

Vendor will provide electronic billing forms for completion by service providers.

Vendor will provide unlimited access to service providers of billing forms for documentation of service provision.

Vendor will provide electronic access to IEP documents related to SHARS billing (i.e. goals and objectives and schedule of services).

Vendor will provide the District with annual SHARS billing guidelines and updates.

Vendor will maintain a “Do Not Bill” list of students whose parents deny permission to bill SHARS.

Vendor will submit appeals for any incorrect billing identified by the District or Vendor.

Vendor is fully versed in legal requirements of Health Care Financing Administration, Texas Education Agency (TEA), Texas Health and Human Services Commission (HHSC), Texas Medicaid Healthcare Partnership (TMHP) Centers for Medicare and Medicaid Services (CMS) and/or all other state or federal agencies governing the SHARS program and services.

Vendor is able to comply at all times with all requirements (and any revisions of such) set forth by the HHSC, CMS and any other state, local or federal agency governing the SHARS program and services (including documentation requirements and data retention requirements).

Vendor has the capacity to fully implement all aspects of the SHARS reimbursement services within the time frame established by the District.

Vendor has the capacity to accept/process both electronic and paper service tickets for filing claims.

Vendor will handle the submission of all claims collected through the electronic documentation system as well as paper claims to TMHP.

Vendor has and will maintain industry-accepted security, privacy, and reliability standards.

Vendor has and will maintain a fully audit-compliant internal quality control system that has at least a SSAE No. 16 (SOC) certification.

Vendor has an internal capacity to assess and will ensure that all SHARS claims submitted to TMHP are at least 99% correct within +/- 3% error with a confidence level of 95%.

Vendor will maintain consistent service levels through the term of this Contract.

Vendor will interface with the Zonar system used by the District's Transportation Dept., through reading Zonar CSV for driver, rider, and aide, uploading and maintaining on a secure site, and inputting dates of birth for students.

Vendor will cross-reference District data with District holidays and weekends, and student attendance, to ensure that direct services are not improperly billed during such times.

Vendor will have an internal systemic capacity of validating all SHARS requirements for interim billing.

Vendor will ensure there is a valid parental consent to release information form on file.

Vendor will ensure there is a valid IEP on file indicating the need for a Direct Medical Service, or Transportation for the dates of service of each claim.

Vendor will verify licensure and certifications for all service providers.

Vendor will verify valid prescription for Direct Medical services with a prescription requirement, provided to students with a documented need for the service in their IEP.

Vendor will verify that the provider is included on the Random Moment Time Study participant list for the quarter that includes the date of Service.

Vendor will verify Medicaid eligibility for date of service, including procedures to submit claims with retroactive eligibility.

Validation requirements are built into the Vendor's software to ensure the inclusion of all required data fields necessary to complete a compliant session note or service log.

Vendor will ensure that annual Medicaid billing notifications are made to parents or guardians.

Vendor will ensure that signed consents from parents or guardians for Medicaid billing are in place.

Vendor will ensure that there is a current evaluation in place, when necessary.

Vendor will ensure that the student's Medicaid number on the IEP and consent match up.

Vendor will ensure that the Medicaid service log has a valid signature, including that of a supervisor when necessary.

Vendor will ensure that the group or individual billing rate matches the IEP.

Vendor will ensure that another related service is being provided to a student on the same day as a transportation claim for such student is being made.

Vendor's electronic documentation system has the ability for District administrative personnel to review, approve, deny as well as flag ineligible claims prior to submission, including, without limitation, an ability to reroute and return session data to the service provider for correction.

Vendor's electronic documentation system has the ability for service providers serving in a supervisory capacity to review, approve, deny as well as flag ineligible claims prior to submission, including, without limitation, an ability to reroute and return session data to the service provider for correction.

Vendor will notify service providers of claims that are flagged as ineligible.

Vendor will provide relevant training to District personnel as needed to ensure legal compliance with the SHARS program and efficient claim processing.

Vendor will have an online reporting system that provides real time data on claim status as it flows through the electronic documentation system as well as real time data on claims submitted to TMHP for reimbursement. Such data should be given to the District in a standard comma-separated-values format, Excel or any other information systems standard acceptable to the District.

Vendor will submit claims on a timely basis to be determined by the District, notify the District when claims have been submitted, and resubmit rejected claims as need.

Vendor must have the ability to capture retroactive eligibility to maximize interim billing revenue as well as real time reporting on all claims assigned a rejected or denied status by TMHP.

Vendor will train the District project manager to seek reimbursement from TMHP.

Vendor must provide a secure file transfer method to exchange student data that is compliant with FERPA and HIPAA.

The Vendor's software has the ability to exchange data with the District's Student Management Software.

The District intends to use software to document all students receiving services and testing regardless of Special Education enrollment, and Vendor's software will allow access to all students enrolled at District for documentation purposes.

The Vendor must have the ability to provide online training to staff, if necessary via recorded training sessions and/or interactive sessions.

Vendor will track all students at the District receiving services and testing, regardless of whether in Special Education enrollment, with its software to be able to access all students enrolled at the District for documentation purposes.

Vendor must give the District project manager access to all reports used to submit claims for Medicaid Reimbursement to TMHP. District must be able to access all reports in a standard "comma - separated-values" (CSV) format, or any other information systems standard acceptable to the District. Reporting should include information -but not be limited to- the following data fields: Session data, claim

data, student eligibility, student data, provider data, IEP date, prescription data, and parental consent to release information data:

- (a) Student ID (local ID)
- (b) Student SSN
- (c) Student Medicaid Number
- (d) Student Name
- (e) Campus
- (f) Medicaid Eligibility as of Date of Service
- (g) Beginning Date of Service
- (h) Ending Date of Service
- (i) Start time for Service
- (j) Stop time for Service
- (k) Period Service provided
- (l) Date Claim Submitted
- (m) Date Claim was Paid
- (n) RNS Report Reference
- (o) Service Provider ID
- (p) Service Provider Name
- (q) Transaction ID
- (r) TMHP session status
- (s) Billed amount
- (t) Billing rate
- (u) Paid amount
- (v) Reimbursed Amount
- (w) Procedure (Type of Service)
- (x) Procedure Code
- (y) Amount (# of units)
- (z) IEP service time per week, month, and 9-week period
- (aa) EOB Codes
- (bb) Eligibility Start
- (cc) Eligibility End
- (dd) Consent Status
- (ee) Consent Date
- (ff) Prescription Start
- (gg) Prescription End
- (hh) Service type (Direct, Consult, etc.)
- (ii) Student Status (Special Education, Not Special Education, etc.)
- (jj) Provider Caseloads.

Upon termination of this Contract, Vendor will furnish all data generated and/or submitted for Medicaid/SHARS reimbursements in a standard comma-separated-values format, Excel, or any other information systems standard acceptable to the District.

Vendor will provide users with capability to document strategies taken to address students struggling behaviorally and academically.

Vendor will provide ability to maintain and access Section 504 referrals and evaluation records.

Vendor will allow the District to access Section 504 accommodation plans and allow for yearly review and updates.

Vendor will provide for maintenance of dyslexia assessment and services and allow for yearly review and updates.

Vendor will enable the District to document and track the use of student restraints.

Vendor will provide electronic access to student data and editing privileges to authorized personnel for the purpose of updating student information.

Vendor will provide electronic method for generating documents in English and Spanish.

Vendor will allow archiving digital media files.

Vendor must allow multiple users to concurrently view documents.

Vendor will provide an integrated Spell-Check feature.

Vendor will provide users with the capability to import and export data in standardized ASCII, PDF, MS Excel forms, etc.

Vendor will archive all documents for 7 years post-graduation for all students.

Vendor will be responsible for face-to-face and remote technical training on use of the system for District personnel on an as-needed basis.

Vendor will provide technical support to service providers during work hours as designated by the District.

Vendor will assist the District with the development of policies and procedures to ensure compliance with federal, state, and local policy.

Vendor will assist the District in resolving any issues with TEA and/or TMHP in a timely manner.

Vendor will maintain compliance with all HIPAA and FERPA requirements.

Vendor will remain current and notify the District in a timely manner on all revisions and/or additions to Medicaid requirements and/or procedures.

Vendor will comply with Federal, State, and Local Governmental Agencies, and the guidelines provided by the Texas Education Agency (TEA).

Vendor will remain current and notify the District in a timely manner on all revisions and/or additions to IDEA and/or TEA requirements and/or procedures.

Vendor will allow the sharing of data with appropriate outside agencies in a manner that complies with FERPA and HIPAA.

Vendor will provide software compatible with PEIMS and TRex (state reporting systems), as well as, all other current and future state mandated systems.

Vendor will provide two-way integration of data with the District's student information systems.

Vendor will maintain two-way integration of data with the District's information systems when/if there is a change in Vendor.

Vendor will provide software and web-based technology compatible with current District technology systems.

Vendor will provide software and web-based technology compatible with both MAC and Windows operating systems.

Vendor will provide software and web-based technology compatible with District-approved browsers (i.e. Firefox, Safari, Explorer, and Edge).

Vendor will provide electronic billing forms compatible with portable electronic devices (i.e. tablets, iPads, etc).

Vendor will assist, or represent, the District before federal and state officials relating to SHARS, upon request, including, without limitation, such assistance or representation after the end of this Contract, for any claims submitted under this Contract.

Vendor must meet with the District's project manager in person in El Paso, Texas at least once per month, and by teleconference or videoconference at least once per week, to review implementation, coordination, and operational issues relating to this Contract and the District's SHARS program.

Vendor will provide, upon request, needs analysis and reports to the District relating to proper implementation, coordination, and operation of the District's SHARS program.

Vendor shall have a dedicated account manager as the point of contact, and shall provide the contact information for such person to the District, and update such information as needed.

3. Other.

Training for both Medicaid regulation and data entry for eStar will be conducted by both Vendor trainers and TSBS trainers. TSBS training includes both unlimited onsite, and unlimited webinar-based, vendor-led training for all SHARS-related topics, including rules and regulations. Vendor training is unlimited and webinar-based, and reviews ARD documentation compliance as well as data entry for SHARS tickets. TSBS will provide unlimited regulatory RMTS training and provides a variety of options for SHARS training sessions, including in-person trainings, as well as electronically generated trainings such as live webinar sessions and video trainings. These trainings are not limited to Special Education, but also to the Business Office, PEIMS Coordinators, as well as other administrative individuals who may be involved in the financial side of the SHARS and MAC program. Vendor provides an online implementation meeting to review the District's ARD Documentation to make sure they meet Medicaid standards, and to also learn your internal processes of ARD procedure. Training will include any documentation changes, as well as entering the SHARS billing tickets in the eStar system. Vendor also provides a variety of training options such as live web based and recorded videos.

In addition to, supplementation of, and/or clarification of, goods and services described in the sections above on eStar and SHARS/SPED Mgmt., Vendor's goods and services will comply with the following requirements:

(a) a technology solution and system with the capability to enter pertinent student information subject to IDEA, ADA, and Section 504, to assist the District with compliance thereof, and including, without limitation, the ability to accomplish all of the following:

- ensure Individualized Education Programs ("IEP") include all components required by IDEA's legal framework, and by the Texas Education Agency
- upload District-specific forms to be stored in the software program
- provide and utilize an IEP Goals and Objectives Bank aligned with state standards
- provide and utilize an Accommodation Bank for creating individualized accommodations
- generate Progress Reports by student, subject, goal focus, campus, grade, and goals and objectives
- include all links to state website for state assessments and state modifications
- share documentation on District best practices using District resources
- include documentation and capabilities to support users in identifying allowable modifications to curriculum and state assessments
- generate notice of meetings, including, without limitation, Notice of Annual Admission, Review, and Dismissal (ARD) Committee meetings, LPAC meetings, 504 meetings, and Manifestation Determination Review (MDR) meetings
- track receipt of documents, including without limitation Receipt of Accommodations, using Peer Portal
- provide advance notice of compliance deadlines, including without limitation at least 30 days notice of the deadline for annual reviews, and at least 120 days' notice of the deadline for 3-year reevaluations
- develop Section 504 plans
- create District-wide announcements to employees for reminders of deadlines for upcoming progress reports
- create and generated Accommodation Plans, including without limitation, Receipt of Accommodations by each teacher per semester, by subject, or as stipulated in the IEP
- transmit documents, including without limitation IEPs and Progress Reports, electronically to parents, District staff, and other stakeholders through the Parent Portal or through e-mail [in the latter case, to those parents who provide electronic verification of the email address and who create passwords to ensure confidentiality]
- store student records, including without limitation Accommodation Plans, Evaluation Reports, Functional Behavior Assessments, Behavior Intervention Plans, Data Collection Documentation, IEPs, audio recordings of ARD Committee meetings, as well as other documents, work samples, audio recordings and other files, in Student Archives, and make such items available to administrators along with multiple users collaborating as a multi-disciplinary team for the education benefit of a student
- develop Functional Behavior Assessments
- collect Antecedent, Behavior, and Consequence data for behaviors to be extinguished
- develop Behavior Intervention Plans, and data-collection forms to document implementation of the same and the results of such implementation
- prepare legally-compliant forms for Disciplinary Intakes, Removals, and Assignments
- track Discipline Referrals and Behavior Incidents, including without limitation Disciplinary documentation, deadlines, and timetables, in order to ensure compliance with change of placement, manifestation determination, and other IDEA requirements
- develop student Graduation Plans, and display as required
- generate plans as both individual documents and collectively as an entire IEP document, to provide to parents, teachers, transition specialists, and those with a need to know per legal requirements
- document, track, and generate SPED/LEP documentation

- track the delivery of Bilingual Education services delivered to students through Course/Curriculum and/or Service documentation
- document Post-Secondary Outcomes, including without limitation notice and documentation of Post-Secondary Outcome results
- develop Individual Health Plans with ability to document services, including without limitation storage of physician statements with effective date and expiration date
- develop student-centered Transition Plans, including without limitation documenting student interests, strengths, needs, aptitude, present levels of academic achievement and functional performance, and career paths relevant to the student and in conjunction with the individual Graduation Plan and the District's CCRP
- store student-centered Transition Plans, with evaluation and interest inventories to be separately stored
- document Response to Intervention (RTI) plans, including without limitation tracking of interventions and results, using the supplemental RTI/MTSS solution
- document Hospital and Homebound Services, including without limitation tracking of instruction, location of instruction, daily documentation by H/HB teachers, start and end dates of services
- integrate with, and extract information from, Frontline SIS f/k/a Prologic TEAMS
- provide static form translations in English and Spanish
- provide dynamic translation services through an integrated data exchange within eStar
- communicate and collaborate with District and community stakeholders
- securely transfer records between the District and others using Frontline IEP and Section 504 solution
- provide responsive support in the event of Records Requests, Requests for Due Process Hearings, and Complaints to the District, Texas Education Agency and Office of Civil Rights
- uploading of the District's custom forms in .pdf to the District Resources folder, from which users can download, complete, and upload such files into the system;

(b) such solution and system will also allow the District to develop plans and monitor compliance based upon data-driven decisions, determine action for identification of students with special needs, and meet other needs of the District;

(c) such solution and system will be user-friendly, and provide capacity for the development, monitoring, and storage of data, including, without limitation, the ability to accomplish all of the following:

- generate reports
- share with other school districts when records are requested in accordance with FERPA
- allow for the users to apply Cross-Battery analysis in making a determination
- provide enough characters for individual users to enter findings and recommendations based on the evaluations completed
- ensure the date of the report prompts notice to users to schedule required Admission, Review, and Dismissal (ARD) meetings
- automatically populate the ARD date onto the session note
- allow for the use of a Multi-Disciplinary Team to evaluate Autism Supplements
- allow for In Home Trainer Assessments and logs for the delivery of services by IHT
- generate transportation forms individually from the IEP and allow for electronic transference to the District's Transportation Department
- once the Transportation Department has the request for transportation, generate notices to inform parents of the bus route assigned to the student

- populate the REED date on the REED page of all REED Documents;
- (d) such solution and system will also meet the following requirements:
- have auto correct and spell check features for multiple languages
 - have unlimited storage
 - provide the District with ample notice of when updates are made to the system or when the system needs to be shut down for maintenance
 - allow for quick print of individual sections of the IEP, the entire IEP and “batch” print Compatible with the District’s technology framework and systems
 - ability to sort and create reports based on random information determined by the SPED administration such as by Eligibility, Grade, State Assessment Results Coordinates with the District’s reporting periods
 - provide select identified users the ability to print IEP forms in the event the District’s systems are not operational
 - all data from the District is owned by the District
 - have electronic footprint of users, including without limitation date, time and location of access
 - allow for reports to be generated; i.e. Transportation, Inclusion, PPCD, etc.
 - electronic date stamp of reports created and generated
 - safe and secure websites for use and storage
 - converting written ARD minutes to an audio format;
- (e) such solution and system will allow for documentation of inclusion services to students, to allow the District to do the following:
- generate individual Goals and Objectives for Inclusion by student
 - have the ability to have users enter the start time and end time of Inclusion services provided by subject, date and time
 - allow for documentation to reflect the name of the provider(s)
 - generate weekly reports to reflect the services provided were as stipulated in the IEP, including without limitation the frequency, duration and location
 - allow for a signature by the provider
 - ensure the Inclusion minutes entered per subject by day do not exceed the number of minutes of instruction available in a given day
 - provide for the data entry of what Inclusion services are required by each individual student
 - provide ability to enter what type of support, who will provide the support, and the student/teacher ratio
 - provide for electronic entry of Classroom Observations describing observable instruction, type of instruction, effectiveness and recommendations or comments
 - provide the Type of Instructional Supports; Type of Accommodations; Curricular Modifications; In-Class Support; External Support; Internal Support; Differentiated Instruction; Per 504 Plan; and Per IEP; and
- (f) such solution and system will include the following training requirements:
- full support and training for the District, on-site or phone/online as appropriate, including without limitation face-to-face instruction to users on the system and how to access the system

- District will be notified of any update to the system and will be provided further training and documentation on any updates
- availability to answer emails, calls and/or any Medicaid related Support tickets
- onsite vendor-led training for all SHARS-related topics, ensuring legal compliance regarding SHARS rules and regulations
- virtual user training hosted by expert trainers over the Frontline Medicaid component
- through TSBS, RMTS training for all staff and administrators who may be selected for a random moment time study sampling or who will have access to the time study participant list
- after the preliminary RMTS training, monitoring through TSBS of the RMTS participant list, providing any follow-up trainings, and aiding the participant in completing their time sampling
- provision through TSBS of training documentation and other items for participants to have on hand in the event they are selected for a time sampling
- providing through TSBS of a variety of options for SHARS training sessions, including in-person trainings, as well as electronically generated trainings such as live webinar sessions and video trainings, with trainings are not limited to only Special Education, but also to the Business Office, PEIMS Coordinators, as well as other administrative individuals who may be involved in the financial side of the SHARS and MAC programs.
- all relevant training in order to ensure legal compliance with the SHARS program and efficient claim processing, with TSBS focusing on the legal compliance portion and notifying the District of what can be billed and, with Provider, provide training on the location of relevant billing information in the ARD and how to enter billing tickets
- before commencement of training, begin with an Implementation Meet and Greet with key members of the District's staff, from administrators to lead providers in each service area, with Provider to provide reports on current documentation levels as it exists in the District's current ARDs
- after reviewing current documentation, and receiving feedback from the District, a training plan is created for the roll out of the Medicaid applications in eSTAR, with as many training sessions as needed to work with each type of user that will be affected in the documentation and ticket entry
- all training is free of cost throughout not only implementation, but for future review or follow up sessions that may take place
- training sessions also include administration training/SHARS Clerk training for running the various reports in the system if necessary
- online training as part of the implementation process
- follow-up and refresher online training is also offered as needed or as requested.

Vendor will further provide such other goods and services described in RFP #20-025 "Third Party Administration of SHARS Claims and Special Education Software" issued by the District (the "RFP") and/or if more favorable to the District, the response of Vendor thereto.

Notwithstanding anything herein to the contrary, the Vendor is permitted to retain Texas State Billing Services, Inc. ("TSBS") as its authorized subcontractor under the Contract for the purposes of the Medicaid billing services for Medicaid reimbursement (the "Subcontracted Services"). The District consents to the Vendor subcontracting the Subcontracted Services to TSBS, but only as to TSBS and only as to the Subcontracted Services. The Vendor and TSBS shall be jointly and severally responsible and liable to the District for performance of the Subcontracted Services. If the Vendor subcontracts the Subcontracted Services to TSBS, then the District, for the period of such subcontracting: (a) authorizes TSBS to act as its billing agent for the Subcontracted Services [as subcontractor and subject to this Agreement]; (b) authorizes TSBS to obtain a copy of the quarterly Certification of Expended State Funds

Letter from the Texas Medicaid and Healthcare Partnership at the time it is sent to the District; and (c) agrees to confirm the foregoing authorizations in a writing in form and substance mutually acceptable to the District and TSBS.

**EXHIBIT “B”
Compensation**

e-STAR Subscription –

\$202,344.39 for the primary term, payable annually after invoicing
\$213,188.29 for the first renewal term if exercised, payable annually after invoicing
\$221,715.82 for the second renewal term if exercised, payable annually after invoicing
\$230,584.45 for the third renewal term if exercised, payable annually after invoicing
\$239,807.83 for the fourth renewal term if exercised, payable annually after invoicing.

SHARS/SPED Mgmt. Services – 4.25% of the aggregate amount of SHARS reimbursement revenue actually received by the District for Medicaid-eligible services provided by the District during the term and which were properly billed by Vendor during the term pursuant to this Contract. Such reimbursement revenue shall include revenue received by the District on an interim basis from such claims billed to Medicaid by Vendor as well as additional revenue received by the District from Medicaid based upon the District’s settled Medicaid’s cost report for the period in which Vendor directly billed Medicaid for eligible services. Payment shall be made after invoicing, with invoicing to occur monthly based upon receipts in the previous month. In the event any claim for which the District received reimbursement is subject to disallowance, Vendor shall refund to the District the amount which was paid by the District to Vendor with respect to such disallowed claim, within 20 days after notification of such disallowance.

Total Compensation for Goods and Services Permitted Under This Contract:

\$202,344.39 for eSTAR for the primary term [plus the applicable above-referenced amount for any exercised renewal term]; otherwise not capped due to variable nature of receipts.

Addendum G


This Addendum is attached to and forms part of the Vendor Contract for Goods and Services (the “Agreement”) between Frontline Technologies Group LLC D/B/A Frontline Education (“Frontline”), on behalf of itself and its subsidiaries and affiliates including esped.com Incorporated, and El Paso Independent School District (“Customer”) as of the date hereof (the “Effective Date”). To the extent that any of the terms or conditions in this Addendum may contradict or conflict with any of the terms or conditions of the Agreement, it is expressly understood and agreed that the terms of this Addendum shall take precedence and supersede the Agreement.

It is the intent of both Frontline and Customer that the following terms of this Addendum are included as part of the Agreement:

1. **Software.** Subject to the terms and conditions set forth in the Agreement, Frontline hereby grants Customer a non-exclusive, non-transferable license to use the software identified on Exhibit “A” to the Agreement (“Software”) and the technical manuals, instructions, user information, training materials, and other documentation that accompany the Software and contain its technical specifications, as may be amended from time to time (“Documentation”) solely for internal use by end users in the ordinary course of Customer’s business. All rights, title and interest to the Software are expressly reserved and retained by Frontline or its licensors, including any program or other application that is designed to integrate and be used with the Software, whether or not developed independently by Frontline, and all improvements, modifications and intellectual property rights therein. Customer shall not, and Customer shall make commercially reasonable, good faith efforts to require any end users to not, (i) transfer, assign, export, or sublicense the Software except as specifically set forth herein, or its license rights thereto, to any other person, organization or entity, including through rental, timesharing, service bureau, subscription, hosting, or outsourcing the Software (whether or not such sublicense, hosting or outsourcing is by Customer or for Customer); (ii) attempt to create any derivative version thereof; (iii) remove or modify any marking or notice on or displayed through the Software or Documentation, including those related to Frontline’s or its licensors’ proprietary rights in and to the Software or Documentation, as applicable; or (iv) de-compile, decrypt, reverse engineer, disassemble, or otherwise reduce same to human-readable form. Without limiting the foregoing, Customer may not sublicense, outsource or otherwise grant access to the Software to any third party (including any third party host of the Software for Customer), except for any billing company or billing subcontractor, or without Frontline’s prior written consent (which consent shall not be unreasonably withheld).
2. **Software Warranties.** Frontline represents and warrants that (a) the Software will perform substantially in accordance with the specifications set forth in the then-current Documentation and (b) the Services will be performed in a professional and workmanlike manner. In the event of a non-conformance of the Software, reported to and verified by Frontline, Frontline will make commercially reasonable efforts to correct such non-conformance. Except as otherwise provided in the Agreement, Customer’s sole remedy for any such non-conformance shall be: (a) the replacement, repair, or refund, at Frontline’s option of defective Software [provided, however, that, in event of refund, Customer may also terminate the Agreement at its option]; and (b) indemnification of the Customer by Frontline for any actual monetary loss to Customer to the extent resulting from such non-conformance.

3. **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, FRONTLINE AND ITS LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO ANY ASPECT OF THE SOFTWARE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FRONTLINE AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE, WILL BE UNINTERRUPTED, OR ERROR-FREE; NOR DO THEY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE.

IN WITNESS WHEREOF, Frontline and District have signed this Addendum and shall be effective as of the Effective Date.

Frontline Technologies Group LLC dba Frontline Education Signature: <u></u> Name: <u>Gregory A. Doran</u> Title: <u>CFO</u> Date: <u>May 11, 2020</u>	El Paso Independent School District Signature: _____ Name: _____ Title: _____ Date: _____
---	--

APPROVED AS TO FORM



By: _____
Jeanne C. Collins, General Counsel for District

Signed: Tuesday, May 12, 2020

Attachment C

HHSC Uniform Terms and Conditions Version 2.16
Published and Effective: February 1, 2019
Responsible Office: Chief Counsel



TEXAS

Health and Human Services

Health and Human Services Commission
HHSC Uniform Terms and Conditions - Grant
Version 2.16

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ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 DEFINITIONS

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

"Amendment" means a written agreement, signed by the Parties, which documents changes to the Contract other than those permitted by Work Orders or Technical Guidance Letters.

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

"Contract" means the Signature Document, these Uniform Terms and Conditions, along with any Attachments, and any Amendments, or Technical Guidance Letters that may be issued by the System Agency, to be incorporated by reference for all purposes.

"Deliverable" means the work product(s), including all reports and project documentation, required to be submitted by Grantee to the System Agency.

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

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

"GAAP" means Generally Accepted Accounting Principles.

"GASB" means the Governmental Accounting Standards Board.

"Grantee" means the Party receiving funds under this Contract. May also be referred to as "Contractor" in certain attachments.

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

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

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

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

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

"Parties" means the System Agency and Grantee, collectively.

"Party" means either the System Agency or Grantee, individually.

"Program" means the statutorily authorized activities of the System Agency under which this Contract has been awarded.

"Project" means specific activities of the Grantee that are supported by funds provided under this Contract.

"Public Information Act" or **"PIA"** means Chapter 552 of the Texas Government Code.

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

"Solicitation" or **"Request for Applications (RFA)"** means the document (including all amendments and attachments) issued by the System Agency under which applications for Program funds were requested, which is incorporated by reference for all purposes in its entirety.

"Solicitation Response" or **"Application"** means Grantee's full and complete response (including any attachments and addenda) to the Solicitation, which is incorporated by reference for all purposes in its entirety.

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

"State of Texas Textravel" means Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

"Statement of Work" means the description of activities performed in completing the Project, as specified in the Contract and as may be amended.

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

"Technical Guidance Letter" or **"TGL"** means an instruction, clarification, or interpretation of the requirements of the Contract, issued by the System Agency to the Grantee.

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

"Uniform Grant Management Standards" or **"UGMS"** means uniform grant and contract administration procedures, developed under the authority of Chapter 783 of the Texas

Government Code, to promote the efficient use of public funds in local government and in programs requiring cooperation among local, state, and federal agencies.

1.2 INTERPRETIVE PROVISIONS

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

ARTICLE II. PAYMENT METHODS AND RESTRICTIONS

2.1 PAYMENT METHODS

- A. Except as otherwise provided by this Contract, the payment method will be one or more of the following:
 - i. Cost Reimbursement. This payment method is based on an approved budget and submission of a request for reimbursement of expenses Grantee has incurred at the time of the request;
 - ii. Unit rate/fee-for-service. This payment method is based on a fixed price or a specified rate(s) or fee(s) for delivery of a specified unit(s) of service and acceptable submission of all required documentation, forms and/or reports; or
 - iii. Advance payment. This payment method is based on disbursement of the minimum necessary funds to carry out the Program or Project where the Grantee has

implemented appropriate safeguards. This payment method will only be utilized in accordance with governing law, state and federal regulations, and at the sole discretion of the System Agency.

- B. Grantee shall bill the System Agency in accordance with the Contract. Unless otherwise specified in the Contract, Grantee shall submit requests for reimbursement or payment monthly by the last business day of the month following the month in which expenses were incurred or services provided. Grantee shall maintain all documentation that substantiates invoices and make the documentation available to the System Agency upon request.

2.2 FINAL BILLING SUBMISSION

Unless otherwise provided by the System Agency, Grantee shall submit a reimbursement or payment request as a final close-out invoice not later than forty-five (45) calendar days following the end of the term of the Contract. Reimbursement or payment requests received after the deadline may not be paid.

2.3 FINANCIAL STATUS REPORTS (FSRs)

Except as otherwise provided, for contracts with categorical budgets, Grantee shall submit quarterly FSRs to System Agency by the last business day of the month following the end of each quarter for System Agency review and financial assessment. Grantee shall submit the final FSR no later than forty-five (45) calendar days following the end of the applicable term.

2.4 USE OF FUNDS

Grantee shall expend funds under this Contract only for approved services and for reasonable and allowable expenses directly related to those services.

2.5 USE FOR MATCH PROHIBITED

Grantee shall not use funds provided under this Contract for matching purposes in securing other funding without the written approval of the System Agency.

2.6 PROGRAM INCOME

Income directly generated from funds provided under this Contract or earned only as a result of such funds is Program Income. Unless otherwise required under the Program, Grantee shall use Program Income, as provided in UGMS Section III, Subpart C, .25(g)(2), to further the Program, and Grantee shall spend the Program Income on the Project. Grantee shall identify and report Program Income in accordance with the Contract, applicable law, and any programmatic guidance. Grantee shall expend Program Income during the Contract term, when earned, and may not carry Program Income forward to any succeeding term. Grantee shall refund Program Income to the System Agency if the Program Income is not expended in the term in which it is earned. The System Agency may base future funding levels, in part, upon Grantee's proficiency in identifying, billing, collecting, and reporting Program Income, and in using Program Income for the purposes and under the conditions specified in this Contract.

2.7 NONSUPPLANTING

Grant funds may be used to supplement existing, new or corresponding programming and related activities. Grant funds may not be used to supplant (replace) existing funds in place to support current programs and related activities.

2.8 ALLOWABLE COSTS

Allowable Costs are restricted to costs that comply with the Texas Uniform Grant Management Standards (UGMS) and applicable state and federal rules and law. The Parties agree that all the requirements of the UGMS apply to this Contract, including the criteria for Allowable Costs. Additional federal requirements apply if this Contract is funded, in whole or in part, with federal funds.

2.9 INDIRECT COST RATES

The System Agency may acknowledge an indirect cost rate for Grantees that is utilized for all applicable contracts. Grantee will provide the necessary financial documents to determine the indirect cost rate in accordance with the Uniform Grant Guidance (UGG) and Uniform Grant Management Standards (UGMS).

ARTICLE III. STATE AND FEDERAL FUNDING

3.1 FUNDING

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

3.2 NO DEBT AGAINST THE STATE

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

3.3 DEBT AND DELINQUENCIES

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

3.4 RECAPTURE OF FUNDS

A. At its sole discretion, the System Agency may i) withhold all or part of any payments to Grantee to offset overpayments, unallowable or ineligible costs made to the Grantee, or if any required financial status report(s) is not submitted by the due date(s), or ii) require Grantee to promptly refund or credit - within thirty (30) calendar days of written notice -

any funds erroneously paid by System Agency which are not expressly authorized under the Contract.

- B. "Overpayments" as used in this Section include payments (i) made by the System Agency that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Contract, including any unapproved expenditures. Grantee understands and agrees that it will be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Grantee further understands and agrees that reimbursement of such disallowed costs shall be paid by Grantee from funds which were not provided or otherwise made available to Grantee under this Contract.

ARTICLE IV. ALLOWABLE COSTS AND AUDIT REQUIREMENTS

4.1 ALLOWABLE COSTS

- A. System Agency will reimburse the allowable costs incurred in performing the Project that are sufficiently documented. Grantee must have incurred a cost prior to claiming reimbursement and within the applicable term to be eligible for reimbursement under this Contract. At its sole discretion, the System Agency will determine whether costs submitted by Grantee are allowable and eligible for reimbursement. The System Agency may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Grantee's repayment obligations. Applicable cost principles, audit requirements, and administrative requirements include, but are not limited to:

Applicable Entity	Applicable Cost Principles	Audit Requirements	Administrative Requirements
State, Local, and Tribal Governments	2 CFR Part 200 and UGMS	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS
Educational Institutions	2 CFR Part 200 and UGMS	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS
Non-Profit Organizations	2 CFR Part 200 and UGMS	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS

For-profit Organization other than a hospital and an organization named in OMB Circular A-122 (2 CFR Part, 230) as not subject to that circular.	48 CFR Part 31, Contract Cost Principles and Procedures, or Uniform cost accounting standards that comply with cost principles acceptable to the federal or state awarding agency	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS
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- B. OMB Circulars will be applied with the modifications prescribed by UGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict.

4.2 AUDITS AND FINANCIAL STATEMENTS

A. Audits

- i. HHS Single Audit Unit will notify Grantee to complete the Single Audit Determination Form. If Grantee fails to complete the form within thirty (30) calendar days after receipt of notice, Grantee will be subject to the sanctions and remedies for non-compliance with this Contract.
- ii. If Grantee, within Grantee's fiscal year, expends at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) in federal funds awarded, Grantee shall have a single audit or program-specific audit in accordance with 2 CFR 200. The federal threshold amount includes federal funds passed through by way of state agency awards.
- iii. If Grantee, within Grantee's fiscal year, expends at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) in state funds awarded, Grantee shall have a single audit or program-specific audit in accordance with UGMS, State of Texas Single Audit Circular. The audit must be conducted by an independent certified public accountant and in accordance with 2 CFR 200, Government Auditing Standards, and UGMS.
- iv. For-profit Grantees whose expenditures meet or exceed the federal or state expenditure thresholds stated above shall follow the guidelines in 2 CFR 200 or UGMS, as applicable, for their program-specific audits.
- v. Each Grantee that is required to obtain a single audit must competitively re-procure single audit services once every six years. Grantee shall procure audit services in compliance with this section, state procurement procedures, as well as with the provisions of UGMS.

B. Financial Statements

Each Grantee that does not meet the expenditure threshold for a single audit or program-specific audit, must provide financial statements.

4.3 SUBMISSION OF AUDITS AND FINANCIAL STATEMENTS

A. Audits

Due the earlier of 30 days after receipt of the independent certified public accountant's report or nine months after the end of the fiscal year, Grantee shall submit electronically one copy of the single audit or program-specific audit to the System Agency via:

i. HHS portal at: or,

<https://hhsportal.hhs.state.tx.us/heartwebextr/hhscSau>

ii. Email to: single_audit_report@hhsc.state.tx.us.

B. Financial Statements

Due no later than nine months after the Grantee's fiscal year end, Grantees which are not required to submit an audit, shall submit electronically financial statements via:

i. HHS portal at:

<https://hhsportal.hhs.state.tx.us/heartwebextr/hhscSau>; or,

ii. Email to: single_audit_report@hhsc.state.tx.us.

ARTICLE V. AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS

5.1 GENERAL AFFIRMATIONS

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

5.2 FEDERAL ASSURANCES

Grantee further certifies that, to the extent Federal Assurances are incorporated into the Contract under the Signature Document, the Grantee has reviewed the Federal Assurances and that Grantee is in compliance with all requirements.

5.3 FEDERAL CERTIFICATIONS

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

ARTICLE VI. INTELLECTUAL PROPERTY

6.1 OWNERSHIP OF WORK PRODUCT

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

therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Grantee agrees to execute all papers and to perform such other property rights as System Agency may deem necessary to secure for System Agency or its designee the rights herein assigned. In the event that Grantee has any rights in and to the Work Product that cannot be assigned to System Agency, Grantee hereby grants to System Agency an exclusive, worldwide, royalty-free, transferable, irrevocable, and perpetual license, with the right to sublicense, to reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, make, have made, use, sell and offer for sale the Work Product and any products developed by practicing such rights.

6.2 GRANTEE'S PRE-EXISTING WORKS

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

6.3 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS

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

6.4 DELIVERY UPON TERMINATION OR EXPIRATION

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

6.5 SURVIVAL

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

ARTICLE VII. RECORDS, AUDIT, AND DISCLOSURE

7.1 BOOKS AND RECORDS

Grantee shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes. Unless otherwise specified in this Contract, Grantee shall maintain legible copies of this Contract and all related documents for a minimum of seven (7) years after the termination of the Contract period or seven (7) years after the completion of any litigation or dispute involving the Contract, whichever is later.

7.2 ACCESS TO RECORDS, BOOKS, AND DOCUMENTS

In addition to any right of access arising by operation of law, Grantee and any of Grantee's affiliate or subsidiary organizations, or Subcontractors shall permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Office of the Texas Attorney General, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Grantee shall produce original documents related to this Contract. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Grantee shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

7.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS

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

7.4 SAO AUDIT

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

7.5 CONFIDENTIALITY

Grantee shall maintain as confidential, and shall not disclose to third parties without System Agency's prior written consent, any System Agency information including but not limited to System Agency's business activities, practices, systems, conditions and services. This section will survive termination or expiration of this Contract.

ARTICLE VIII. CONTRACT REMEDIES AND EARLY TERMINATION

8.1 CONTRACT REMEDIES

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

- i. suspending all or part of the Contract;
- ii. requiring the Grantee to take specific actions in order to remain in compliance with the Contract;
- iii. recouping payments made by the System Agency to the Grantee found to be in error;
- iv. suspending, limiting, or placing conditions on the Grantee's continued performance of the Project;
- v. imposing any other remedies, sanctions or penalties authorized under this Contract or permitted by federal or state statute, law, regulation or rule.

8.2 TERMINATION FOR CONVENIENCE

The System Agency may terminate the Contract at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in HHSC's notice of termination. The System Agency's right to terminate the Contract for convenience is cumulative of all rights and remedies which exist now or in the future.

8.3 TERMINATION FOR CAUSE

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

i. Material Breach

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

ii. Failure to Maintain Financial Viability

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

ARTICLE IX. MISCELLANEOUS PROVISIONS

9.1 AMENDMENT

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

9.2 INSURANCE

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

9.3 LEGAL OBLIGATIONS

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

9.4 PERMITTING AND LICENSURE

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

9.5 INDEMNITY

- A. GRANTEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND SYSTEM AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY ACTS OR OMISSIONS OF GRANTEE OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY GRANTEE WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND GRANTEE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. GRANTEE AND SYSTEM AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**
- B. THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE GRANTEE TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE SYSTEM AGENCY OR ITS EMPLOYEES.**
- C. For the avoidance of doubt, System Agency shall not indemnify Grantee or any other entity under the Contract.**

9.6 ASSIGNMENTS

- A. Grantee may not assign all or any portion of its rights under, interests in, or duties required under this Contract without prior written consent of the System Agency, which may be withheld or granted at the sole discretion of the System Agency. Except where otherwise agreed in writing by the System Agency, assignment will not release Grantee from its obligations under the Contract.**
- B. Grantee understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. This assignment will only be made to another State agency or a non-state agency that is contracted to perform agency support.**

9.7 INDEPENDENT CONTRACTOR

Grantee and Grantee's employees, representatives, agents, Subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the Contract. Neither Grantee nor System Agency is an agent of the other and neither may make any commitments on the other party's behalf. Should Grantee subcontract any of the services required in the Contract, Grantee expressly understands and acknowledges that in entering such subcontract(s), System Agency is in no manner liable to any Subcontractor(s) of Grantee. In no event shall this provision relieve Grantee of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract. Grantee shall have no claim against System Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The Contract shall not create any joint venture, partnership, agency, or employment relationship between Grantee and System Agency.

9.8 TECHNICAL GUIDANCE LETTERS

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

9.9 DISPUTE RESOLUTION

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

9.10 GOVERNING LAW AND VENUE

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

9.11 SEVERABILITY

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

enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

9.12 SURVIVABILITY

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

9.13 FORCE MAJEURE

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

9.14 NO WAIVER OF PROVISIONS

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

9.15 PUBLICITY

- A. Except as provided in the paragraph below, Grantee must not use the name of, or directly or indirectly refer to, the System Agency, the State of Texas, or any other State agency in any media release, public announcement, or public disclosure relating to the Contract or its subject matter, including in any promotional or marketing materials, customer lists, or business presentations.
- B. Grantee may publish, at its sole expense, results of Grantee performance under the Contract with the System Agency's prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.

9.16 PROHIBITION ON NON-COMPETE RESTRICTIONS

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

9.17 NO WAIVER OF SOVEREIGN IMMUNITY

Nothing in the Contract will be construed as a waiver of the System Agency's or the State's sovereign immunity. This Contract shall not constitute or be construed as a waiver of

any of the privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas under the Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. System Agency does not waive any privileges, rights, defenses, or immunities available to System Agency by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.

9.18 ENTIRE CONTRACT AND MODIFICATION

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

9.19 COUNTERPARTS

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

9.20 PROPER AUTHORITY

Each Party represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract.

9.21 E-VERIFY PROGRAM

Grantee certifies that it utilizes and will continue to utilize the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- i. all persons employed to perform duties within Texas during the term of the Contract; and
- ii. all persons, (including subcontractors) assigned by the Grantee to perform work pursuant to the Contract within the United States of America.

9.22 CIVIL RIGHTS

A. Grantee agrees to comply with state and federal anti-discrimination laws, including:

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

B. Grantee agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from

participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.

- C. Grantee agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. State and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Grantee agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- D. Grantee agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHSC Civil Rights Office. The posters are available on the HHS website at: <http://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>
- E. Grantee agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- F. Upon request, Grantee shall provide HHSC's Civil Rights Office with copies of the Grantee's civil rights policies and procedures.
- G. Grantee must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:

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

Attachment D

HHSC MAC SUPPLEMENTAL CONDITIONS

Attachment C (the “HHSC UTCs”), is revised as follows:

1. **Section 2.1, Payment Methods**, is deleted in its entirety and replaced with the following:

Except as otherwise provided by the provisions of the Contract, the payment method will be one or more of the following:

- a. **Cost reimbursement.** This payment method is based on quarterly claims and submission of a request for reimbursement of expenses Grantee has incurred during the reporting period;
- b. **Unit rate/fee-for-service.** This payment method is based on a fixed price or a specified rate(s) or fee(s) for delivery of a specified unit(s) of service and acceptable submission of all required documentation, forms and/or reports; or
- c. **Advance payment.** This payment method is based on disbursal of the minimum necessary funds to carry out the Program or Project where the Grantee has implemented appropriate safeguards. This payment method will only be utilized in accordance with governing law and at the sole discretion of the System Agency.

2. **Section 2.2, Final Billing Submission**, is deleted in its entirety and replaced with the following:

Unless otherwise provided by the System Agency, Grantee shall submit a reimbursement request as a final close-out not later than 90 days following the end of the term of the Contract. Reimbursement or payment requests received in the System Agency's offices more than 90 days following the termination of the Contract may not be paid.

3. **Section 9.17, No Waiver of Sovereign Immunity**, is deleted in its entirety and replaced with the following:

Nothing in the Contract will be construed as a waiver of sovereign immunity by the System Agency. Similarly, nothing in the Contract will be construed as a waiver of any rights or affirmative defenses available to Grantee.

(Remainder of Page Intentionally Left Blank)

Attachment E

CONTRACT AFFIRMATIONS

By entering into this Contract, Grantee affirms, without exception, as follows:

1. Grantee represents and warrants that these Contract Affirmations apply to Grantee and all of Grantee's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract and any related Solicitation.
2. Grantee represents and warrants that all statements and information provided to HHSC are current, complete, and accurate. This includes all statements and information in this Contract and any related Solicitation Response.
3. Grantee understands that HHSC will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Grantee is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
4. Grantee accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation, if any, under which this Contract was awarded. Grantee agrees that all exceptions to the Solicitation, if any, are rejected unless expressly accepted by HHSC in writing.
5. Grantee agrees that HHSC has the right to use, produce, and distribute copies of and to disclose to HHSC employees, agents, and contractors and other governmental entities all or part of this Contract or any related Solicitation Response as HHSC deems necessary to complete the procurement process or comply with state or federal laws.
6. Grantee generally releases from liability and waives all claims against any party providing information about the Grantee at the request of HHSC.
7. Grantee has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or any related Solicitation, or related Solicitation Response. Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Grantee certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

8. Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Grantee certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
9. Under Section 231.006(d) of the Texas Family Code regarding child support, Grantee certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.
10. Grantee certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Grantee's subcontracts, if any, if payment in whole or in part is from federal funds.
11. Grantee certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
12. Grantee represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
13. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Grantee certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of this Contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.
14. Grantee represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
15. Grantee agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.
16. Grantee represents and warrants that payments to Grantee and Grantee's receipt of appropriated or other funds under this Contract or any related Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).

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

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

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

20. If this Contract is for the purchase or lease of computer equipment, then Grantee certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
21. If this Contract is for the purchase or lease of covered television equipment, then Grantee certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.
22. Grantee represents and warrants, during the twelve (12) month period immediately prior to the date of the execution of this Contract, none of its employees including, but not limited to those will provide services under the Contract, was an employee of an HHS Agency. Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), Grantee will not allow any former employee of the System Agency to perform services

under this Contract during the twelve (12) month period immediately following the employee's last date of employment at the System Agency.

23. Grantee acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Grantee may not accept employment from Grantee before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.
24. If this Contract is for consulting services under Chapter 2254 of the Texas Government Code, in accordance with Section 2254.033 of the Texas Government Code, Grantee certifies that it does not employ an individual who was employed by System Agency or another agency at any time during the two years preceding the submission of any related Solicitation Response related to this Contract or, in the alternative, Grantee has disclosed in any related Solicitation Response the following: (i) the nature of the previous employment with System Agency or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation at the time of the employment was terminated.
25. Grantee represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to HHSC under this Contract or any related Solicitation and that Grantee's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
26. Grantee understands that HHSC does not tolerate any type of fraud. The agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or Grantees who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Grantee agrees to comply with all applicable laws, rules, regulations, and HHSC policies regarding fraud including, but not limited to, HHS Circular C-027.
27. The undersigned affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Grantee has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (b) in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Grantee has violated any federal antitrust law; and (c) neither I nor any representative of the Grantee has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Response to a competitor of the Grantee or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Grantee.
28. Grantee represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or

threatened against Grantee or any of the individuals or entities included in numbered paragraph 1 of these Contract Affirmations within the five (5) calendar years immediately preceding execution of this Contract or the submission of any related Solicitation Response that would or could impair Grantee's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into this Contract. If Grantee is unable to make the preceding representation and warranty, then Grantee instead represents and warrants that it has provided to HHSC a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Grantee's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into this Contract. In addition, Grantee acknowledges this is a continuing disclosure requirement. Grantee represents and warrants that Grantee shall notify HHSC in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update HHSC shall constitute breach of contract and may result in immediate contract termination.

29. Grantee represents and warrants that, pursuant to Section 2270.002 of the Texas Government Code, Grantee does not boycott Israel and will not boycott Israel during the term of this Contract.
30. Grantee certifies that for contracts for services, Grantee shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of this Contract to determine the eligibility of:
 - (a) all persons employed by Grantee to perform duties within Texas; and
 - (b) all persons, including subcontractors, assigned by Grantee to perform work pursuant to this Contract within the United States of America.
31. Grantee understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Grantee is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.
32. Grantee represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.
33. Grantee represents and warrants that all statements and information prepared and submitted by Grantee in this Contract and any related Solicitation Response are current, complete, true, and accurate. Grantee acknowledges any false statement or material misrepresentation made by Grantee during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Grantee understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Grantee is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.
34. Grantee represents and warrants that the individual signing this Contract is authorized to sign on behalf of Grantee and to bind the Grantee.

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

Legal Name of Grantee: Juan Cabrera, Supt. El Paso I.S.D.


Signature of Authorized Representative

8/26/19
Date Signed

Juan Cabrera, Supt. El Paso I.S.D.
Printed Name and Title of Authorized Representative

(915) 230-2000
Phone Number

74-6000 769
Federal Employer Identification Number

(915) 230-0575
Fax Number

079841979
DUNS Number

Superintendent@episd.org
Email Address

6531 Boeing Dr.
Physical Street Address

El Paso TX 79925
City, State, Zip Code

6531 Boeing Dr
Mailing Address, if different

El Paso TX 79925
City, State, Zip Code

(Remainder of Page Intentionally Left Blank)

Approved to Form:


Jeanne C. Collins
EPISD General Counsel

Attachment F

HHS Contract No. _____

DATA USE AGREEMENT BETWEEN THE TEXAS HEALTH AND HUMAN SERVICES SYSTEM AND CONTRACTOR

This Data Use Agreement ("DUA") is effective as of the date of the Base Contract into which it is incorporated ("Effective Date"), by and between the Texas Health and Human Services System, which includes the Texas Health and Human Services Commission and the Department of State Health Services ("THHS") and Contractor (the "Base Contract").

ARTICLE 1. PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE

The purpose of this DUA is to facilitate access to, creation, receipt, maintenance, use, disclosure or transmission of Confidential Information with Contractor, and describe Contractor's rights and obligations with respect to the Confidential Information and the limited purposes for which the Contractor may create, receive, maintain, use, disclose or have access to Confidential Information. This DUA also describes HHS's remedies in the event of Contractor's noncompliance with its obligations under this DUA. This DUA applies to both HHS business associates, as "business associate" is defined in the Health Insurance Portability and Accountability Act (HIPAA), and contractors who are not business associates, who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of HHS, its programs or clients as described in the Base Contract. As a best practice, HHS requires its contractors to comply with the terms of this DUA to safeguard all types of Confidential Information.

As of the Effective Date of this DUA, if any provision of the Base Contract conflicts with this DUA, this DUA controls.

ARTICLE 2. DEFINITIONS

For the purposes of this DUA, capitalized, underlined terms have the following meanings:

"Authorized Purpose" means the specific purpose or purposes described in the Base Contract for Contractor to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

"Authorized User" means a person:

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

"Breach" means an impermissible use or disclosure of electronic or non-electronic sensitive personal information by an unauthorized person or for an unauthorized purpose that compromises the security or privacy of Confidential Information such that the use or disclosure poses a risk of reputational harm, theft of financial information, identity theft, or medical identity theft. Any acquisition, access, use, disclosure or loss of Confidential Information other than as permitted by this DUA shall be presumed to be a Breach unless Contractor demonstrates, based on a risk assessment, that there is a low probability that the Confidential Information has been compromised.

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

- (1) Education records as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. Part 99
- (2) Federal Tax Information as defined in Internal Revenue Code §6103 and Internal Revenue Service Publication 1075;
- (3) Personal Identifying Information (PII) as defined in Texas Business and Commerce Code, Chapter 521;
- (4) Protected Health Information (PHI) in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information as defined in 45 C.F.R. §160.103;
- (5) Sensitive Personal Information (SPI) as defined in Texas Business and Commerce Code, Chapter 521;
- (6) Social Security Administration Data, including, without limitation, Medicaid information means disclosures of information made by the Social Security Administration or the Centers for Medicare and Medicaid Services from a federal system of records for administration of federally funded benefit programs under the Social Security Act, 42 U.S.C., Chapter 7;
- (7) All privileged work product;
- (8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

"Destroy", "Destruction", for Confidential Information, means:

- (1) Paper, film, or other hard copy media have been shredded or destroyed such that the Confidential Information cannot be read or otherwise cannot be reconstructed. Redaction is specifically excluded as a means of data destruction.
- (2) Electronic media have been cleared, purged, or destroyed consistent with NIST Special Publication 800-88, "Guidelines for Media Sanitization," such that the Confidential Information cannot be retrieved.

"Discover, Discovery" means the first day on which a Breach becomes known to Contractor, or, by exercising reasonable diligence would have been known to Contractor.

"Legally Authorized Representative" of an individual, including as provided in 45 CFR 435.923 (authorized representative); 45 CFR 164.502(g)(1) (personal representative); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code §166.164 (medical power of attorney); and Texas Estates Code § 22.031 (representative).

"Required by Law" means a mandate contained in law that compels an entity to use or disclose Confidential Information that is enforceable in a court of law, including court orders, warrants, subpoenas or investigative demands.

"Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

"Workforce" means employees, volunteers, trainees or other persons whose performance of work is under the direct control of a party, whether or not they are paid by that party.

ARTICLE 3. CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION

Section 3.01 Obligations of Contractor

Contractor agrees that:

(A) With respect to PHI, Contractor shall:

(1) Make PHI available in a designated record set if requested by HHS, if Contractor maintains PHI in a designated record set, as defined in HIPAA.

(2) Provide to HHS data aggregation services related to the healthcare operations Contractor performs for HHS pursuant to the Base Contract, if requested by HHS, if Contractor provides data aggregation services as defined in HIPAA.

(3) Provide access to PHI to an individual who is requesting his or her own PHI, or such individual's Legally Authorized Representative, in compliance with the requirements of HIPAA.

(4) Make PHI available to HHS for amendment, and incorporate any amendments to PHI that HHS directs, in compliance with HIPAA.

(5) Document and make available to HHS, an accounting of disclosures in compliance with the requirements of HIPAA.

(6) If Contractor receives a request for access, amendment or accounting of PHI by any individual, promptly forward the request to HHS or, if forwarding the request would violate HIPAA, promptly notify HHS of the request and of Contractor's response. HHS will respond to all such requests, unless Contractor is Required by Law to respond or HHS has given prior written consent for Contractor to respond to and account for all such requests.

(B) With respect to ALL Confidential Information, Contractor shall:

(1) Exercise reasonable care and no less than the same degree of care Contractor uses to protect its own confidential, proprietary and trade secret information to prevent Confidential Information from being used in a manner that is not expressly an Authorized Purpose or as Required by Law. Contractor will access, create, maintain, receive, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threats or hazards to the security or integrity of such information or unauthorized uses.

(2) Establish, implement and maintain appropriate procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, in accordance with applicable laws or regulations relating to Confidential Information, to prevent any unauthorized use or disclosure of Confidential Information as long as Contractor has such Confidential Information in its actual or constructive possession.

(3) Implement, update as necessary, and document privacy, security and Breach notice policies and procedures and an incident response plan to address a Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the Base Contract. Contractor shall produce, within three business days of a request by HHS, copies of its policies and procedures and records relating to the use or disclosure of Confidential Information.

(4) Obtain HHS's prior written consent to disclose or allow access to any portion of the Confidential Information to any person, other than Authorized Users, Workforce or Subcontractors of

Contractor who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Breach to Contractor's management and as permitted in Section 3.01(A)(3), above. Contractor shall produce evidence of completed training to HHS upon request. HHS, at its election, may assist Contractor in training and education on specific or unique HHS processes, systems and/or requirements.

(5) Establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or applicable law. Contractor shall maintain evidence of sanctions and produce it to HHS upon request.

(6) Obtain prior written approval of HHS, to disclose or provide access to any Confidential Information on the basis that such act is Required by Law, so that HHS may have the opportunity to object to the disclosure or access and seek appropriate relief. If HHS objects to such disclosure or access, Contractor shall refrain from disclosing or providing access to the Confidential Information until HHS has exhausted all alternatives for relief.

(7) Certify that its Authorized Users each have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose and that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this DUA. Contractor and its Subcontractors shall maintain at all times an updated, complete, accurate list of Authorized Users and supply it to HHS upon request.

(8) Provide, and shall cause its Subcontractors and agents to provide, to HHS periodic written confirmation of compliance with controls and the terms and conditions of this DUA.

(9) Return to HHS or Destroy, at HHS's election and at Contractor's expense, all Confidential Information received from HHS or created or maintained by Contractor or any of Contractor's agents or Subcontractors on HHS's behalf upon the termination or expiration of this DUA, if reasonably feasible and permitted by law. Contractor shall certify in writing to HHS that all such Confidential Information has been Destroyed or returned to HHS, and that Contractor and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, Contractor acknowledges and agrees that it may not Destroy any Confidential Information if federal or state law, or HHS record retention policy or a litigation hold notice prohibits such Destruction. If such return or Destruction is not reasonably feasible, or is impermissible by law, Contractor shall immediately notify HHS of the reasons such return or Destruction is not feasible, and agree to extend the protections of this DUA to the Confidential Information for as long as Contractor maintains such Confidential Information.

(10) Complete and return with the Base Contract to HHS, attached as Attachment 2 to this DUA, the HHS Security and Privacy Initial Inquiry (SPI) at <https://hhs.texas.gov/laws-regulations/forms/miscellaneous/hhs-information-security-privacy-initial-inquiry-spi>. The SPI identifies basic privacy and security controls with which Contractor must comply to protect Confidential Information. Contractor shall comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information Contractor creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. Contractor's security controls shall be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. Contractor shall update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and shall provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements.

(11) Comply with the HHS Acceptable Use Policy (AUP) and require each Subcontractor and Workforce member who has direct access to HHS Information Resources, as defined in the AUP, to execute an HHS Acceptable Use Agreement.

(12) Only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form. A secure transmission of electronic Confidential Information in motion includes secure File Transfer Protocol (SFTP) or encryption at an appropriate level as required by rule, regulation or law. Confidential Information at rest requires encryption unless there is adequate administrative, technical, and physical security as required by rule, regulation or law. All electronic data transfer and communications of Confidential Information shall be through secure systems. Contractor shall provide proof of system, media or device security and/or encryption to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit, or the Discovery of a Breach. HHS may also request production of proof of security at other times as necessary to satisfy state and federal monitoring requirements. De-identification of Confidential Information in accordance with HIPAA de-identification standards is deemed secure.

(13) Designate and identify a person or persons, as Privacy Official and Information Security Official, each of whom is authorized to act on behalf of Contractor and is responsible for the development and implementation of the privacy and security requirements in this DUA. Contractor shall provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. Upon written notice from HHS, Contractor shall promptly remove and replace such official(s) if such official(s) is not performing the required functions.

(14) Make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, Confidential Information in accordance with applicable laws, regulations or demands of a regulatory authority relating to Confidential Information. Contractor shall provide such information in a time and manner reasonably agreed upon or as designated by the applicable law or regulatory authority.

(15) Comply with the following laws and standards *if applicable to the type of Confidential Information and Contractor's Authorized Purpose*:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;
- The Privacy Act of 1974;
- OMB Memorandum 17-12;
- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- Internal Revenue Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;
- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI;
- Family Educational Rights and Privacy Act

- Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that Contractor supports on behalf of HHS.
- (16) Be permitted to use or disclose Confidential Information for the proper management and administration of Contractor or to carry out Contractor's legal responsibilities, except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, if:
- (a) Disclosure is Required by Law;
 - (b) Contractor obtains reasonable assurances from the person to whom the information is disclosed that the person shall:
 - 1. Maintain the confidentiality of the Confidential Information in accordance with this DUA;
 - 2. Use or further disclose the information only as Required by Law or for the Authorized Purpose for which it was disclosed to the person; and
 - 3. Notify Contractor in accordance with Section 4.01 of a Breach of Confidential Information that the person Discovers or should have Discovered with the exercise of reasonable diligence.
 - (C) With respect to ALL Confidential Information, Contractor shall NOT:
 - (1) Attempt to re-identify or further identify Confidential Information that has been de-identified, or attempt to contact any persons whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS.
 - (2) Engage in prohibited marketing or sale of Confidential Information.
 - (3) Permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information, on behalf of HHS without requiring that Subcontractor first execute either the Form Subcontractor Agreement, Attachment 1, or Contractor's own Subcontractor agreement that ensures that the Subcontractor shall comply with the same safeguards and restrictions contained in this DUA for Confidential Information. Contractor is directly responsible for its Subcontractors' compliance with, and enforcement of, this DUA.

ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS

Section 4.01. Cooperation and Financial Responsibility.

- (A) Contractor shall, at Contractor's expense, cooperate fully with HHS in investigating, mitigating to the extent practicable, and issuing notifications as directed by HHS, for any Breach of Confidential Information.
- (B) Contractor shall make Confidential Information in Contractor's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach.
- (C) Contractor's obligation begins at the Discovery of a Breach and continues as long as related activity continues, until all effects of the Breach are mitigated to HHS's satisfaction (the "incident response period").

Section 4.02. Initial Breach Notice.

For federal information *obtained from a federal system of records*, including Federal Tax Information and Social Security Administration Data (which includes Medicaid and other governmental benefit program Confidential Information), Contractor shall notify HHS of the Breach within the first consecutive clock hour of Discovery. The Base Contract shall specify whether Confidential Information is obtained from a

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federal system of records. For all other types of Confidential Information Contractor shall notify HHS of the Breach not more than 24 hours after Discovery, or in a timeframe otherwise approved by HHS in writing. Contractor shall initially report to HHS's Privacy and Security Officers via email at: privacy@HHSC.state.tx.us and to the HHS division responsible for the Base Contract.

Contractor shall report all information reasonably available to Contractor about the Breach.

Contractor shall provide contact information to HHS for Contractor's single point of contact who will communicate with HHS both on and off business hours during the incident response period.

Section 4.03 Third Business Day Notice: No later than 5 p.m. on the third business day after Discovery, or a time within which Discovery reasonably should have been made by Contractor of a Breach of Confidential Information, Contractor shall provide written notification to HHS of all reasonably available information about the Breach, and Contractor's investigation, including, to the extent known to Contractor:

- a. The date the Breach occurred;
- b. The date of Contractor's and, if applicable, Subcontractor's Discovery;
- c. A brief description of the Breach, including how it occurred and who is responsible (or hypotheses, if not yet determined);
- d. A brief description of Contractor's investigation and the status of the investigation;
- e. A description of the types and amount of Confidential Information involved;
- f. Identification of and number of all individuals reasonably believed to be affected, including first and last name of the individual and if applicable, the Legally authorized representative, last known address, age, telephone number, and email address if it is a preferred contact method;
- g. Contractor's initial risk assessment of the Breach demonstrating whether individual or other notices are required by applicable law or this DUA for HHS approval, including an analysis of whether there is a low probability of compromise of the Confidential Information or whether any legal exceptions to notification apply;
- h. Contractor's recommendation for HHS's approval as to the steps individuals and/or Contractor on behalf of individuals, should take to protect the individuals from potential harm, including Contractor's provision of notifications, credit protection, claims monitoring, and any specific protections for a Legally Authorized Representative to take on behalf of an individual with special capacity or circumstances;
- i. The steps Contractor has taken to mitigate the harm or potential harm caused (including without limitation the provision of sufficient resources to mitigate);
- j. The steps Contractor has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Breach;
- k. Identify, describe or estimate of the persons, Workforce, Subcontractor, or individuals and any law enforcement that may be involved in the Breach;
- l. A reasonable schedule for Contractor to provide regular updates regarding response to the Breach, but no less than every three (3) business days, or as otherwise directed by HHS in writing, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and
- m. Any reasonably available, pertinent information, documents or reports related to a Breach that HHS requests following Discovery.

Section 4.04. Investigation, Response and Mitigation.

- (A) Contractor shall immediately conduct a full and complete investigation, respond to the Breach, commit necessary and appropriate staff and resources to expeditiously respond, and report as required to HHS for incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the satisfaction of HHS.
- (B) Contractor shall complete or participate in a risk assessment as directed by HHS following a Breach, and provide the final assessment, corrective actions and mitigations to HHS for review and approval.
- (C) Contractor shall fully cooperate with HHS to respond to inquiries and/or proceedings by state and federal authorities, persons and/or individuals about the Breach.
- (D) Contractor shall fully cooperate with HHS's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such Breach, or to recover or protect any Confidential Information, including complying with reasonable corrective action or measures, as specified by HHS in a Corrective Action Plan if directed by HHS under the Base Contract.

Section 4.05. Breach Notification to Individuals and Reporting to Authorities.

- (A) HHS may direct Contractor to provide Breach notification to individuals, regulators or third-parties, as specified by HHS following a Breach.
- (B) Contractor must comply with all applicable legal and regulatory requirements in the time, manner and content of any notification to individuals, regulators or third-parties, or any notice required by other state or federal authorities. Notice letters will be in Contractor's name and on Contractor's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of Contractor's representative, an email address and a toll-free telephone number, for the individual to obtain additional information.
- (C) Contractor shall provide HHS with draft notifications for HHS approval prior to distribution and copies of distributed and approved communications.
- (D) Contractor shall have the burden of demonstrating to the satisfaction of HHS that any required notification was timely made. If there are delays outside of Contractor's control, Contractor shall provide written documentation to HHS of the reasons for the delay.
- (E) If HHS directs Contractor to provide notifications, HHS shall, in the time and manner reasonably requested by Contractor, cooperate and assist with Contractor's information requests in order to make such notifications.

ARTICLE 5. GENERAL PROVISIONS

Section 5.01. Ownership of Confidential Information

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

Section 5.02. HHS Commitment and Obligations

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

Section 5.03 HHS Right to Inspection

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

Section 5.04 Term: Termination of DUA: Survival

This DUA will be effective on the date on which Contractor executes the Base Contract, and will terminate upon termination of the Base Contract and as set forth herein. If the Base Contract is extended, this DUA is extended to run concurrent with the Base Contract.

(A) If HHS determines that Contractor has violated a material term of this DUA, HHS may in its sole discretion:

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

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

(B) If neither termination nor cure is feasible, HHS shall report the violation to the applicable regulatory authorities.

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

Section 5.05 Injunctive Relief

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

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

Section 5.06 Indemnification

To the extent permitted by law, Contractor shall indemnify, defend and hold harmless HHS and its respective Executive Commissioner, employees, Subcontractors, agents (including other state agencies acting on behalf of HHS) or other members

of HHS' Workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this DUA or from any acts or omissions related to this DUA by Contractor or its employees, directors, officers, Subcontractors, or agents or other members of Contractor's Workforce. The duty to indemnify, defend and hold harmless is independent of the duty to insure. Upon demand, Contractor shall reimburse HHS for any and all losses, liabilities, lost profits, fines, penalties, costs or expenses (including costs of required notices, investigation, and mitigation of a Breach, fines or penalties imposed on an Indemnified Party by a regulatory authority, and reasonable attorneys' fees) which may be imposed upon any Indemnified Party to the extent caused by and which results from the Contractor's failure to meet any of its obligations under this DUA. Contractor's obligation to defend, indemnify and hold harmless any Indemnified Party will survive the expiration or termination of this DUA.

Section 5.07 Insurance

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

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

Section 5.08 Entirety of the Contract

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

Section 5.09 Automatic Amendment and Interpretation

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

Section 5.10 Notices; Requests for Approval

All notices and requests for approval related to this DUA must be directed to the HHS Chief Privacy Officer at privacy@hhsc.state.tx.us.

HHS Contract No.

ATTACHMENT 1. SUBCONTRACTOR AGREEMENT FORM
HHS CONTRACT NUMBER _____

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

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

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

Contractor and Subcontractor assure HHS that any Breach as defined by the DUA that Subcontractor Discovers shall be reported to HHS by Contractor in the time, manner and content required by the DUA.

If Contractor knows or should have known in the exercise of reasonable diligence of a pattern of activity or practice by Subcontractor that constitutes a material breach or violation of the DUA or the Subcontractor's obligations, Contractor shall:

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

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

CONTRACTOR

BY: _____

NAME: Juan Cabrera

TITLE: Superintendent EPISD

DATE: August 26, 2019

SUBCONTRACTOR

BY: _____

NAME: Albert Campos

TITLE: MAC Consultant

DATE: 8/22/19

HHS Data Use Agreement v. 8.4 November 12, 2017

Approved to Form:


Jeanne G. Collins
EPISD General Counsel

DUA Attachment 2--
Security and Privacy Initial Inquiry

HHS Security and Privacy Initial Inquiry Form

(<https://hhs.texas.gov/laws-regulations/forms/miscellaneous/hhs-information-security-privacy-initial-inquiry-spi>)

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