

Electronic Information Resources Accessibility (EIR) Clause, Version 1

(in HHSC Uniform Terms and Conditions, Version 1.5 as Section 5.07 Electronic and Information Resources Accessibility Standards.)

(a) Applicability.

The following Electronic and Information Resources (EIR) requirements apply to the Agreement because CONTRACTOR performs services that include EIR that:

(i) HHSC employees are required or permitted to access; or

(ii) members of the public are required or permitted to access. This Section does not apply to incidental uses of EIR in the performance of the Agreement, unless the Parties agree that the EIR will become property of the State of Texas or will be used by HHSC's clients or recipients after completion of the Agreement. Nothing in this section is intended to prescribe the use of particular designs or technologies or to prevent the use of alternative technologies, provided they result in substantially equivalent or greater access to and use of a Product.

(b) Definitions.

For purposes of this Section:

"Accessibility Standards" means accessibility standards and specifications for Texas agency and institution of higher education websites and EIR set forth in 1 Texas Administrative Code, Chapter 206 and/or Chapter 213

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

"Electronic and Information Resources Accessibility Standards" means the accessibility standards for electronic and information resources contained in 1 Texas Administrative Code Chapter 213.

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

"Web Site Accessibility Standards/ Specifications" means standards contained in Volume 1 Texas Administrative Code Chapter 206.(c) Accessibility Requirements.

Under Texas Government Code Chapter 2054, Subchapter M, and implementing rules of the Texas Department of Information Resources, HHSC must procure Products and services that comply with the Accessibility Standards when those Products are available in the commercial marketplace or when those Products are developed in response to a procurement solicitation. Accordingly, CONTRACTOR

must provide electronic and information resources and associated Product documentation and technical support that comply with the Accessibility Standards.

(c) Evaluation, Testing, and Monitoring.

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

Neither (1) the review, testing (including acceptance testing), evaluation or monitoring of any Product or service, nor (2) the absence of review, testing, evaluation or monitoring, will result in a waiver of the State's right to contest the CONTRACTOR's assertion of compliance with the Accessibility Standards.

(2) CONTRACTOR agrees to cooperate fully and provide HHSC and its representatives timely access to Products, records, and other items and information needed to conduct such review, evaluation, testing, and monitoring.

(d) Representations and Warranties.

(1) CONTRACTOR represents and warrants that:

(i) as of the Effective Date of the Agreement, the Products and associated documentation and technical support comply with the Accessibility Standards as they exist at the time of entering the Agreement, unless and to the extent the Parties otherwise expressly agree in writing; and

(ii) if the Products will be in the custody of the state or an HHS Agency's client or recipient after the Contract expiration or termination, the Products will continue to comply with Accessibility Standards after the expiration or termination of the Contract Term, unless HHSC or its clients or recipients, as applicable, use the Products in a manner that renders it noncompliant.

(2) In the event CONTRACTOR becomes aware, or is notified that the Product or service and associated documentation and technical support do not comply with the Accessibility Standards, CONTRACTOR represents and warrants that it will, in a timely manner and at no cost to HHSC, perform all necessary steps to satisfy the Accessibility Standards, including remediation, replacement, and upgrading of the Product or service, or providing a suitable substitute.

(3) CONTRACTOR acknowledges and agrees that these representations and warranties are essential inducements on which HHSC relies in awarding this Agreement.

(4) CONTRACTOR's representations and warranties under this subsection will survive the termination or expiration of the Contract and will remain in full force and effect throughout the useful life of the Product.

(e) Remedies.

(1) Under Tex. Gov't Code § 2054.465, neither CONTRACTOR nor any other person has cause of action against HHSC for a claim of a failure to comply with Tex. Gov't Code Chapter 2054, Subchapter M, and rules of the Department of Information Resources.

(2) In the event of a breach of CONTRACTOR's representations and warranties, CONTRACTOR will be liable for direct, consequential, indirect, special, or liquidated damages and any other remedies to which HHSC may be entitled under this Contract and other applicable law. This remedy is cumulative of any other remedies to which HHSC may be entitled under this Contract and other applicable law.