

HHSC CONTRACT NO. HHS000517200001

The Texas Health and Human Services Commission (“HHSC”), an administrative agency within the executive branch of the State of Texas, and Conduent State Healthcare, LLC (“Contractor”), having its principal office at 100 Campus Drive, Suite 200, Florham Park, New Jersey 07932, (each a “Party” and collectively the “Parties”), enter into the following agreement (“Contract”) for claims processing and adjudication and financial services.

I. LEGAL AUTHORITY

This Contract is entered into pursuant to Section 2157.006(a)(2) of the Texas Government Code and Title 34 Texas Administrative Code Rule 20.391. Contractor was selected by HHSC as the successful respondent under HHSC’s Request for Offers No. HHS0005172 issued November 19, 2021.

II. DURATION

The Contract is effective on the date of the last Party to sign this agreement (“Effective Date”) and expires four (4) years and nine (9) months after the Effective Date (“Initial Term”), unless sooner terminated as provided in this Contract. HHSC, at its sole discretion, may extend the Initial Term up to three (3) additional one (1) year periods for a maximum Contract Term of seven (7) years and nine (9) months.

Notwithstanding the limitation in the preceding paragraph and with at least ninety (90) calendar days’ advance written notice to Contractor, at the end of the Initial Term or any extension period, HHSC, at its sole discretion, may extend this Contract as necessary to ensure continuity of service, for purposes of transition, or as otherwise determined by HHSC to serve the best interest of the State for up to twelve (12) months, in one-month intervals, at the then-current contract rate or rates (if applicable) as modified during the Contract Term.

III. SERVICES

A. Service Description. The description of services to which Contractor is bound is included as

- HHSC Request for Offers No. HHS0005172 located in Attachment I (HHSC Request for Offers No. HHS0005172 and All RFO Addenda),
- Attachment J (Contractor’s Solicitation Response and Oral Presentation Submission), and
- Attachment K (Contractor’s Modifications to Solicitation Response).

Unless otherwise indicated, capitalized terms used herein but not otherwise defined shall have the respective meanings assigned to such terms in the documents set forth in Article IX (Contract Documents).

- B. Negotiated Terms and Conditions. To the extent there are negotiated terms and conditions as well as HHSC accepted exceptions and assumptions to HHSC Request for Offers No. HHS0005172, such terms and conditions are addressed in Article V (Supplemental Terms and Conditions), Article VI (Modifications to Section 2.1 (Description of Scope of Work) and Section 7.2 (Financial Approach – Business Terms) in HHSC Request for Offers No. HHS0005172), Attachment H (Insurance Requirements), Attachment K (Contractor’s Modifications to Solicitation Response), or Attachment L (Final Pricing Workbook) and Attachment M (Fee Schedules).

IV. BUDGET

- A. The total amount payable by HHSC during the Initial Term will not exceed ONE HUNDRED FORTY-SEVEN MILLION, SEVEN HUNDRED TWENTY-NINE THOUSAND, THREE HUNDRED EIGHTY-ONE AND 06/100 DOLLARS (\$147,729,381.06). By executing this Contract, Contractor agrees to the contracted rates and budget for the Contract Term, including the Initial Term and all renewals and extensions exercised. However, by mutual agreement of the Parties as authorized under the Contract, the budget or contract amounts may be amended. All expenditures under the Contract will be in accordance with the fee schedules located in Attachment L (Final Pricing Workbook).
- B. Attachment M (Fee Schedules), comprised of the following schedules, is a summarization of Attachment L (Final Pricing Workbook):
- M-1(a) Transition Fixed Fees;
 - M-1(b) Transition Fixed Fees Detail;
 - M-2(a) Operations Net Fixed Fees;
 - M-2(b) Operations Pass-Through Fees;
 - M-2(c) Operations Total Fixed Fees
 - M-3 Variable Unit Rates; and
 - M-4 Contractor Rates (Periodic and Recurring Activity Rates - Operations and Technical Labor).

V. SUPPLEMENTAL TERMS AND CONDITIONS

- A. General. All terms and conditions of Attachment A (Contract Affirmations), Attachment B (Uniform Terms and Conditions) and Attachment D (Data Use Agreement) of this Contract remain unmodified except as provided in this Article V.
- B. HHSC Confidential Information Remains Within United States. The Contractor shall ensure that all Confidential Information, as defined in Attachment D (Data

Use Agreement), including such information residing on back-up systems, remains within the United States. Confidential Information shall not be accessed by Contractor personnel located outside of the United States. Furthermore, Confidential Information may not be received, stored, processed, or disposed via information technology systems located outside of the United States.

- C. Copyright. Notwithstanding any copyright markings that Contractor may have placed on its Solicitation Response, Oral Presentation Submission, or Contractor's Modifications to Solicitation Response, Contractor agrees that HHSC may reproduce and distribute copies of the Solicitation Response, Oral Presentation Submission, and Contractor's Modifications to Solicitation Response to third parties without cost or liability, subject to Contractor's confidentiality markings, in the ordinary course of business which includes, but is not limited to, postings to HHSC's public website, responses to requests received under the Texas Public Information Act in accordance with Chapter 552 of the Texas Government Code, and postings to the Texas Legislative Budget Board website in accordance with Section 322.020 of the Texas Government Code. Contractor's assertion of confidentiality, if any, regarding its Solicitation Response, Oral Presentation Submission, or Contractor's Modifications to Solicitation Response is governed by Chapter 552 of the Texas Government Code.
- D. Representation by Counsel. Each Party represents that it has been represented by counsel in connection with the negotiation and execution of this Contract. The rule of construction that ambiguities are resolved against the drafting party shall not apply to this Contract.
- E. Electronic Signature. This Contract may be executed by using generally recognized e-signature technology (e.g., DocuSign or Adobe Sign), and such signature shall constitute an original signature with the same legal validity, enforceability, and admissibility as a manual handwritten signature affixed on paper.
- F. Clause 5 (Assignment) in Attachment A (Contract Affirmations) is deleted and replaced with the following:

5. Assignment

- A. Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from System Agency. Any attempted assignment in violation of this provision is void and without effect.
- B. Contractor understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract to a successor in interest designated by the Texas Legislature. Upon receipt of System Agency's notice of assignment, pledge, or transfer, Contractor shall cooperate with System Agency in giving

effect to such assignment, pledge, or transfer, at no cost to System Agency or to the recipient entity.

- G. Clause 6 (Terms and Conditions) in Attachment A (Contract Affirmations) is deleted and replaced with the following:

6. Terms and Conditions

Contractor 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. Contractor agrees that all exceptions to the Solicitation, as well as terms and conditions advanced by Contractor that differ in any manner from HHS' terms and conditions, if any, are rejected unless expressly accepted by System Agency in writing on the Signature Document.

- H. Clause 8 (Release from liability) in Attachment A (Contract Affirmations) is deleted and replaced with the following:

8. Release from Liability

Contractor generally releases from liability and waives all claims against any party providing information about the Contractor at the request of System Agency for the limited purposes of System Agency's evaluation of the Solicitation Response and System Agency's monitoring of Contractor's performance under the Contract. Notwithstanding the foregoing, this release and waiver for third parties does not apply when the furnished information is subject to a preexisting non-disclosure agreement between Contractor and a third party other than a Contractor-designated customer reference.

- I. Clause 45 (Office of Inspector General Investigative Findings Expert Review) in Attachment A (Contract Affirmations) is deleted and replaced with the following:

45. [Reserved]

- J. Clause 46 (Contract for Professional Services of Physicians, Optometrists, and Registered Nurses) in Attachment A (Contract Affirmations) is deleted and replaced with the following:

46. [Reserved]

- K. The term "Deliverable" set forth in Section 1.1 (Definitions) in Attachment B (Uniform Terms and Conditions) is deleted and replaced with the following:

"Deliverable" means a Work Product(s), including all reports and project documentation, prepared, developed, provided, or procured by Contractor as

part of the Services under the Contract for the use or benefit of the System Agency or the State of Texas.

- L. Section 5.1 (Ownership of Work Product) in Attachment B (Uniform Terms and Conditions) is deleted and replaced with the following:

5.1 OWNERSHIP OF WORK PRODUCT

- A. All right, title, and interest in the Work Product, including all Intellectual Property Rights therein, is exclusively owned by System Agency. Contractor and Contractor's employees will have no rights in or ownership of the Work Product or any other property of System Agency.
- B. Any and all Work Product that is copyrightable under United States copyright law is deemed to be "work made for hire" owned by System Agency, as provided by Title 17 of the United States Code. To the extent that Work Product does not qualify as a "work made for hire" under applicable federal law, Contractor hereby irrevocably assigns and transfers to System Agency, its successors and assigns, the entire right, title, and interest in and to the Work Product, including any and all Intellectual Property Rights embodied therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing.
- C. Contractor agrees to execute all papers and to perform such other acts as System Agency may deem necessary to secure for System Agency or its designee the rights herein assigned.
- D. In the event that Contractor has any rights in and to the Work Product that cannot be assigned to System Agency, Contractor hereby grants to System Agency an exclusive, worldwide, royalty-free, transferable, irrevocable, and perpetual license, with the right to sublicense, to reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, make, have made, use, sell and offer for sale the Work Product and any products developed by practicing such rights.
- E. The foregoing does not apply to Incorporated Pre-existing Works or Third-Party IP that are incorporated in the Work Product by Contractor. For the avoidance of doubt, nothing in this Section 5.1 affects the ownership of Intellectual Property Rights of either Party which were in existence prior to the Effective Date or are developed independently of Contractor's performance of the Services and obligations under the Contract. Contractor shall provide System

Agency access during normal business hours to all Vendor materials, premises, and computer files containing the Work Product.

M. Section 5.2 (Contractor's Pre-Existing Works) in Attachment B (Uniform Terms and Conditions) is deleted and replaced with the following:

5.2 CONTRACTOR'S PRE-EXISTING WORKS

- A. To the extent that Contractor incorporates into the Work Product any works of Contractor that were created by Contractor or that Contractor acquired rights independently of the performance of Services or that Contractor created or acquired rights in prior to the Effective Date of this Contract (collectively, the "**Incorporated Pre-existing Works**"), Contractor retains ownership of such Incorporated Pre-existing Works.
- B. Software. During (i) the Contract Term or (ii) the period commencing on the Contract Effective Date and ending four (4) years and nine (9) months later, whichever is longer, Contractor hereby grants to System Agency a limited, non-exclusive, royalty-free, non-transferable, non-sublicensable, worldwide right and license to use and access and allow a successor service provider to use and access the Incorporated Pre-existing Works comprised of software as necessary to receive the Services and only in executable code format (i.e., not source code).
- C. Non-Software and Related Documentation. For Incorporated Pre-existing Works other than software and related software documentation, Contractor hereby grants to System Agency an irrevocable, perpetual, non-exclusive, royalty-free, non-transferable, worldwide right and license, to use, reproduce, modify, copy, create derivative works of, publish, publicly perform and display, the Incorporated Pre-existing Works, in any medium, with or without the associated Work Product for the limited purposes of compliance with System Agency's records retention, audit, litigation and other legal obligations, for System Agency's other Texas Medicaid program business purposes (e.g., communications with associated service providers, Providers, System Agency consultants with a need to know, oversight agencies, auditors, legislators), and for any authorized government purpose.
- D. Contractor represents, warrants, and covenants to System Agency that Contractor has all necessary right and authority to grant the foregoing license in the Incorporated Pre-existing Works to System Agency.
- E. For each Work Product that contains Incorporated Pre-existing Work, Contractor shall apply a conspicuous marking on its face

specifying whether the Work Product comprises (1) Contractor's Intellectual Property Rights only or (2) Intellectual Property Rights from both Contractor and System Agency. Contractor shall collaborate with System Agency in the placement of Intellectual Property Right markings on the Work Product. For the avoidance of doubt, Contractor agrees that the following Work Products will not be considered Contractor's Incorporated Pre-existing Work: (i) reports containing only Texas information and (ii) the form and format of meeting notifications, minutes, and agenda (i.e., the look and feel of the documents independent of the work-for-hire content and excluding content and attachments which may comprise Contractor's Incorporated Pre-existing Works).

F. For purposes of this Section 5.2, the term "Contract Term" refers to the period of time beginning on the Effective Date of the Contract and ending when the Contract expires in accordance with its terms, or when it has been terminated.

N. Section 9.2 (Termination for Convenience) of Attachment B (Uniform Terms and Conditions) is deleted and replaced with the following:

9.2 TERMINATION FOR CONVENIENCE

- A. The System Agency may terminate the Contract, in whole or in part, at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in the System Agency's notice of termination.
- B. There is no buyout or termination fee due if System Agency terminates the Contract early; however, if System Agency terminates the Contract for convenience, the System Agency's sole and maximum obligation to Contractor shall be to pay (i) in full for all Work completed, and a percentage/pro rata for all partially completed Work, that was previously authorized and in compliance with the requirements of the Contract at time of Contract termination; (ii) if termination occurs during the Transition Phase, then to pay Contractor's reasonable and substantiated costs directly attributable to the terminated Contract (not to exceed the unpaid balance of any Transition Phase fees owed) incurred in compliance with Clause C of this Section 9.2; and (iii) if termination occurs during the Operations Phase, then to pay Contractor any Demobilization Costs incurred in compliance with Clause C of this Section 9.2.
- C. If System Agency terminates the Contract for convenience, then Contractor shall be entitled to payment for reasonable and substantiated costs directly attributable to the terminated Contract, subject to Contractor's obligation to make all reasonable efforts to mitigate such costs. In no event shall any costs paid by System

Agency to Contractor, following termination for convenience, include fees or costs related to Contractor's loss of expected revenue, savings, or profits.

For purposes of this Section 9.2, the term "Demobilization Costs" means the following categories of costs of Contractor resulting from System Agency's termination of the Contract for convenience:

- i. office lease termination fees and office build-out costs limited to the Initial Term of the Contract;
- ii. reasonable employee severance costs on a case-by-case basis; and
- iii. reasonable Subcontractor early termination fees.

Contractor shall develop a demobilization budget for System Agency's review and approval.

O. Section 9.3 (Termination for Cause) of Attachment B (Uniform Terms and Conditions) is deleted and replaced with the following:

9.3 TERMINATION FOR CAUSE

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

i. Material Breach

The System Agency will have the right to terminate the Contract in whole or in part on thirty (30) calendar days' written notice if the System Agency determines, in its sole discretion, that Contractor has materially breached the Contract and the Contractor does not cure such breach within thirty (30) calendar days of receipt of notice, provided, however, the System Agency shall have the right to immediately terminate the Contract if the breach is (1) Contractor's failure to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Contractor's duties under the Contract, (2) Contractor's misrepresentation in any aspect of Contractor's Solicitation Response, (3) Contractor's addition to the System for Award Management (SAM) exclusion list, (4) a breach that cannot be reasonably cured within thirty (30) calendar days, e.g., Contractor's unauthorized dissemination of confidential information, or (5) a repeated or chronic breach of the Contract. For clarification, such cure period does not apply to application of any liquidated damages or service credits specified in the Contract.

ii. Failure to Maintain Financial Viability

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

iii. Threat to Health and Safety

No provision in this Section 9.3 shall restrict the System Agency's right to exercise any remedy without restriction to address a serious threat to health and safety.

P. Section 10.3 (Additional Indemnity Provisions) of Attachment B (Uniform Terms and Conditions) of the Contract is deleted and replaced with the following:

10.3 ADDITIONAL INDEMNITY PROVISIONS

- A. CONTRACTOR AND SYSTEM AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY INDEMNITY CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES.**
- B. THE DEFENSE SHALL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL.**
- C. CONTRACTOR SHALL REIMBURSE SYSTEM AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE SYSTEM AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF SYSTEM AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, SYSTEM AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR SHALL PAY ALL REASONABLE COSTS OF SYSTEM AGENCY'S COUNSEL.**
- D. FOR THE AVOIDANCE OF DOUBT, CONTRACTOR'S INDEMNITY OBLIGATIONS DO NOT APPLY TO DIRECT CLAIMS ASSERTED BY SYSTEM AGENCY (AS DIFFERENTIATED FROM THIRD PARTY CLAIMS).**

- Q. Article XI (General Provisions) of Attachment B (Uniform Terms and Conditions) is amended to add new Section 11.27 titled "Limitation of Liability" as follows:

11.27 LIMITATION OF LIABILITY

A. General Limitation. TO THE EXTENT PERMISSIBLE UNDER THE TEXAS CONSTITUTION AND THE LAWS PROMULGATED THEREUNDER, CONTRACTOR, ITS SUBCONTRACTORS AND THEIR RESPECTIVE PERSONNEL SHALL NOT BE LIABLE TO SYSTEM AGENCY FOR ANY CLAIMS, LIABILITIES OR ASSOCIATED EXPENSES RELATED TO THE CONTRACT ("CLAIMS"), IN EACH CONTRACT YEAR, IN AN AGGREGATE AMOUNT IN EXCESS OF THE GREATER OF EITHER (i) TWO HUNDRED FIFTY MILLION AND NO/100 DOLLARS (\$250,000,000.00) OR (ii) THREE (3) TIMES THE AMOUNT PAID BY SYSTEM AGENCY TO CONTRACTOR UNDER THIS CONTRACT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM. FOR THE AVOIDANCE OF DOUBT, THE LIMITATION OF LIABILITY WILL APPLY TO ALL CLAIMS FOR ANY MATTER RELATING TO OR ARISING FROM THE CONTRACT, WHETHER THE CLAIM IS BASED UPON AN ACTION OR CLAIM IN CONTRACT, WARRANTY, EQUITY, NEGLIGENCE, OR OTHERWISE (INCLUDING ANY ACTION OR CLAIM ARISING FROM THE ACTS OR OMISSIONS, NEGLIGENT OR OTHERWISE, OF THE LIABLE PARTY).

B. Exclusions from Limitation of Liability.

1. NOTWITHSTANDING ANY PROVISION OF THE CONTRACT TO THE CONTRARY, NO LIMITATION OF CONTRACTOR'S LIABILITY SHALL APPLY TO
 - (i) CLAIMS SUBJECT TO CONTRACTOR'S INDEMNIFICATION OBLIGATIONS OF THE CONTRACT EXCEPT AS PROVIDED IN CLAUSE 3;
 - (ii) CLAIMS RESULTING FROM CONTRACTOR'S OR SUBCONTRACTORS' RECKLESSNESS, BAD FAITH, OR INTENTIONAL MISCONDUCT;
 - (iii) CLAIMS INVOLVING PERSONAL INJURY OR DEATH;
 - (iv) CLAIMS INVOLVING PROPERTY DAMAGE;
 - (v) CLAIMS RESULTING FROM FRAUD;
 - (vi) CLAIMS OF PATENT, TRADEMARK,

- COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT;
- (vii) VIOLATIONS OF STATE OR FEDERAL LAW APPLICABLE TO THE CONTRACT INCLUDING, BUT NOT LIMITED TO, DISCLOSURES OF CONFIDENTIAL INFORMATION, AND ANY PENALTY OF ANY KIND LAWFULLY ASSESSED AS A RESULT OF SUCH VIOLATION;
- (viii) LIQUIDATED DAMAGES ASSESSED AGAINST CONTRACTOR FOR FAILURE TO MEET KEY PERFORMANCE MEASURES;
- (ix) DISALLOWANCE BY THE UNITED STATES GOVERNMENT; OR
- (x) AMOUNTS DESCRIBED BY SECTION 11.28(C).

2. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGE, LOSS OR EXPENSE EVEN IF IT HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE.

3. CONTRACTOR'S INDEMNIFICATION OBLIGATION UNDER ATTACHMENT D (DATA USE AGREEMENT) TO THE CONTRACT IS SUBJECT TO SECTION 11.27(A) (GENERAL LIMITATION).

R. Article XI (General Provisions) of Attachment B (Uniform Terms and Conditions) is amended to add new Section 11.28 titled "Acknowledged Direct Damages" as follows:

11.28 ACKNOWLEDGED DIRECT DAMAGES

A. For the avoidance of doubt, the following shall be considered direct damages, and neither Party shall assert that these damages are indirect, incidental, collateral, consequential or special damages, or lost profits, to the extent they result directly from Contractor's failure to perform in accordance with the Contract:

- (i) costs and expenses for restoring or reloading any lost, stolen, or damaged System Agency Data;
- (ii) costs and expenses of implementing any work-around in respect of a failure by Contractor to provide the Services or any part thereof;
- (iii) costs and expenses of replacing lost, stolen, or damaged government property;

- (iv) cover damages, including the costs and expenses incurred by System Agency to procure the Services or corrected Services from an alternate source than the Contractor;
 - (v) costs and expenses incurred to bring the Services in-house or in obtaining the same Services from an alternate source than the Contractor;
 - (vi) straight time, overtime or related expenses incurred by either Party in performing (i) through (v) of this Subsection A, including overhead allocations for employees, wages, and salaries of additional employees, travel expenses, overtime expenses, telecommunication charges, and similar charges;
 - (vii) fines, penalties, sanctions, interest or other monetary remedies incurred by System Agency as a result of the Contractor's failure to comply with applicable laws;
 - (viii) any losses for which the Contractor is made explicitly liable under Attachment D (Data Use Agreement) of this Contract; and
 - (ix) liquidated damages assessed against Contractor for failure to meet Key Performance Measures.
- B. Subsection A is not intended to be an exhaustive list. The failure to include certain direct damages from the list in this Section 11.28 shall not be construed or interpreted as an agreement to exclude such damages as direct damages under the Contract.
- C. Without regard to the theory of liability or whether the action is in contract or tort, the following items are deemed direct damages and to the extent System Agency incurs such costs or expenses due to Contractor's breach of Attachment D (Data Use Agreement) of this Contract, Contractor shall pay or reimburse System Agency for:
- (a) remediation efforts, including investigating the cause of the unauthorized disclosure (including any related forensic analysis), mitigating and correcting the unauthorized disclosure, and reasonably preventing any further similar incidents and causes thereof;
 - (b) regulatory fines or penalties assessed against System Agency by a government entity;
 - (c) notification to individuals whose personal data may have been disclosed;
 - (d) twelve (12) consecutive months of credit monitoring services for such individuals; and
 - (e) a toll-free phone number where such individuals can learn if their information was impacted.

VI. MODIFICATIONS TO SECTION 2.1 (DESCRIPTION OF SCOPE OF WORK) AND SECTION 7.2 (FINANCIAL APPROACH – BUSINESS TERMS) IN HHSC REQUEST FOR OFFERS NO. HHS0005172

- A. Section 2.1.1.2 (Operations) of HHSC Request for Offers No. HHS0005172 located in Attachment I (HHSC Request for Offers No. HHS0005172 and All RFO Addenda) is deleted and replaced with the following:

2.1.1.2 Operations

The Contractor must commence Operations on or before September 1, 2023. Operations does not commence until after (1) HHSC determines that the Contractor has successfully completed all Transition activities, and (2) HHSC provides written notice to the Contractor to proceed with the commencement of Operations services. Operations services include all Contract requirements for ongoing functions to process and pay FFS claims and conduct all financial activities.

- B. The first three (3) paragraphs of Section 2.1.3.4 (Deliverables Requirements) of HHSC Request for Offers No. HHS0005172 located in Attachment I (HHSC Request for Offers No. HHS0005172 and All RFO Addenda) are deleted and replaced with the following:

This section includes requirements outlining the expectations for each Project Deliverable. Requirements in this section outline:

- a. Obtaining HHSC approval before starting work on the Deliverable,
- b. Requirements to meet with HHSC staff, as necessary, while developing the proposed formats for Deliverables, and
- c. Due dates.

Deliverables include the plans and documentation necessary to prepare for, implement, manage, and maintain the requirements of the Contract during the Contract Term. Unless an alternate timeline is specified in the Deliverable requirement or otherwise agreed in writing by HHSC, a 10-5-5 Review Cycle will be used for the evaluation of written Deliverables during Transition. The “10-5-5 Review Cycle” refers to a review cycle whereby ten (10) Business Days is allotted to HHSC to evaluate the Contractor’s initial submission of a written Deliverable for compliance with Contract requirements and furnish written notification of approval or rejection of the written Deliverable to Contractor, followed by five (5) Business Days allotted to Contractor to respond to HHSC comments and, as applicable, submit a revised written Deliverable to HHSC, followed by five (5) Business Days allotted to HHSC for its consideration of Contractor’s responses to HHSC’s comments and provision of additional comments and, as applicable, the evaluation of Contractor’s re-submitted written Deliverable for compliance with Contract requirements.

The requirements for Deliverables listed in **Table 6, - Deliverables Requirements** below describe the tasks and activities that must be performed by the Contractor during the Contract Term.

- C. Requirement ID No. CTRN-6 in Section 2.1.3.6 (Transition Requirements) of HHSC Request for Offers No. HHS0005172 located in Attachment I (HHSC Request for Offers No. HHS0005172 and All RFO Addenda) is deleted and replaced with the following:

CTRN-6	Document any gaps between the Contractor’s solution and the business requirements in a requirements management tool. Configuration gaps identified during the Transition design sessions and gaps (configuration, system or integration changes) approved by the change control board for implementation must show bi-directional traceability with applicable business requirement(s), design, test cases, test results, and certification artifacts.
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- D. Requirement ID No. CTRN-13 in Section 2.1.3.6 (Transition Requirements) of HHSC Request for Offers No. HHS0005172 located in Attachment I (HHSC Request for Offers No. HHS0005172 and All RFO Addenda) is deleted and replaced with the following:

CTRN-13	Demonstrate a fully functioning solution that has been initially configured based on the requirements described in the SOW and, as they pertain to the Contract as agreed by both parties, HHSC policy documents, manuals, and fee schedules.
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- E. Requirement ID No. CTRN-24 in Section 2.1.3.6.1 (Transition Key Performance Measures) of HHSC Request for Offers No. HHS0005172 located in Attachment I (HHSC Request for Offers No. HHS0005172 and All RFO Addenda) is deleted and replaced with the following:

CTRN-24	Complete all Key Performance Milestones, including all additional activities identified during Transition that are needed to satisfy operational readiness, no later than the operational readiness review date in the HHSC-approved Transition Project Work Schedule or alternate date approved by HHSC.	\$25,000 per Business Day for failure to meet the completion of all key transition tasks by the operational readiness review date.
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- F. Requirement ID No. CSYS-3 in Section 2.1.3.12 (System Requirements) of HHSC Request for Offers No. HHS0005172 located in Attachment I (HHSC Request for Offers No. HHS0005172 and All RFO Addenda) is deleted and replaced with the following:

CSYS-3	[Reserved]
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G. Section 2.1.3.12 (System Requirements) of HHSC Request for Offers No. HHS0005172 located in Attachment I (HHSC Request for Offers No. HHS0005172 and All RFO Addenda) is amended by adding new Requirement ID No. CSYS-3a and Requirement ID No. CSYS-3b to Table 24 (System Requirements) as follows:

CSYS-3a	Provide a system that can be adapted to changes in business practices and policies within the agreed timeframes. The Contractor is required to cover the cost of such system configurations and modifications to meet the requirements of the Contract.
CSYS-3b	During the Operations phase, the Contractor is required to cover the cost of system configurations. Modifications during the Operations Phase will follow the change control process outlined in CDEL-4.

H. Section 7.2.4.1.2 (Payment for Administrative Services) of HHSC Request for Offers No. HHS0005172 located in Attachment I (HHSC Request for Offers No. HHS0005172 and All RFO Addenda) is deleted and replaced with the following:

7.2.4.1.2 Payment for Administrative Services

The Operations phase of the Contract is forty-eight (48) months in length. The Operations pricing schedules consist of the following four (4) operational periods:

- a. Operational Contract Year 1: Contract months (12 months);
- b. Operational Contract Year 2: Contract months (12 months);
- c. Operational Contract Year 3: Contract months (12 months); and
- d. Operational Contract Year 4: Contract months (12 months).

HHSC reserves the option to amend the term of the Contract for up to three (3) additional one (1) year period(s) as necessary to complete the mission of the procurement. In the event HHSC exercises an available extension term under the Contract, the fixed and variable administrative fees will be determined by the application of an inflator/deflator proposed by the Contractor.

Payment to the Contractor for administrative services will be based either on a fixed administrative fee basis only, or a combination of fixed administrative fees plus one (1) of the administrative fees as depicted below:

- a. For the Texas Medicaid services (Acute care, excludes LTC) separate fixed and variable payment methodologies will be proposed.

- b. For the Texas Non-Medicaid Services, only separate fixed payment methodologies will be proposed as well as for the LTC program services, only fixed payments will be proposed.
 1. MTP;
 2. CSHCN Services Program;
 3. HTW; and
 4. FPP.

HHSC reserves the right to determine the final percentage of fixed fees and variable fees for the Texas Medicaid services (Acute care, excludes LTC) in the resulting Contract of this Solicitation.

Any expenses incurred by a Contractor after the commencement of the Operations phase of the Contract to complete transition activities or correct any defects from the Transition phase must not be recorded as an operational expense and will not be considered an allowable expense for the Contract.

HHSC will reduce the fixed and/or variable administrative payments for any Services that become obsolete or no longer necessary during the Contract Term as stated in Section 7.2.4.1.2.6 (Reduced Services).

HHSC will not recognize as valid costs any excessive charges or fees from the Contractor or any of the Contractor's Subcontractors that HHSC deems inappropriate.

HHSC will reduce the fixed and/or variable administrative payments in any option year exercised by HHSC for any expenses that will not be applicable during the option year; such as, but not limited to, depreciation and amortization expenses for capital items fully expensed during the initial Contract Term subject to mutual agreement memorialized in an amendment to the Contract.

The Contractor must acknowledge and agree that HHSC will not be invoiced for fees for Services or Deliverables that have not been provided by the Contractor or any of its Subcontractors and will not be invoiced for fees for capital items that have not been incurred by the Contractor or any of its Subcontractors.

HHSC reserves the right to modify the fixed and variable fee payment methodologies to include fewer variable payment elements and/or additional variable payment elements in the administrative payment structure at any time during the Contract Term through negotiations and Amendments as necessary. If the Parties fail to reach agreement regarding these modifications HHSC may exercise its right to terminate the Contract.

The Contractor's Cost Proposal and Price Summary Sheet(s) related to this Solicitation must be based on the Contractor's proposed costs and an administrative service fee that will be included as part of each proposed fixed or variable fee and each proposed periodic activity fee applicable to the

Contract. The final Administrative Service Fee that is included in the Contract will remain unchanged and be applicable for all Fixed Fees, Variable Fees, Periodic Activity Fees, recurring activity fees and any change orders executed during the Contract Term.

- I. Section 7.2.4.1.2.4 (Transition Costs) of HHSC Request for Offers No. HHS0005172 located in Attachment I (HHSC Request for Offers No. HHS0005172 and All RFO Addenda) is deleted and replaced with the following:

7.2.4.1.2.4 Transition Costs

Transition costs to meet the requirements of the Solicitation will be paid on a fixed fee basis. Transition costs in excess of the final fixed price amount(s) included in the Contract will not be paid by HHSC. Separate transition costs will be proposed, negotiated, and paid for:

- a. Texas Medicaid (i.e., Acute care, which includes all Services not otherwise covered by the programs below);
- b. MTP;
- c. LTC;
- d. FPP;
- e. HTW; and
- f. CSHCN Services Program.

The Contractor will propose transition costs to allow the Contractor to assume the applicable transition responsibilities no later than the Contract Effective Date. Transition costs will not be paid as an element of operational administrative costs. Transition costs will be paid to the Contractor retrospectively and not to exceed the percent distribution of the total transition costs per milestone as stated in **Table 52, Transition Key Performance Milestones with Percentage of Total Fee**. The payment for Key Performance Milestone #4 – Configuration Deliverables will be spread equally over seven (7) months beginning month four (4). The total cost of Key Performance Milestone #4 – Configuration Deliverables will remain subject to the 15% withholding included herein.

Transition costs will be proposed to allow the Contractor to assume the responsibilities of each Key Performance Milestone included in the Contract effective with the Operational Start Date.

Any expenses incurred by a Contractor after the Operational Start Date of a specific Key Performance milestone to complete transition activities or correct any defects from the Transition phase of that specific Key Performance Milestone must not be recorded as an operational expense and will not be considered an allowable expense for the Retrospective Cost Settlement (see **Section 7.2.4.2.3, Retrospective Cost Settlement**) provision of the Contract.

Table 52 – Transition Key Performance Milestones with Percentage of Total Fee

Transition Key Performance Milestones with Percentage of Total Fee		
Key Performance Milestones		Maximum Key Performance Milestone Percentage Weight of Total Fee Allowed:
1	Initial Deliverables	21.592%
2	Management Deliverables	9.143%
3	Gap Completion	20.679%
4	Configuration Deliverables	38.276%
5	Data conversion	2.062%
6	Reporting	2.062%
7	Finance	2.062%
8	Readiness	2.062%
9	Implementation	2.062%
Total		100%

- a. **Key Performance Milestone #1 – Initial Deliverables** includes submission and HHSC approval of the Security Plan (CDEL-1), the Detailed Project Work Schedule (CDEL-9), the Privacy Plan (CDEL-22) and submission of the Organization Chart (CSTF-18).
- b. **Key Performance Milestone #2 – Management Deliverables** includes submission and HHSC approval of the Project Management Plan (CDEL-2), the Training Plan (CDEL-13), the Disaster Recovery Plan (CDEL-16), and the Business Continuity and Contingency Plan (CDEL-15).
- c. **Key Performance Milestone #3 – Gap completion** includes completion of the Transition design sessions (CTRN-5), and HHSC approval of the resulting traceability documentation (CTRN-6).
- d. **Key Performance Milestone #4 – Configuration Deliverables** includes submission and HHSC approval of the Master Test Plan (CDEL-11), the Data Conversion and Migration Plan (CDEL-10), and the Operational Readiness Review Plan (CDEL-20).
- e. **Key Performance Milestone #5 – Data conversion** includes HHSC approval of the completion of conversion activities of five (5) years of Client, provider, claim data history, and all applicable operational data from the State’s legacy systems (CTRN-16).
- f. **Key Performance Milestone #6 – Reporting** includes delivery and HHSC approval of mockups of all identified production reports (CTRN-22) and the Interface Control Document (CDEL-21).

- g. **Key Performance Milestone #7 – Finance** includes HHSC approval of quality assurance procedures (CFIN-1), accounts receivable procedures (CFIN-26), and the establishment of bank accounts (CFIN-77).
- h. **Key Performance Milestone #8 – Readiness** includes HHSC operational readiness approval.
- i. **Key Performance Milestone #9 – Implementation** includes HHSC project implementation approval.

Also, during the Transition phase, the Contractor will submit an invoice for up to eighty-five (85%) percent of the total fee for each Transition phase Key Performance Milestone. HHSC will pay up to eighty-five (85%) percent of each completed Transition phase Key Performance Milestone that is approved and accepted by HHSC, less any assessed deductions for Service Level remedy.

Once the final Key Performance Milestone #9 – Implementation is completed, the Contractor will submit an invoice for the final fifteen (15%) percent fee balance from all nine (9) Key Performance Milestones to HHSC.

Once HHSC has provided formal acceptance and acknowledgement of completion of a fully operational Contractor solution to the Contractor, then the final invoice for the remaining fifteen (15%) percent fee will be paid to the Contractor in accordance with Chapter 2251 of the Texas Government Code.

HHSC will process and pay the transition costs in accordance with Texas Government Code Chapter 2251. Each invoice will be processed and paid separately. As directed by HHSC, the Contractor will separate the invoices according to the various state and federal funding sources that support the applicable Program that have responsibilities for specific Key Performance Milestones and/or segments of the respective Service.

HHSC, at its sole discretion, may choose to process only a portion of a Key Performance Milestone invoice, if only a portion of the invoice can be verified and validated by the information submitted. If HHSC decides to process an invoice in this manner, an adjustment will be made by HHSC and only that portion of the Key Performance Milestone invoice that can be verified and validated will be paid.

A Contractor must submit supplemental invoice(s) along with all necessary corrections to be paid for the Key Performance Milestone fees previously denied or not processed by HHSC. HHSC will process and pay Key Performance Milestone fee(s) billed on supplemental invoices in accordance with Texas Government Code Chapter 2251. Each invoice will be processed and paid separately.

Proposed transition costs will be included in the pricing evaluation for each Key Performance Milestone. Actual transition costs in excess of the amount included in the Contract for each Key Performance Milestone will not be paid by HHSC. Performance remedies, either liquidated damages and/or actual damages, may apply if the Contractor is not able to provide all of the necessary Services and/or Deliverables on the specified date for the Operational Readiness Review included in the Contract.

J. Section 2.1 (Description of Scope of Work) of HHSC Request for Offers No. HHS0005172 located in Attachment I (HHSC Request for Offers No. HHS0005172 and All RFO Addenda) is amended by adding new Section 2.1.4 as follows:

2.1.4 Performance Measurements, Key Performance Measures; Additional Remedies

- a. HHSC will monitor the performance of the Contractor and all requirements of the Contract are subject to performance evaluation by HHSC. Satisfactory performance by the Contractor shall be measured by:
- (1) Adherence to the Contract, including all representations and warranties;
 - (2) Compliance with project work plans, schedules, and milestones approved by HHSC;
 - (3) Delivery of the Services and Deliverables in accordance with the service levels set forth in the Scope of Work;
 - (4) Results of audits performed by HHSC or its representatives in accordance with the Contract;
 - (5) Timeliness, completeness, and accuracy of required Deliverables; and
 - (6) Achievement of performance measures required by the Contract or developed under the Contract.
- b. In the event the Contractor fails to perform or complete its obligations in a timely manner, HHSC may, in addition to the remedies set forth elsewhere in the Contract, impose remedies which include the following:
- (1) Compliance by Contractor, at no cost to HHSC, with the performance improvement activities and timelines specified in a written corrective action plan(s) approved by HHSC;
 - (2) Additional or ad hoc reporting by Contractor, at no cost to HHSC, to address performance issues;
 - (3) Accelerated monitoring of Contractor's performance by HHSC, including access to the Contractor's facilities, records, data, information systems and personnel; and
 - (4) Assessment of liquidated damages in accordance with Texas law.
- c. For a contractual obligation subject to a Key Performance Measure (KPM), the KPM will be used to gauge the Contractor's commitment to successful performance, its willingness to stand behind its Goods and Services during the Contract Term, as well as its confidence in its ability to perform.

- d. For purposes of the KPMs, all measurement periods shall be monthly unless otherwise specified. In addition, the term "day" refers to a Calendar Day, unless otherwise specified in the text. Partial days beyond the due date shall be rounded up to a whole day for the purposes of the KPM measurement. Also, an hour is not prorated i.e., a fraction of an hour means an hour.
 - e. When a liquidated damages measure refers to a percentage point, or portion thereof, the "portion thereof" means that a full percentage point deviation is not required to assess the liquidated damages. For example, if the standard is 99% and the results achieved are 98.6%, the liquidated damages that may be assessed is based on 1 percentage point. If the results achieved are 97.9%, the liquidated damage that may be assessed is based on 2 percentage points.
 - f. HHSC is not required to provide the Contractor with notice and opportunity to resolve issues prior to HHSC's assessment of liquidated damages.
 - g. Liquidated damages will not be assessed if Contractor is not responsible for the delay or failure of the applicable KPM.
 - h. If Contractor is aware a problem exists and fails to report the problem to HHSC, Contractor continues to be responsible for meeting the requirements and timelines established in the Contract. Under these circumstances, HHSC shall not be liable for any detrimental consequences and Contractor remains liable for Contractor's failure to comply with Contract requirements e.g., liquidated damages.
- K. Section 2.1 (Description of Scope of Work) of HHSC Request for Offers No. HHS0005172 located in Attachment I (HHSC Request for Offers No. HHS0005172 and All RFO Addenda) is amended by adding new Section 2.1.5 as follows:

2.1.5 Cooperation

Contractor shall cooperate in all reasonable respects as necessary in connection with the performance of the Contract with State of Texas personnel, service providers retained by HHSC in connection with the Services, and any other HHSC designated entities which are associated with the Services provided under the Contract.

VII. CONTRACT REPRESENTATIVES

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

HHSC Contract Representative
 Estella Bell
 Health and Human Services
 Commission

Contractor Contract Representative
 Lydie Quebe
 Conduent State Healthcare, LLC

701 W. 51st Street
Austin, Texas 78751
estella.bell03@hhs.texas.gov

100 Campus Drive, Suite 200
Florham Park, New Jersey 07932
lydie.quebe@conduent.com

VIII. NOTICE REQUIREMENTS

A. All notices given by Contractor shall be in writing, include the Contract number, comply with all terms and conditions of the Contract, and be delivered to the HHSC Contract Representative identified above.

B. Contractor shall send legal notices to HHSC at the address below and provide a copy to the HHSC Contract Representative:

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

C. HHSC shall send legal notices to Contractor at the address below and provide a copy to the Contractor Contract Representative:

Conduent State Healthcare, LLC
Attn: Legal Department
100 Campus Drive, Suite 200
Florham Park, New Jersey 07932

D. Notices given by HHSC to Contractor may be emailed, mailed or sent by common carrier. Email notices shall be deemed delivered when sent by HHSC. Notices sent by mail shall be deemed delivered when deposited by HHSC in the United States mail, postage paid, certified, return receipt requested. Notices sent by common carrier shall be deemed delivered when deposited by HHSC with a common carrier, overnight, signature required.

E. Notices given by Contractor to HHSC shall be deemed delivered when received by HHSC.

F. Either Party may change its Contract Representative or Legal Notice contact by providing written notice to the other Party.

IX. CONTRACT DOCUMENTS

The following documents are incorporated by reference and made a part of this Contract for all purposes:

ATTACHMENT A – CONTRACT AFFIRMATIONS
ATTACHMENT B – UNIFORM TERMS AND CONDITIONS
ATTACHMENT C – ADDITIONAL PROVISIONS
ATTACHMENT D – DATA USE AGREEMENT

ATTACHMENT E – FEDERAL ASSURANCES (NON-CONSTRUCTION PROGRAMS)
ATTACHMENT F – CERTIFICATION REGARDING LOBBYING
ATTACHMENT G – HUB SUBCONTRACTING PLAN
ATTACHMENT H – INSURANCE REQUIREMENTS
ATTACHMENT I – HHSC REQUEST FOR OFFERS No. HHS0005172 AND ALL RFO
ADDENDA
ATTACHMENT J – CONTRACTOR'S SOLICITATION RESPONSE AND ORAL
PRESENTATION SUBMISSION
ATTACHMENT K – CONTRACTOR'S MODIFICATIONS TO SOLICITATION RESPONSE
ATTACHMENT L – FINAL PRICING WORKBOOK
ATTACHMENT M – FEE SCHEDULES

In the event of conflict, ambiguity or inconsistency between or among any contract documents, the following documents, including any amendments thereto, shall control in the specified order of precedence:

1. This twenty-four page signature document
2. ATTACHMENT D – DATA USE AGREEMENT
3. ATTACHMENT A – CONTRACT AFFIRMATIONS
4. ATTACHMENT B – UNIFORM TERMS AND CONDITIONS
5. ATTACHMENT C – ADDITIONAL PROVISIONS
6. ATTACHMENT E – FEDERAL ASSURANCES (NON-CONSTRUCTION PROGRAMS)
7. ATTACHMENT F – CERTIFICATION REGARDING LOBBYING
8. ATTACHMENT G – HUB SUBCONTRACTING PLAN
9. ATTACHMENT H – INSURANCE REQUIREMENTS
10. ATTACHMENT I – HHSC REQUEST FOR OFFERS No. HHS0005172 AND ALL RFO ADDENDA
11. ATTACHMENT K – CONTRACTOR'S MODIFICATIONS TO SOLICITATION RESPONSE
12. ATTACHMENT M – FEE SCHEDULES
13. ATTACHMENT L – FINAL PRICING WORKBOOK
14. ATTACHMENT J – CONTRACTOR'S SOLICITATION RESPONSE AND ORAL PRESENTATION SUBMISSION

X. SIGNATURE 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. Any Services or Work performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

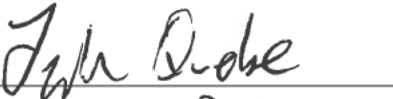
SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR HHSC CONTRACT NO. HHS000517200001

**Health and Human Services
Commission**

Conduent State Healthcare, LLC

By: 

By: 

Name: Cecile Young

Name: Lydie Quebe

Title: Executive Commissioner

Title: Vice President

Date of execution: Dec 2, 2022

Date of execution: December 4, 2022

SIGNATURE PAGE FOR HHSC CONTRACT NO. HHS000517200001

Health and Human Services
Commission

Conduent State Healthcare, LLC

By: 

By: 

Name: Cecile Young

Name: Lydie Quebe

Title: Executive Commissioner

Title: Vice President

Date of execution: Dec 2, 2022

Date of execution: December 4, 2022

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