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**Status:** Posted

**Solicitation ID:** 720-1924

**Solicitation Title:** Disaster Recovery Services

**Agency/Texas SmartBuy Member Name:** University Of Texas System - 720

**Posting Requirements:** 21+ Days for Solicitation Notice

**Solicitation Posting Date:** 7/19/2019

**Response Due Date:** 8/16/2019

**Response Due Time:** 2:30 PM

**Solicitation Description:** The purpose of this RFP is to select multiple Contractors who specialize in the area of disaster recovery documentation services to assist UT System Institutions in the event of a federally declared disaster which makes the Institution(s) eligible for federal reimbursement. The agreements resulting from this RFP will not be used until necessary. Contractors will work with the UT System Office of Risk Management.

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**Class/Item Code:** 99030-Disaster Relief Services[Published Details](#)   [Internal Notes](#)**Record Attachments**

#	Name	Description
1	<a href="#">ESBD_File_167601_UTS RFP - Submission Instructions - 720-1924 Disaster Recovery.docx</a>	Link to Bonfire, the UT System RFP management software, and the RFP project and documents.



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# REQUEST FOR PROPOSAL

**RFP No. 720-1924 Disaster Recovery Services**

**Proposal Submittal Deadline: August 16, 2019 at 2:30 PM CST**

The University of Texas System  
Office of Risk Management

Prepared By:  
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July 19, 2019

REQUEST FOR PROPOSAL

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## SECTION 1

### INTRODUCTION

#### 1.1 Description of The University of Texas System

For more than 130 years, The University of Texas System has been committed to improving the lives of Texans and people all over the world through education, research and health care.

The University of Texas System is one of the nation's largest systems of higher education, with [14 institutions](#) that educate more than 230,000 students. Each year, UT institutions award more than one-third of all undergraduate degrees in Texas and almost two-thirds of all health professional degrees. With about 20,000 faculty – including Nobel laureates – and more than 80,000 health care professionals, researchers, student advisors and support staff, the UT System is one of the largest employers in the state.

Life-changing research and invention of new technologies at UT institutions places the UT System among the [top 10 “World’s Most Innovative Universities,”](#) according to Reuters. The UT System [ranks eighth in the nation in patent applications](#), and because of the high caliber of scientific research conducted at UT institutions, the UT System is ranked No. 1 in Texas and No. 3 in the nation in federal research expenditures.

In addition, the UT System is home to three of the nation's National Cancer Institute Cancer Centers – UT MD Anderson, UT Southwestern and UT Health Science Center-San Antonio – which must meet rigorous criteria for world-class programs in cancer research. And the UT System is the only System in the country to have four Clinical and Translational Science Awards (CTSA) from the National Institutes of Health.

Transformational initiatives implemented over the past several years have cemented UT as a national leader in higher education, including the expansion of educational opportunities in South Texas with the opening of The University of Texas Rio Grande Valley in 2015. And UT was the only system of higher education in the nation that established not one, but two new medical schools in 2016 at The University of Texas at Austin and UT Rio Grande Valley.

University of Texas institutions are setting the standard for excellence in higher education and will continue to do so thanks to our generous donors and the leadership of the [Chancellor](#), [Board of Regents](#) and [UT presidents](#).

#### 1.2 Background and Special Circumstances

The purpose of this RFP is to select multiple Contractors who specialize in the area of disaster recovery documentation services to assist UT System Institutions in the event of a federally declared disaster which makes the Institution(s) eligible for federal reimbursement. The agreements resulting from this RFP will not be used until necessary. Contractors will work with the UT System Office of Risk Management.

#### 1.3 Objective of Request for Proposal

The University of Texas System is soliciting proposals in response to this Request for Proposal No.720-1924 (this “**RFP**”), from qualified vendors to provide disaster recovery services (the “**Services**”) more specifically described in **Section 5** of this RFP.

#### **1.4 Group Purchase Authority**

Texas law authorizes institutions of higher education (defined by [§61.003, Education Code](#)) to use the group purchasing procurement method (ref. §§[51.9335](#), [73.115](#), and [74.008](#), *Education Code*). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Proposer under this RFP. In particular, Proposer should note that University is part of The University of Texas System (**UT System**), which is comprised of fourteen institutions described at <http://www.utsystem.edu/institutions>. UT System institutions routinely evaluate whether a contract resulting from a procurement conducted by one of the institutions might be suitable for use by another, and if so, this RFP could give rise to additional purchase volumes. As a result, in submitting its proposal, Proposer should consider proposing a pricing model and other commercial terms that take into account the higher volumes and other expanded opportunities that could result from the eventual inclusion of other institutions in the purchase contemplated by this RFP. Any purchases made by other institutions based on this RFP will be the sole responsibility of those institutions.

## SECTION 2

### NOTICE TO PROPOSER

#### 2.1 Submittal Deadline

University will accept proposals submitted in response to this RFP until 2:30 p.m., Central Standard Time (“CST”) on August 16, 2019 (the “**Submittal Deadline**”).

#### 2.3 Criteria for Selection

The successful Proposer, if any, selected by University through this RFP will be the Proposer that submits a proposal on or before the Submittal Deadline that is the most advantageous to University. The successful Proposer is referred to as “**Contractor**.”

Proposer is encouraged to propose terms and conditions offering the maximum benefit to University in terms of (1) service, (2) total overall cost, and (3) project management expertise.

The evaluation of proposals and the selection of Contractor will be based on the information provided in the proposal. University may consider additional information if University determines the information is relevant.

Criteria to be considered by University in evaluating proposals and selecting Contractor, will be these factors:

##### 2.3.1 Threshold Criteria Not Scored

- A. Ability of University to comply with laws regarding Historically Underutilized Businesses; and
- B. Ability of University to comply with laws regarding purchases from persons with disabilities.

##### 2.3.2 Scored Criteria

- A. Cost (30%);
- B. Vendor Experience and Competence (30%);
- C. Company Profile and Reputation (15%);
- D. Approach to Project, Subcontractors, Quality, and Service (25%).

#### 2.4 Key Events Schedule

Issuance of RFP	July 19, 2019
Pre-Proposal Call (ref. <b>Section 2.6</b> of this RFP)	10:30am CST on August 1, 2019
Deadline for Questions / Concerns (ref. <b>Section 2.2</b> of this RFP)	August 9, 2019
Submittal Deadline (ref. <b>Section 2.1</b> of this RFP)	2:30 p.m. CST on August 16, 2019

## 2.5 Historically Underutilized Businesses

- 2.5.1 All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (each a “HUB”) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP, Contractor subcontracts any of the Services, then Contractor must make a good faith effort to utilize HUBs certified by the Procurement and Support Services Division of the Texas Comptroller of Public Accounts. Proposals that fail to comply with the requirements contained in this **Section 2.5** will constitute a material failure to comply with advertised specifications and will be rejected by University as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP. Proposer acknowledges that, if selected by University, its obligation to make a good faith effort to utilize HUBs when subcontracting any of the Services will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of the Services by Proposer is subject to review by University to ensure compliance with the HUB program.
- 2.5.2 University has reviewed this RFP in accordance with [Title 34, Texas Administrative Code, Section 20.285](#), and has determined that subcontracting opportunities (HUB and/or Non-HUB) are probable under this RFP. The HUB participation goal for this RFP is \_\_\_\_ %
- 2.5.3 A HUB Subcontracting Plan (“HSP”) is required as part of, *but submitted separately from*, Proposer’s proposal. The HSP will be developed and administered in accordance with University’s Policy on Utilization of Historically Underutilized Businesses and incorporated for all purposes.

*Each Proposer, **whether self-performing or planning to subcontract**, must complete and return the HSP in accordance with the terms and conditions of this RFP. Proposers that fail to do so will be considered non-responsive to this RFP in accordance with [§2161.252, Government Code](#).*

*Questions regarding the HSP may be directed to:*

Contact: Kyle Hayes  
HUB Coordinator  
Phone: 512-322-3745  
Email: [khayes@utsystem.edu](mailto:khayes@utsystem.edu)

Contractor will not be permitted to change its HSP after the deadline submittal date unless: (1) Contractor completes a new HSP, setting forth all modifications requested by Contractor, (2) Contractor provides the modified HSP to University, (3) University HUB Program Office approves the modified HSP in writing, and (4) all agreements resulting from this RFP are amended in writing to conform to the modified HSP.

### **Instructions on completing an HSP**

Proposer must visit <https://www.utsystem.edu/offices/historically-underutilized-business/hub-forms> to download the most appropriate HUB Subcontracting Plan (HSP) / Exhibit H form for use with this Request for Proposal. Proposer will find, on the HUB Forms webpage, a link to “[Guide to Selecting the Appropriate HSP Option](#)”. **Click on this link and read the Guide first before selecting an HSP Option.** Proposer shall select, from the four (4) Options available, the Option that is most applicable to Proposer’s



subcontracting intentions. These forms are in **fillable** PDF format and must be downloaded and opened with *Adobe Acrobat / Reader* to utilize the fillable function. If Proposer has any questions regarding which Option to use, Proposer shall submit the question via Bonfire portal.

Proposer must complete the HSP, then print, sign and scan *all pages* of the HSP Option selected, with additional support documentation\*, **and submit via Bonfire portal.** NOTE: signatures must be “wet” signatures. Digital signatures are not acceptable.

Any proposal submitted in response to this RFP that does not have a corresponding HSP meeting the above requirements may be rejected by University and returned to Proposer as non-responsive due to material failure to comply with advertised specifications.

Each Proposer’s HSP will be evaluated for completeness and compliance prior to opening the proposal to confirm Proposer compliance with HSP rules and standards. Proposer’s failure to submit one (1) completed and signed HUB Subcontracting Plan **to the Bonfire portal** may result in University’s rejection of the proposal as non-responsive due to material failure to comply with advertised specifications.

**\*If Proposer’s submitted HSP refers to specific page(s) / Sections(s) of Proposer’s proposal that explain how Proposer will perform entire contract with its own equipment, supplies, materials and/or employees, Proposer must submit copies of those pages with the HSP sent to the Bonfire Portal. In addition, all solicitation emails to potential subcontractors must be included as backup documentation to the Proposer’s HSP to demonstrate Good Faith Effort.** Failure to do so will slow the evaluation process and may result in DISQUALIFICATION.

## 2.6 Pre-Proposal Call

University will hold a pre-proposal call at 10:30 a.m. / p.m., **Central Standard Time on August 1, 2019**. The pre proposal conference will allow all Proposers an opportunity to ask University’s representatives relevant questions and clarify provisions of this RFP.

**Call-in number: (877)226-9790**

**Participant Code: 6269693#**

## SECTION 3

### SUBMISSION OF PROPOSAL

#### 3.1 Proposal Validity Period

Each proposal must state that it will remain valid for University's acceptance for a minimum of one hundred and twenty (120) days after the Submittal Deadline, to allow time for evaluation, selection, and any unforeseen delays.

#### 3.2 Terms and Conditions

3.2.1 Proposer must comply with the requirements and specifications contained in this RFP, including the Agreement (ref. **APPENDIX TWO**), the Notice to Proposer (ref. **Section 2** of this RFP), Proposal Requirements (ref. **APPENDIX ONE**) and the Specifications and Additional Questions (ref. **Section 5** of this RFP). If there is a conflict among the provisions in this RFP, the provision requiring Proposer to supply the better quality or greater quantity of services will prevail, or if such conflict does not involve quality or quantity, then interpretation will be in the following order of precedence:

3.2.1.1. Specifications and Additional Questions (ref. **Section 5** of this RFP);

3.2.1.2. Agreement (ref. **Section 4** and **APPENDIX TWO**);

3.2.1.3. Proposal Requirements (ref. **APPENDIX ONE**);

3.2.1.4. Notice to Proposers (ref. **Section 2** of this RFP).

## SECTION 4

### GENERAL TERMS AND CONDITIONS

The terms and conditions contained in the attached Agreement (ref. **APPENDIX TWO**) or, in the sole discretion of University, terms and conditions substantially similar to those contained in the Agreement, will constitute and govern any agreement that results from this RFP. *If Proposer takes exception to any terms or conditions set forth in the Agreement, Proposer will submit redlined **APPENDIX TWO** as part of its proposal in accordance with **Section 5.3.1** of this RFP.* Proposer's exceptions will be reviewed by University and may result in disqualification of Proposer's proposal as non-responsive to this RFP. If Proposer's exceptions do not result in disqualification of Proposer's proposal, then University may consider Proposer's exceptions when University evaluates the Proposer's proposal.

## SECTION 5

### SPECIFICATIONS AND ADDITIONAL QUESTIONS

#### 5.1 General

The minimum requirements and the specifications for the Services, as well as certain requests for information to be provided by Proposer as part of its proposal, are set forth below. As indicated in **Section 2.3** of this RFP, the successful Proposer is referred to as the “**Contractor.**”

**Contract Term:** University intends to enter into an agreement with the Contractor to perform the Services for an initial one (1) year base term, with the option to renew for four (4) additional one (1) year renewal periods, upon mutual written agreement of both parties.

**Approval by the Board of Regents:** No Agreement resulting from this RFP will be effective for amounts exceeding one million dollars (\$1,000,000) until approved by the Board of Regents of The University of Texas System.

**Multiple Awards:** University reserves the right to make multiple awards against this RFP.

**Disclosure of Existing Agreements:** University has existing disaster recovery service agreements with Witt O’Brien’s, LLC and Adjusters International, Inc., which are scheduled to expire August 31, 2019.

#### 5.2 Additional Questions Specific to this RFP

Proposer must submit the following information as part of Proposer’s proposal:

5.2.1 If Proposer takes exception to any terms or conditions set forth in the Agreement (ref. **APPENDIX TWO**), Proposer must redline **APPENDIX TWO** and include **APPENDIX TWO** as part of its Proposal. If Proposer agrees with terms or conditions set forth in the **APPENDIX TWO**, Proposer will submit a written statement acknowledging it.

5.2.2 By signing the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**), Proposer agrees to comply with Certificate of Interested Parties laws (ref. [§2252.908, Government Code](#)) and [1 TAC §§46.1 through 46.5](#)) as implemented by the Texas Ethics Commission (“TEC”), including, among other things, providing TEC and University with information required on the form promulgated by TEC and set forth in **APPENDIX THREE**. *Proposer may learn more about these disclosure requirements, including applicable exceptions and use of the TEC electronic filing system, by reviewing [§2252.908, Government Code](#), and information on the TEC website at [https://www.ethics.state.tx.us/whatsnew/FAQ\\_Form1295.html](https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html). **The Certificate of Interested Parties must only be submitted by Contractor upon delivery to University of a signed Agreement.***

#### 5.3 Scope of Work

Contractor will provide the following services to University:

##### A. Project Identification

1. Develop a Project Worksheet (PW) strategy to maximize the administrative allowance and minimize the cost to the institution.

2. Review estimates of incurred costs for damage, debris removal, repair, emergency protective measures, etc. to determine eligibility for funding through FEMA.
3. Develop eligible Scopes of Work from descriptions provided by the institution and / or its contractors.
4. Prepare and submit FEMA project worksheets.
5. Coordinate with the institution and its contractors to insure that insurance coverage is maximized.

## **B. Project Claims Processing**

1. Prepare, review and submit all documentation required for reimbursement.
2. Develop and maintain all databases needed to track project progress and subsequent reimbursement.
3. Provide the institution with accurate and timely data of the disaster costs to include insured and uninsured losses.

## **C. Project Preparation**

1. Coordinate with the institution to properly document "Improved and Alternate" Projects.
2. Identify and incorporate Section 406, of the Stafford Act, Hazard Mitigation into all eligible PW's.
3. Identify and develop Section 404, of the Stafford Act, Hazard Mitigation Projects.
4. Provide mobile or temporary Command Center facilities.
5. Provide Crisis Communications support, Joint Information System operations support, Two-Way.
6. Radio Communications, and/or social media support.
7. Plan for and provide debris management.
8. Provide debris management monitoring services.
9. Provide recovery planning.
10. Provide mitigation planning.
11. Acquire and / or provide associated technology to support Command Center operations such as web-based Incident Command System standard documents.

## **D. Project Reporting**

1. Monitor work to insure compliance with approved Scope of Work.
2. Submit required progress reports to the institution, State of Texas, and FEMA.
3. Prepare and submit FEMA Public Assistance processing and documentation for any new incidents.
4. Research, prepare and submit all appeals in accordance with applicable rules and regulations.
5. Represent the institution in all audits.
6. Provide staff augmentation for the Incident Command Planning Section to assist in preparing Incident.
7. Action Planning documentation and supporting documentation to include resource requests submitted to implement the Incident Commander's objectives for each operational period.
8. Provide other services as required by the institution.

The Scope of Work activities to be undertaken by Contractor in various phases are summarized as follows:

## **E. Phase I**

Review the long-term goals of the institution and how they might impact the recovery effort. Provide assistance and advice with the following:

- development of a methodology and strategic action plan;
- development of options analyses;
- selection and justification of the optimal scenarios;
- development of the implementation plan consisting of PW's and Hazard Mitigation Grant Proposals (if applicable).

#### **F. Phase II**

Provide technical assistance throughout the duration of the recovery process. Provide reporting and claims preparation. Provide appeal and audit support as needed.

#### **G. Phase III**

Provide additional services to the institution as required.

### **5.4 Additional Questions Specific to this RFP**

Proposer must submit the following information as part of Proposer's proposal:

#### **Vendor Experience and Competence (30%)**

1. Provide references from three (3) of Proposer's customers from the past five (5) years for services that are similar in scope, size, and complexity to the Services described in this RFP.

Provide the following information for each customer:

- Customer name and address;
  - Contact name with email address and phone number;
  - Time period in which work was performed;
  - Short description of work performed.
2. Has Proposer worked with University institutions in the past five (5) years? If "yes," state University Institution name, department name, department contact, and provide a brief description of work performed.
  3. Is Proposer up to date with any and all new FEMA requirements post-Hurricane Harvey? Explain.

#### **Company Profile and Reputation (15%)**

4. Explain if Proposer's focus has always been on disaster recovery and / or federally declared disaster claims?

#### **Approach to Project, Subcontractors, Quality, and Service (25%)**

5. Explain Proposer's strategy when employing subcontractors to assist with a project.
6. Explain Proposer's strategy to approach filing a FEMA claim?
7. How often (if at all) does FEMA kick back a claim or deny it in regards to Proposer's quality of work? Explain.

**SECTION 6**

**PRICING AND DELIVERY SCHEDULE**

**Proposal of:** \_\_\_\_\_  
(Proposer Company Name)

**To:** The University of Texas System

**RFP No.:** 720-1924 Disaster Recovery Services

Ladies and Gentlemen:

Having carefully examined all the specifications and requirements of this RFP and any attachments thereto, the undersigned proposes to furnish the required pursuant to the above-referenced Request for Proposal upon the terms quoted (firm fixed price) below. The University will not accept proposals which include assumptions or exceptions to the work identified in this RFP.

**6.1 Pricing for Services Offered (30%)**

Provide Proposer's pricing by Project Role per hour:

Project Role	Hourly Rate
	\$ _____
	\$ _____
	\$ _____
	\$ _____

1. Does this pricing include payment to any other (third party) contractors? If "yes", explain.

\_\_\_\_\_

2. List any additional services Proposer provides. Provide pricing for these services.

\_\_\_\_\_

**6.2 Discounts**

Describe all discounts that may be available to University, including, educational, federal, state and local discounts.

**6.3 Delivery Schedule of Events and Time Periods**

Indicate number of calendar days needed to commence the Services from the execution of the services agreement:

\_\_\_\_\_ Calendar Days

## 6.4 Payment Terms

University's standard payment terms are "net 30 days" as mandated by the *Texas Prompt Payment Act* (ref. [Chapter 2251, Government Code](#)).

Indicate below the prompt payment discount that Proposer offers:

Prompt Payment Discount: \_\_\_\_\_% \_\_\_\_\_ days / net 30 days.

[Section 51.012, Education Code](#), authorizes University to make payments through electronic funds transfer methods. Proposer agrees to accept payments from University through those methods, including the automated clearing house system ("ACH"). Proposer agrees to provide Proposer's banking information to University in writing on Proposer letterhead signed by an authorized representative of Proposer. Prior to the first payment, University will confirm Proposer's banking information. Changes to Proposer's bank information must be communicated to University in writing at least thirty (30) days before the effective date of the change and must include an [IRS Form W-9](#) signed by an authorized representative of Proposer.

University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with [§151.309, Tax Code](#), and [Title 34 TAC §3.322](#). Pursuant to [34 TAC §3.322\(c\)\(4\)](#), University is not required to provide a tax exemption certificate to establish its tax exempt status.

Respectfully submitted,

**Proposer:** \_\_\_\_\_

**By:** \_\_\_\_\_  
(Authorized Signature for Proposer)

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_



**APPENDIX ONE**  
**PROPOSAL REQUIREMENTS**

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## SECTION 1

### GENERAL INFORMATION

#### 1.1 Purpose

University is soliciting competitive sealed proposals from Proposers having suitable qualifications and experience providing services in accordance with the terms, conditions and requirements set forth in this RFP. This RFP provides sufficient information for interested parties to prepare and submit proposals for consideration by University.

By submitting a proposal, Proposer certifies that it understands this RFP and has full knowledge of the scope, nature, quality, and quantity of the services to be performed, the detailed requirements of the services to be provided, and the conditions under which such services are to be performed. Proposer also certifies that it understands that all costs relating to preparing a response to this RFP will be the sole responsibility of the Proposer.

PROPOSER IS CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFP CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

#### 1.2 Inquiries and Interpretations

University may in its sole discretion respond in writing to written inquiries concerning this RFP and mail its response as an Addendum to all parties recorded by University as having received a copy of this RFP. Only University's responses that are made by formal written Addenda will be binding on University. Any verbal responses, written interpretations or clarifications other than Addenda to this RFP will be without legal effect. All Addenda issued by University prior to the Submittal Deadline will be and are hereby incorporated as a part of this RFP for all purposes.

Proposers are required to acknowledge receipt of each Addendum as specified in this Section. The Proposer must acknowledge all Addenda by completing, signing and returning the Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**). The Addenda Checklist must be received by University prior to the Submittal Deadline and should accompany the Proposer's proposal.

Any interested party that receives this RFP by means other than directly from University is responsible for notifying University that it has received an RFP package, and should provide its name, address, telephone and facsimile (**FAX**) numbers, and email address, to University, so that if University issues Addenda to this RFP or provides written answers to questions, that information can be provided to that party.

#### 1.3 Public Information

Proposer is hereby notified that University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information.

University may seek to protect from disclosure all information submitted in response to this RFP until such time as a final agreement is executed.

Upon execution of a final agreement, University will consider all information, documentation, and other materials requested to be submitted in response to this RFP, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the *Texas Public Information Act* (ref. [Chapter 552, Government Code](#)). Proposer will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under §§[552.101](#), [552.104](#), [552.110](#), [552.113](#), and [552.131](#), *Government Code*.

#### 1.4 Type of Agreement

Contractor, if any, will be required to enter into a contract with University in a form substantially similar to the Agreement between University and Contractor (the "**Agreement**") attached to this RFP as **APPENDIX TWO** and incorporated for all purposes.

#### 1.5 Proposal Evaluation Process

University will select Contractor by using the competitive sealed proposal process described in this Section. Any proposals that are not submitted by the Submittal Deadline or that are not accompanied by required number of completed and signed originals of the HSP will be rejected by University as non-responsive due to material failure to comply with this RFP (ref. **Section 2.5.4** of this RFP). Upon completion of the initial review and evaluation of proposals, University may invite one or more selected Proposers to participate in oral presentations. University will use commercially reasonable efforts to avoid public disclosure of the contents of a proposal prior to selection of Contractor.

University may make the selection of Contractor on the basis of the proposals initially submitted, without discussion, clarification or modification. In the alternative, University may make the selection of Contractor on the basis of negotiation with any of the Proposers. In conducting negotiations, University will use commercially reasonable efforts to avoid disclosing the contents of competing proposals.

University may discuss and negotiate all elements of proposals submitted by Proposers within a specified competitive range. For purposes of negotiation, University may establish, after an initial review of the proposals, a competitive range of acceptable or potentially acceptable proposals composed of the highest rated proposal(s). In that event, University may defer further action on proposals not included within the competitive range pending the selection of Contractor; provided, however, University reserves the right to include additional proposals in the competitive range if deemed to be in the best interest of University.

After the Submittal Deadline but before final selection of Contractor, University may permit Proposer to revise its proposal in order to obtain the Proposer's best and final offer. In that event, representations made by Proposer in its revised proposal, including price and fee quotes, will be binding on Proposer. University will provide each Proposer within the competitive range with an equal opportunity for discussion and revision of its proposal. University is not obligated to select the Proposer offering the most attractive economic terms if that Proposer is not the most advantageous to University overall, as determined by University.

University reserves the right to (a) enter into an agreement for all or any portion of the requirements and specifications set forth in this RFP with one or more Proposers, (b) reject any and all proposals and re-solicit proposals, or (c) reject any and all proposals and temporarily or permanently abandon this selection process, if deemed to be in the best interests of University. Proposer is hereby notified that University will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by University.

#### **1.6 Proposer's Acceptance of RFP Terms**

Proposer (1) accepts [a] Proposal Evaluation Process (ref. **Section 1.5** of **APPENDIX ONE**), [b] Criteria for Selection (ref. **2.3** of this RFP), [c] Specifications and Additional Questions (ref. **Section 5** of this RFP), [d] terms and conditions of the Agreement (ref. **APPENDIX TWO**), and [e] all other requirements and specifications set forth in this RFP; and (2) acknowledges that some subjective judgments must be made by University during this RFP process.

#### **1.7 Solicitation for Proposal and Proposal Preparation Costs**

Proposer understands and agrees that (1) this RFP is a solicitation for proposals and University has made no representation written or oral that one or more agreements with University will be awarded under this RFP; (2) University issues this RFP predicated on University's anticipated requirements for the Services, and University has made no representation, written or oral, that any particular scope of services will actually be required by University; and (3) Proposer will bear, as its sole risk and responsibility, any cost that arises from Proposer's preparation of a proposal in response to this RFP.

#### **1.8 Proposal Requirements and General Instructions**

- 1.8.1 Proposer should carefully read the information contained herein and submit a complete proposal in response to all requirements and questions as directed.
- 1.8.2 Proposals and any other information submitted by Proposer in response to this RFP will become the property of University.
- 1.8.3 University will not provide compensation to Proposer for any expenses incurred by the Proposer for proposal preparation or for demonstrations or oral presentations that may be made by Proposer. Proposer submits its proposal at its own risk and expense.
- 1.8.4 Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFP in any way; or (iii) contain irregularities of any kind, are subject to disqualification by University, at University's sole discretion.
- 1.8.5 Proposals should be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet the requirements and specifications of this RFP. Emphasis should be on completeness, clarity of content, and responsiveness to the requirements and specifications of this RFP.
- 1.8.6 University makes no warranty or guarantee that an award will be made as a result of this RFP. University reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP or the Agreement when deemed to be in University's best interest. University reserves the right to seek clarification from any Proposer concerning any item contained in its proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to University, at University's sole discretion. Representations made by Proposer within its proposal will be binding on Proposer.
- 1.8.7 Any proposal that fails to comply with the requirements contained in this RFP may be rejected by University, in University's sole discretion.

## 1.9 Preparation and Submittal Instructions

### 1.9.1 Specifications and Additional Questions

Proposals must include responses to the questions in Specifications and Additional Questions (ref. **Section 5** of this RFP). Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N / A (Not Applicable) or N / R (No Response), as appropriate. Proposer should explain the reason when responding N / A or N / R.

### 1.9.2 Execution of Offer

Proposer must complete, sign and return the attached Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) as part of its proposal. The Execution of Offer must be signed by a representative of Proposer duly authorized to bind the Proposer to its proposal. Any proposal received without a completed and signed Execution of Offer may be rejected by University, in its sole discretion.

### 1.9.3 Pricing and Delivery Schedule

Proposer must complete and return the Pricing and Delivery Schedule (ref. **Section 6** of this RFP), as part of its proposal. In the Pricing and Delivery Schedule, the Proposer should describe in detail (a) the total fees for the entire scope of the Services; and (b) the method by which the fees are calculated. The fees must be inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit.

University will not recognize or accept any charges or fees to perform the Services that are not specifically stated in the Pricing and Delivery Schedule.

In the Pricing and Delivery Schedule, Proposer should describe each significant phase in the process of providing the Services to University, and the time period within which Proposer proposes to be able to complete each such phase.

### 1.9.4 Proposer's General Questionnaire

Proposals must include responses to the questions in Proposer's General Questionnaire (ref. **Section 3** of **APPENDIX ONE**). Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N / A (Not Applicable) or N / R (No Response), as appropriate. Proposer should explain the reason when responding N / A or N / R.

### 1.9.5 Addenda Checklist

Proposer should acknowledge all Addenda to this RFP (if any) by completing, signing and returning the Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**) as part of its proposal. Any proposal received without a completed and signed Addenda Checklist may be rejected by University, in its sole discretion.

### 1.9.6 Submission

*Proposer should submit all proposal materials as instructed in **Section 3** of this RFP. RFP No. (ref. **Title Page** of this RFP) and Submittal Deadline (ref. **Section 2.1** of this RFP) should be clearly shown (1) in the Subject line of any email transmitting the proposal, and (2) in the lower left-hand corner on the top surface of any envelope or package containing the proposal. In addition, the name and the return address of the Proposer should be clearly visible in any email or on any envelope or package.*

University will not under any circumstances consider a proposal that is received after the Submittal Deadline or which is not accompanied by the HSP as required by **Section 2.5** of this RFP. University will not accept proposals submitted by email, telephone or FAX transmission.

Except as otherwise provided in this RFP, no proposal may be changed, amended, or modified after it has been submitted to University. However, a proposal may be withdrawn and resubmitted at any time prior to the Submittal Deadline. No proposal may be withdrawn after the Submittal Deadline without University's consent, which will be based on Proposer's written request explaining and documenting the reason for withdrawal, which is acceptable to University.

## SECTION 2

### EXECUTION OF OFFER

**THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED AND RETURNED WITH PROPOSER'S PROPOSAL. FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH THE PROPOSER'S PROPOSAL MAY RESULT IN THE REJECTION OF THE PROPOSAL.**

- 2.1 Representations and Warranties.** Proposer represents, warrants, certifies, acknowledges, and agrees as follows:
- 2.1.1 Proposer will furnish the Services to University and comply with all terms, conditions, requirements and specifications set forth in this RFP and any resulting Agreement.
  - 2.1.2 This RFP is a solicitation for a proposal and is not a contract or an offer to contract. Submission of a proposal by Proposer in response to this RFP will not create a contract between University and Proposer. University has made no representation or warranty, written or oral, that one or more contracts with University will be awarded under this RFP. Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
  - 2.1.3 Proposer is a reputable company that is lawfully and regularly engaged in providing the Services.
  - 2.1.4 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform the Services.
  - 2.1.5 Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances relating to performance of the Services.
  - 2.1.6 Proposer understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in the Agreement under which Proposer will be required to operate.
  - 2.1.7 Proposer will not delegate any of its duties or responsibilities under this RFP or the Agreement to any sub-contractor, except as expressly provided in the Agreement.
  - 2.1.8 Proposer will maintain any insurance coverage required by the Agreement during the entire term.
  - 2.1.9 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. University will rely on such statements, information and representations in selecting Contractor. If selected by University, Proposer will notify University immediately of any material change in any matters with regard to which Proposer has made a statement or representation or provided information.
  - 2.1.10 PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTling ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF PROPOSER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROPOSER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.
  - 2.1.11 Pursuant to §§[2107.008](#) and [2252.903](#), *Government Code*, any payments owing to Proposer under the Agreement may be applied directly to any debt or delinquency that Proposer owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until such debt or delinquency is paid in full.
  - 2.1.12 Any terms, conditions, or documents attached to or referenced in Proposer's proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP, and (b) do not place any requirements on University that are not set forth in this RFP. Submission of a proposal is Proposer's good faith intent to enter into the Agreement with University as specified in this RFP and that Proposer's intent is not contingent upon University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.
  - 2.1.13 Pursuant to [Chapter 2270, Government Code](#), Proposer certifies Proposer (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of the Agreement. Proposer acknowledges the Agreement may be terminated and payment withheld if this certification is inaccurate.
  - 2.1.14 Pursuant to [Subchapter F, Chapter 2252, Government Code](#), Proposer certifies Proposer is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Proposer acknowledges the Agreement may be terminated and payment withheld if this certification is inaccurate.
- 2.2 No Benefit to Public Servants.** Proposer has not given or offered to give, nor does Proposer 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 its proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting Agreement, and Proposer may be removed from all proposer lists at University.
- 2.3 Tax Certification.** Proposer is not currently delinquent in the payment of any taxes due under [Chapter 171, Tax Code](#), or Proposer is exempt from the payment of those taxes, or Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at University's option, may result in termination of any resulting Agreement.

- 2.4 Antitrust Certification.** Neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, nor anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in [§15.01 et seq., Business and Commerce Code](#), or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
- 2.5 Authority Certification.** The individual signing this document and the documents made a part of this RFP, is authorized to sign the documents on behalf of Proposer and to bind Proposer under any resulting Agreement.
- 2.6 Child Support Certification.** Under [§231.006, Family Code](#), relating to child support, the individual or business entity named in Proposer's proposal is not ineligible to receive award of the Agreement, and any Agreements resulting from this RFP may be terminated if this certification is inaccurate.
- 2.7 Relationship Certifications.**
- No relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Proposer that is a sole proprietorship, the officers or directors of any Proposer that is a corporation, the partners of any Proposer that is a partnership, the joint venturers of any Proposer that is a joint venture, or the members or managers of any Proposer that is a limited liability company, on one hand, and an employee of any member institution of University, on the other hand, other than the relationships which have been previously disclosed to University in writing.
  - Proposer has not been an employee of any member institution of University within the immediate twelve (12) months prior to the Submittal Deadline.
  - No person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in Proposer's proposal or any contract resulting from this RFP (ref. [§669.003, Government Code](#)).
  - All disclosures by Proposer in connection with this certification will be subject to administrative review and approval before University enters into any Agreement resulting from this RFP with Proposer.
- 2.8 Compliance with Equal Employment Opportunity Laws.** Proposer is in compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 2.9 Compliance with Safety Standards.** All products and services offered by Proposer to University in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law ([Public Law 91-596](#)) and the *Texas Hazard Communication Act*, [Chapter 502, Health and Safety Code](#), and all related regulations in effect or proposed as of the date of this RFP.
- 2.10 Exceptions to Certifications.** Proposer will and has disclosed, as part of its proposal, any exceptions to the information stated in this *Execution of Offer*. All information will be subject to administrative review and approval prior to the time University makes an award or enters into any Agreement with Proposer.
- 2.11 Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act Certification.** If Proposer will sell or lease computer equipment to University under any Agreement resulting from this RFP then, pursuant to [§361.965\(c\), Health & Safety Code](#), Proposer is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in [Chapter 361, Subchapter Y, Health & Safety Code](#), and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in [30 TAC Chapter 328, §361.952\(2\), Health & Safety Code](#), states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term "computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.
- 2.12 Conflict of Interest Certification.**
- Proposer is not a debarred vendor or the principal of a debarred vendor (i.e. owner, proprietor, sole or majority shareholder, director, president, managing partner, etc.) either at the state or federal level.
  - Proposer's provision of services or other performance under any Agreement resulting from this RFP will not constitute an actual or potential conflict of interest.
  - Proposer has disclosed any personnel who are related to any current or former employees of University.
  - Proposer has not given, nor does Proposer intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to an officer or employee of University in connection with this RFP.
- 2.13 Proposer should complete the following information:**

If Proposer is a Corporation, then State of Incorporation: \_\_\_\_\_

If Proposer is a Corporation, then Proposer's Corporate Charter Number: \_\_\_\_\_

RFP No.: 720-1924 Disaster Recovery Services

**NOTICE:** WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER [§§552.021 AND 552.023, GOVERNMENT CODE](#), INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER [§559.004, GOVERNMENT CODE](#), INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

**Submitted and Certified By:**

\_\_\_\_\_  
(Proposer Institution's Name)

\_\_\_\_\_  
(Signature of Duly Authorized Representative)

\_\_\_\_\_  
(Printed Name / Title)

\_\_\_\_\_  
(Date Signed)

\_\_\_\_\_  
(Proposer's Street Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(FAX Number)

\_\_\_\_\_  
(Email Address)

SECTION 3

**PROPOSER'S GENERAL QUESTIONNAIRE**

**NOTICE:** WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER §§552.021 AND 552.023, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER §559.004, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Proposals must include responses to the questions contained in this Proposer's General Questionnaire. Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N / A (Not Applicable) or N / R (No Response), as appropriate. Proposer will explain the reason when responding N / A or N / R.

**3.1 Proposer Profile**

3.1.1 Legal name of Proposer company:

\_\_\_\_\_

Address of principal place of business:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address of office that would be providing service under the Agreement:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Number of years in Business: \_\_\_\_\_

State of incorporation: \_\_\_\_\_

Number of Employees: \_\_\_\_\_

Annual Revenues Volume: \_\_\_\_\_

Name of Parent Corporation, if any \_\_\_\_\_

**NOTE: If Proposer is a subsidiary, University prefers to enter into a contract or agreement with the Parent Corporation or to receive assurances of performance from the Parent Corporation.**

3.1.2 State whether Proposer will provide a copy of its financial statements for the past two (2) years, if requested by University.

3.1.3 Proposer will provide a financial rating of the Proposer entity and any related documentation (such as a Dunn and Bradstreet analysis) that indicates the financial stability of Proposer.

3.1.4 Is Proposer currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, Proposer will explain the expected impact, both in organizational and directional terms.

3.1.5 Proposer will provide any details of all past or pending litigation or claims filed against Proposer that would affect its performance under the Agreement with University (if any).

3.1.6 Is Proposer currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, Proposer will specify the pertinent date(s), details, circumstances, and describe the current prospects for resolution.

3.1.7 Proposer will provide a customer reference list of no less than three (3) organizations with which Proposer currently has contracts and / or to which Proposer has previously provided services (within the past five (5) years) of a type and scope similar to those required by University's RFP. Proposer will include in its customer reference list the customer's company name, contact person, telephone number, project description, length of business relationship, and background of services provided by Proposer.



- 3.1.8 Does any relationship exist (whether by family kinship, business association, capital funding agreement, or any other such relationship) between Proposer and any employee of University? If yes, Proposer will explain.
- 3.1.9 Proposer will provide the name and Social Security Number for each person having at least 25% ownership interest in Proposer. This disclosure is mandatory pursuant to [§231.006, Family Code](#), and will be used for the purpose of determining whether an owner of Proposer with an ownership interest of at least 25% is more than 30 days delinquent in paying child support. Further disclosure of this information is governed by the *Texas Public Information Act* (ref. [Chapter 552, Government Code](#)), and other applicable law.

### 3.2 Approach to Project Services

- 3.2.1 Proposer will provide a statement of the Proposer's service approach and will describe any unique benefits to University from doing business with Proposer. Proposer will briefly describe its approach for each of the required services identified in **Section 5.3** Scope of Work of this RFP.
- 3.2.2 Proposer will provide an estimate of the earliest starting date for services following execution of the Agreement.
- 3.2.3 Proposer will submit a work plan with key dates and milestones. The work plan should include:
- 3.2.3.1 Identification of tasks to be performed;
  - 3.2.3.2 Time frames to perform the identified tasks;
  - 3.2.3.3 Project management methodology;
  - 3.2.3.4 Implementation strategy; and
  - 3.2.3.5 The expected time frame in which the services would be implemented.
- 3.2.4 Proposer will describe the types of reports or other written documents Proposer will provide (if any) and the frequency of reporting, if more frequent than required in this RFP. Proposer will include samples of reports and documents if appropriate.

### 3.3 General Requirements

- 3.3.1 Proposer will provide summary resumes for its proposed key personnel who will be providing services under the Agreement with University, including their specific experiences with similar service projects, and number of years of employment with Proposer.
- 3.3.2 Proposer will describe any difficulties it anticipates in performing its duties under the Agreement with University and how Proposer plans to manage these difficulties. Proposer will describe the assistance it will require from University.

### 3.4 Service Support

Proposer will describe its service support philosophy, how it is implemented, and how Proposer measures its success in maintaining this philosophy.

### 3.5 Quality Assurance

Proposer will describe its quality assurance program, its quality requirements, and how they are measured.

### 3.6 Miscellaneous

- 3.6.1 Proposer will provide a list of any additional services or benefits not otherwise identified in this RFP that Proposer would propose to provide to University. Additional services or benefits must be directly related to the goods and services solicited under this RFP.
- 3.6.2 Proposer will provide details describing any unique or special services or benefits offered or advantages to be gained by University from doing business with Proposer. Additional services or benefits must be directly related to the goods and services solicited under this RFP.
- 3.6.3 Does Proposer have a contingency plan or disaster recovery plan in the event of a disaster? If so, then Proposer will provide a copy of the plan.

**SECTION 4**

**ADDENDA CHECKLIST**

**Proposal of:** \_\_\_\_\_  
(Proposer Company Name)

**To:** The University of Texas System

**Ref.:** Disaster Recovery Services

**RFP No.:** 720-1924

Ladies and Gentlemen:

The undersigned Proposer hereby acknowledges receipt of the following Addenda to the captioned RFP (initial if applicable).

**Note: If there was only one (1) Addendum, initial just the first blank after No. 1, not all five (5) blanks below.**

No. 1 \_\_\_\_\_ No. 2 \_\_\_\_\_ No. 3 \_\_\_\_\_ No. 4 \_\_\_\_\_ No. 5 \_\_\_\_\_

Respectfully submitted,

**Proposer:** \_\_\_\_\_

**By:** \_\_\_\_\_  
(Authorized Signature for Proposer)

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**APPENDIX TWO**  
**SAMPLE AGREEMENT**  
**(INCLUDED AS SEPARATE ATTACHMENT)**

**APPENDIX THREE**

**CERTIFICATE OF INTERESTED PARTIES  
(Texas Ethics Commission Form 1295)**

This is a sample Texas Ethics Commission's FORM 1295 – CERTIFICATE OF INTERESTED PARTIES. If not exempt under [Section 2252.908\(c\), Government Code](https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html), Contractor must use the Texas Ethics Commission electronic filing web page (at [https://www.ethics.state.tx.us/whatsnew/FAQ\\_Form1295.html](https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html)) to complete the most current Certificate of Interested Parties form and submit the form as instructed to the Texas Ethics Commission and University. **The Certificate of Interested Parties will be submitted only by Contractor to University with the signed Agreement.**

<b>CERTIFICATE OF INTERESTED PARTIES</b>		<b>FORM 1295</b>	
Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.		<b>OFFICE USE ONLY</b>	
<b>1</b> Name of business entity filing form, and the city, state and country of the business entity's place of business.			
<b>2</b> Name of governmental entity or state agency that is a party to the contract for which the form is being filed.			
<b>3</b> Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.			
4	Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)
			<input type="checkbox"/> Controlling <input type="checkbox"/> Intermediary
<b>5</b> Check only if there is NO Interested Party. <input type="checkbox"/>			
<b>6 AFFIDAVIT</b> I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.			
_____ Signature of authorized agent of contracting business entity			
AFFIX NOTARY STAMP / SEAL ABOVE			
Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20 _____, to certify which, witness my hand and seal of office.			
_____ Signature of officer administering oath      Printed name of officer administering oath      Title of officer administering oath			
<b>ADD ADDITIONAL PAGES AS NECESSARY</b>			

## NON- EXCLUSIVE EMERGENCY AND RECOVERY SERVICES RELATED TO DISASTER EVENTS AGREEMENT BETWEEN UNIVERSITY AND CONTRACTOR

This Non-Exclusive Emergency and Recovery Services Related To Disaster Events Agreement ("**Agreement**") is made and entered into effective as of \_\_\_\_\_, 2019 (the "**Effective Date**"), by and between **The University of Texas System**, an agency and institution of higher education established under the laws of the State of Texas ("**University**") for and on its own behalf and on behalf of all institutions and entities included in the University as set forth in Section 65.02, *Texas Education Code* (collectively, "**Institutions**" and each an "**Institution**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Contractor**"), Federal Tax Identification Number \_\_\_\_\_

University and Contractor hereby agree as follows:

### 1. Scope of Work.

- 1.1 Contractor will perform services within the scope of work ("**Work**" or "**Services**") set forth in **Exhibit A**, Scope of Work, attached and incorporated for all purposes, only on request of an Institution (each a "**Requesting Institution**") and in accordance with a Project Addendum fully executed by Contractor and a Requesting Institution, as described in **Section 2** below. The Institutions include, but are not limited to, the following: The University of Texas at Arlington, The University of Texas at Austin, The University of Texas at Dallas, The University of Texas at El Paso, The University of Texas of the Permian Basin, The University of Texas Rio Grande Valley, The University of Texas at San Antonio, The University of Texas at Tyler, The University of Texas Southwestern Medical Center, The University of Texas Medical Branch at Galveston, The University of Texas Health Science Center at Houston, The University of Texas Health Science Center at San Antonio, The University of Texas MD Anderson Cancer Center, The University of Texas Health Science Center at Tyler and the University of Texas System Administration. Contractor will perform the Work to the satisfaction of each Requesting Institution and in accordance with the schedule ("**Schedule**") for the Work set out in the executed Project Addendum. Time is of the essence in connection with this Agreement and each Project Addendum. University and the Requesting Institutions will have no obligation to accept late performance or waive timely performance by Contractor.
- 1.2 Contractor will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local, laws, statutes, regulations and ordinances ("**Applicable Laws**"), for the performance of the Work.
- 1.3 Contractor will not replace or substitute staff for those staff that Contractor has identified to a Requesting Institution as performing Work under a Project Addendum with that Requesting Institution without first notifying that Requesting Institution in a writing that identifies the Contractor's reasons for such replacement or substitution and the qualifications of Contractor's replacement staff personnel. If a Requesting Institution finds the performance of any of Contractor's staff to be in breach of this Agreement or a Project Addendum or otherwise unacceptable, then the Requesting Institution will inform Contractor and Contractor must rectify that staff performance issue to the Requesting Institution's satisfaction. If such a staff performance issue is not so rectified, then the Requesting Institution may , without liability to Requesting

Institution, elect one or more of the following: (1) to not enter into a Project Addendum with Contractor, (2) to terminate any or all of the Project Addenda that it has entered into with Contractor, or (3) to pursue any claims, actions, or remedies available to it under Applicable Laws (as defined below.)

- 1.4 Contractor acknowledges that this Agreement is a non-exclusive agreement. Neither University nor any Institution is obligated to request services from or enter into Project Addenda with Contractor under this Agreement. CONTRACTOR UNDERSTANDS AND AGREES THAT NEITHER UNIVERSITY NOR ANY INSTITUTION HAVE MADE ANY REPRESENTATION, ASSURANCE, WARRANTY OR GUARANTY THAT UNIVERSITY OR ANY INSTITUTION WILL REQUEST CONTRACTOR TO PERFORM ANY SERVICE AND THAT UNIVERSITY AND ALL INSTITUTIONS HAVE AND DO SPECIFICALLY DISCLAIM ANY SUCH REPRESENTATIONS, WARRANTIES, ASSURANCES OR GUARANTIES.

## 2. **Project(s).**

- 2.1 Prior to Contractor's commencement of any Work, the Contractor and the Requesting Institution must complete and enter into the Project Addendum attached hereto as **Exhibit F – Project Addendum**, which will contain a description of the Project covered and a schedule for performance of Work to be completed by Contractor under that Project Addendum. All of terms and conditions contained in this Agreement are incorporated into each Project Addendum for all purposes.
- 2.2 In the event of a conflict between a Project Addendum and this Agreement, this Agreement will control, provided, however, that the Requesting Institution and Contractor may agree to language in a Project Addendum that specifies or clarifies the Services to be provided or that provides the Requesting Institution with more beneficial pricing than that set forth in this Agreement. Contractor and a Requesting Institution can enter into a Project Addendum at any time during the Term. A Project Addendum will specify the term during which Contractor will provide Work to the Requesting Institution set forth in that Project Addendum. To the extent that this Agreement expires or terminates prior to the end of a Project Addendum, such Project Addendum will survive any such termination or expiration of the Agreement and the terms and conditions of this Agreement will continue to be incorporated for all purposes into the Project Addendum. Contractor understands and agrees that it will not receive any payment or other compensation under this Agreement unless it enters into a Project Addendum and provides Services in accordance with the terms and conditions of that Project Addendum and this Agreement.

## 3. **Time for Commencement and Completion.**

The term (“**Initial Term**”) of this Agreement will begin on the Effective Date and expire on \_\_\_\_\_, 20\_\_\_\_. University will have the option to renew this Agreement for four (4) additional one (1) year terms (each a “**Renewal Term**”). The Initial Term and each Renewal Term are collectively referred to as the “**Term**”).

## 4. **Contractor's Obligations.**

- 4.1 Contractor will perform Work in compliance with (a) all federal, state or local, laws, statutes, regulations and ordinances (collectively, **Applicable Laws**) and (b) the

Board of Regents of The University of Texas System *Rules and Regulations* (<http://www.utsystem.edu/offices/board-regents/regents-rules-and-regulations>), the policies of The University of Texas System (<http://www.utsystem.edu/board-of-regents/policy-library>), and the institutional rules, regulations and policies of University and the Institutions (collectively, **University Rules**). Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for the firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, [Chapter 15, Texas Business and Commerce Code](#), or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor's response to University's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.

- 4.2 Contractor represents, warrants and agrees that (a) it will use its best efforts to perform the Work in a good and workmanlike manner and in accordance with the highest standards of Contractor's profession or business, and (b) all of the Work to be performed will be of the quality that prevails among similar businesses of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances.
- 4.3 Contractor will call to University's attention in writing all information in any materials supplied to Contractor (by University or any other party) that Contractor regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.
- 4.4 University at all times is relying on Contractor's skill and knowledge in performing Work. Contractor represents, warrants, and agrees that the Work will be accurate and free from any material defects. Contractor's duties and obligations under this Agreement will at no time be in any way diminished by reason of any approval by University or any Institution nor will Contractor be released from any liability by reason of any approval by University or any Institution, it being agreed that University and the Requesting Institutions at all times are relying upon Contractor's skill and knowledge in performing the Work.
- 4.5 Contractor will, at its own cost, correct all material defects in the Work as soon as practical after Contractor becomes aware of the defects. If Contractor fails to correct material defects in the Work within a reasonable time, then University may correct the defective Work at Contractor's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Work that University may have at law or in equity.
- 4.6 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will cause all persons connected with Contractor directly in charge of the Work to be duly registered and / or licensed under all Applicable Laws. Contractor will assign a designated representative who will be responsible for the administration and coordination of the Work. Contractor will furnish efficient business administration and coordination and perform the Work in an expeditious and economical manner consistent with the interests of University and the Requesting Institution(s).

- 4.7 Contractor represents and warrants that if it is duly organized, validly existing and in good standing under the laws of the state of its organization; it is duly authorized and in good standing to conduct business in the State of Texas; it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 4.8 Contractor represents and warrants that neither the execution and delivery of this Agreement by Contractor nor the performance of its duties and obligations under this Agreement will (a) result in the violation of any provision [i] if a corporation, of Contractor's articles of incorporation or by-laws, [ii] if a limited liability company, of its articles of organization or regulations, or [iii] if a partnership, of any partnership agreement by which Contractor is bound; (b) result in the violation of any provision of any agreement by which Contractor is bound; or (c) to the best of Contractor's knowledge and belief, conflict with any order or decree of any court or other body or authority having jurisdiction.
- 4.9 Contractor represents and warrants that all of Contractor's Personnel contributing to the Work Material (ref. **Section 7**) under this Agreement will be required to (i) acknowledge in writing the ownership of Contractor (for the benefit of University and the Requesting Institutions) of the Work Material and each element thereof produced by its Personnel while performing services pursuant to this Agreement and (ii) make all assignments necessary to effectuate such ownership. "**Personnel**" means any and all persons associated with Contractor who provide any work or work product pursuant to this Agreement, including officers, managers, supervisors, full-time employees, part-time employees, and independent contractors.
- 4.10 Contractor represents and warrants that: (i) the Work will be performed solely by Contractor, its full-time or part-time employees during the course of their employment, or independent contractors who have assigned in writing all right, title and interest in their work to Contractor for the benefit of University and the Requesting Institutions; (ii) University and the Requesting Institutions will receive free, good and clear title to all Work Material developed under this Agreement; (iii) the Work Material and the intellectual property rights protecting the Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges or other restrictions; (iv) the Work Material will not infringe upon or violate any patent, copyright, trade secret, trademark, service mark or other property right of any former employer, independent contractor, client or other third party; and (v) the use, reproduction, distribution, or modification of the Work Material will not violate the rights of any third parties in the Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.
- 4.11 If this Agreement requires Contractor's presence on University's or an Institution's premises or in University's or an Institution's facilities, Contractor agrees to cause its employees, representatives, agents, or subcontractors to become aware of, fully informed about, and in full compliance with all applicable University Rules, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.



## 5. The Contract Amount.

- 5.1 So long as Contractor has provided University or a Requesting Institution with its current and accurate Federal Tax Identification Number in writing, University and the Requesting Institutions that have entered into a Project Addendum with Contractor will pay Contractor for the performance of the Work under those Project Addenda as more particularly set forth in **Exhibit C**, Payment for Services and the terms of those Project Addendum.
- 5.2 Each Project Addendum must identify the maximum total amount of fees and expenses that the Requesting Institution may be required to pay to Contractor under that Project Addendum (the “**Contract Amount**”). The Contract Amount must include all applicable federal, state or local sales or use taxes payable as a result of the execution or performance of the Project Addendum.
- 5.3 University and the Institutions (State agencies) are exempt from Texas Sales & Use Tax on Work in accordance with [§151.309, Texas Tax Code](#) and [34 Texas Administrative Code \(TAC\) §3.322](#). Pursuant to 34 TAC §§3.322(c)(4) and (g)(3), this Agreement is sufficient proof of University’s and all Institutions’ tax exempt status and neither the University nor any Institution are not required to provide further evidence of their exempt status.
- 5.4 This total amount paid by University and all Requesting Institutions under the Project Addenda entered into under this Agreement must not exceed \$1,000,000 until this Agreement is approved by The University of Texas System Board of Regents.

## 6. Payment Terms.

- 6.1 At least ten (10) days after the end of each calendar month during the term of each Project Addendum entered into under this Agreement, Contractor will submit to the Requesting Institution under that Project Addenda an invoice covering the Services performed for the Requesting Institution under that Project Addenda during the immediately preceding calendar month, in compliance with **Exhibit C**, Payment for Services and the terms of that Project Addendum. Each invoice will be accompanied by documentation that the Requesting Institution may reasonably request to support the invoice amount. The Requesting Institution will, within twenty-one (21) days from the date it receives an invoice and supporting documentation, approve or disapprove the amount reflected in the invoice. If the Requesting Institution approves the amount or any portion of the amount set forth in the invoice, the Requesting Institution will promptly pay (each a “**Progress Payment**”) to Contractor the amount approved so long as Contractor is not in default under the applicable Project Addendum or this Agreement. If the Requesting Institution disapproves any invoice amount, the Requesting Institution will give Contractor specific reasons for its disapproval in writing.
- 6.2 Within ten (10) days after final completion of the Work under each Project Addendum, or as soon thereafter as possible, Contractor will submit a final invoice (“**Final Invoice**”) to the Requesting Institution under that Project Addendum setting forth all amounts due and remaining unpaid to Contractor under that Project Addendum.

Upon approval of the Final Invoice by the Requesting Institution, the Requesting Institution will pay ("**Final Payment**") to Contractor the amount due under the Final Invoice.

- 6.3 Notwithstanding any provision of this Agreement or any Project Addendum to the contrary, no Requesting Institution will be obligated to make any payment (whether a Progress Payment or Final Payment) to Contractor if Contractor is in default under this Agreement or a Project Addendum.
- 6.4 The cumulative amount of all Progress Payments and the Final Payment under a Project Addendum will not exceed the Contract Amount documented in that Project Addendum.
- 6.5 No payment made by a Requesting Institution will (a) be construed to be final acceptance or approval of that part of the Work to which the payment relates, or (b) relieve Contractor of any of its duties or obligations under this Agreement or a Project Addendum.
- 6.6 The acceptance of Final Payment under a Project Addendum by Contractor will constitute a waiver of all claims by Contractor regarding that Project Addendum except those previously made in writing and identified by Contractor as unsettled at the time of the Final Invoice for payment under that Project Addendum.
- 6.7 University or a Requesting Institution will have the right to verify the details set forth in Contractor's invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Contractor at mutually convenient times; (b) examining any reports with respect to this Agreement or a Project Addendum; and (c) other reasonable action.
- 6.8 [Section 51.012, Texas Education Code](#), authorizes University or a Requesting Institution to make payments through electronic funds transfer methods. Contractor agrees to accept payments from University and the Requesting Institutions through those methods, including the automated clearing house system (ACH). Contractor agrees to provide Contractor's banking information to University and the Requesting Institutions in writing on Contractor letterhead signed by an authorized representative of Contractor. Prior to the first payment, University or a Requesting Institution will confirm Contractor's banking information. Changes to Contractor's bank information must be communicated to University and the Requesting Institutions in accordance with **Section 12.14** in writing at least thirty (30) days before the effective date of the change and must include an [IRS Form W-9](#) signed by an authorized representative of Contractor.
- 6.9 Notwithstanding any other provision of this Agreement, University and the Requesting Institutions are entitled to a "**Prompt Payment Discount**" of     % off of each payment that University or the Requesting Institutions submit within      days after University's or the Requesting Institution's receipt of Contractor's invoice for that payment.

## 7. Ownership and Use of Work Material.

- 7.1 All drawings, specifications, plans, computations, sketches, data, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by Contractor or any subcontractors in connection with the Work (collectively, "**Work Material**"), whether or not accepted or rejected by University or the Requesting Institutions, are the sole property of University and the Requesting Institutions and for their exclusive use and re-use at any time without further compensation and without any restrictions.
- 7.2 Contractor grants and assigns to University and the Requesting Institutions all rights and claims of whatever nature and whether now or hereafter arising in and to the Work Material and will cooperate fully with University and the Requesting Institutions in any steps University or the Requesting Institutions may take to obtain or enforce patent, copyright, trademark or like protections with respect to the Work Material.
- 7.3 Contractor will deliver all Work Material to University and the Requesting Institutions upon expiration or termination of this Agreement. University and the Requesting Institutions will have the right to use the Work Material for the completion of the Work or otherwise. University and the Requesting Institutions may, at all times, retain the originals of the Work Material. The Work Material will not be used by any persons other than University and the Requesting Institutions on other projects unless expressly authorized by University and the Requesting Institutions in writing.
- 7.4 The Work Material will not be used or published by Contractor or any other party unless expressly authorized by University and the Requesting Institutions in writing. Contractor will treat all Work Material as confidential.

## 8. Default and Termination.

- 8.1 In the event of a material failure by a party to this Agreement or a Project Addendum to perform in accordance with the terms of this Agreement or that Project Addendum ("**default**"), then other party may terminate this Agreement upon fifteen (15) days' written notice of termination setting forth the nature of the material failure; provided, that, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the fifteen-day period.
- 8.2 University may, without cause, terminate this Agreement and all Project Addenda at any time upon giving seven (7) days' advance written notice to Contractor. Upon termination pursuant to this Section, Contractor will be entitled to payment of an amount that will compensate Contractor for the Work satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement and the Project Addenda provided, that, Contractor has delivered all Work Material to University and the Requesting Institutions. Notwithstanding any provision in this Agreement or any Project Addendum to the contrary, neither the University nor any of the Requesting Institutions will be required to pay or reimburse Contractor for any Services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor.

- 8.3 A Requesting Institution or Contractor may, without cause, terminate a Project Addendum at any time by giving fifteen (15)-days' notice to the other party. Upon termination pursuant to this Section, Contractor will be entitled to payment for the Work satisfactorily performed under that Project Addendum from the time of the last payment date to the termination date in accordance with this Agreement and the Project Addendum; provided that Contractor has delivered all Work Material to Requesting Institution. Notwithstanding any provision in this Agreement or any Project Addendum to the contrary, neither University nor any Requesting Institution will be required to pay or reimburse Contractor for any Services performed or for expenses incurred by Contractor after the date of the termination notice that could have been reasonably avoided or mitigated by Contractor. The termination of a Project Addendum without cause by Requesting Institution or Contractor under this **Section 8.3** shall not terminate or otherwise affect any other Project Addenda entered into with Contractor under this Agreement by that Requesting Institution or by any other Requesting Institutions.
- 8.4 Termination under **Sections 8.1, 8.2, or 8.3** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.
- 8.5 If Contractor fails to cure any default within fifteen (15) days after receiving written notice of the default, University or the applicable Requesting Institutions will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Contractor under this Agreement or any Project Addendum, any and all reasonable expenses incurred in connection with University's or the Requesting Institutions' curative actions.
- 8.6 In the event that this Agreement or any Project Addendum is terminated, then within thirty (30) days after termination, Contractor will reimburse University and the Requesting Institutions for all fees paid by University or the Requesting Institutions to Contractor that were (a) not earned by Contractor prior to termination, or (b) for goods or services that University or Institution did not receive from Contractor prior to termination.

**9. Indemnification**

- 9.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY, THE INSTITUTIONS, AND THEIR RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY “**INDEMNITEES**”) FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS’ FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY “**CLAIMS**”) BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM CONTRACTOR’S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR, ANYONE DIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.
- 9.2 IN ADDITION, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY CONTRACTOR, OR THE USE BY INDEMNITEES, AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UNIVERSITY WILL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UNIVERSITY AND THE REQUESTING INSTITUTIONS AGREE TO REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

**10. Relationship of the Parties.**

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venturer, or agent of University or any Institution. Contractor will not bind nor attempt to bind University or the Institutions to any agreement or contract. As an independent contractor, Contractor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers’ compensation insurance.

**11. Insurance.**

11.1 Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-:VII or better, and in amounts not less than the following minimum limits of coverage:

11.1.1 Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

Employers Liability - Each Accident	\$1,000,000
Employers Liability - Each Employee	\$1,000,000
Employers Liability - Policy Limit	\$1,000,000

Workers' Compensation policy must include under Item 3.A. on the information page of the Workers' Compensation policy the state in which Work is to be performed for University.

11.1.2 Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 300,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000

The required Commercial General Liability policy will be issued on a form that insures Contractor's and subcontractor's liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

11.1.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for Bodily Injury and Property Damage;

11.1.4 Umbrella/Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence and aggregate with a deductible of no more than \$10,000, and will be excess over and at least as broad as the underlying coverage as required under sections 5.1.1 Employer's Liability; 5.1.2 Commercial General Liability; and 5.1.3 Business Auto Liability. Inception and expiration dates will be the same as the underlying policies. Drop down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.

11.1.5 Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 each occurrence, \$3,000,000 aggregate. Such insurance will cover all Work performed by or on behalf of Contractor and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis,

Contractor agrees to purchase an Extended Reporting Period Endorsement, effective twenty-four (24) months after the expiration or cancellation of the policy. No Professional Liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least twenty-four (24) months after the expiration or termination of this Agreement for any reason.

11.1.6 Contractor's Employee Dishonesty Insurance will be endorsed with a Client's Property Endorsement (or equivalent) to protect the assets and property of University with limits of not less than \$1,000,000 per claim. If Contractor has property of University in its care, custody or control away from University's premises, Contractor will provide bailee coverage for the replacement cost of the property. Contractor's Employee Dishonesty policy will name University as Loss Payee.

11.1.7 Directors' and Officers' Liability Insurance with limits of not less than \$1,000,000 per claim. The coverage will be continuous for the duration of this Agreement and for not less than twenty-four (24) months following the expiration or termination of this Agreement.

11.2 Contractor will deliver to University:

11.2.1 Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all required insurance policies after the execution and delivery of this Agreement and prior to the performance of any Work by Contractor under this Agreement. Additional evidence of insurance will be provided verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

11.2.1.1 **All insurance policies** (with the exception of workers' compensation, employer's liability and professional liability) will be endorsed and name the Board of Regents of The University of Texas System, The University of Texas System and University as Additional Insureds for liability caused in whole or in part by Contractor's acts or omissions with respect to its on-going and completed operations up to the actual liability limits of the required insurance policies maintained by Contractor. Commercial General Liability Additional Insured endorsement including ongoing and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.

11.2.1.2 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System, The University of Texas System and University. **All insurance policies** will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System, The University of Texas System and University. No policy will be canceled until after thirty (30) days' unconditional written notice to

University. ***All insurance policies*** will be endorsed to require the insurance carrier providing coverage to send notice to University thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this **Section 11**.

11.2.1.3 Contractor will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by University prior to the performance of any Work by Contractor under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

11.2.1.4 Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following University contact:

Name:

Address: The University of Texas System  
Office of Risk Management  
210 West 7<sup>th</sup> Street  
Austin, Texas 78701

Facsimile Number:

Email Address:

11.3 Contractor's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by University or the University of Texas System. Contractor's or subcontractor's insurance will be kept in force until all Work has been fully performed and accepted by University in writing

11.3.1 Professional Liability Insurance coverage written on a claims-made basis requires Contractor to purchase an Extended Reporting Period Endorsement, effective for twenty-four (24) months after the expiration or cancellation of this policy.

11.3.2 Directors and Officers Liability Insurance coverage written on a claims-made basis requires Contractor to purchase an Extended Reporting Period Endorsement, effective for twenty-four (24) months after the expiration or cancellation of this policy.

## 12. **Miscellaneous.**

12.1 Assignment and Subcontracting. Except as specifically provided in **EXHIBIT E**, Historically Underutilized Business Subcontracting Plan, attached and incorporated for all purposes, Contractor's interest in this Agreement and all Project Addenda (including Contractor's duties and obligations under this Agreement and all Project Addenda, and the fees due to Contractor under this Agreement and all Project Addenda) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on University or any Requesting Institution; and (b) be a breach of this Agreement and all Project Addenda for which Contractor will be subject to all remedial actions



provided by Applicable Laws, including [Chapter 2161, Texas Government Code](#), and [34 TAC §§20.285\(g\)\(5\), 20.585 and 20.586](#). The benefits and burdens of this Agreement and all Project Addenda are assignable by University and the respective Requesting Institutions.

- 12.2 **Texas Family Code Child Support Certification.** Pursuant to [§231.006, Texas Family Code](#), Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and all Project Addenda and acknowledges that this Agreement and all Project Addenda may be terminated and payment may be withheld if this certification is inaccurate.
- 12.3 **Tax Certification.** If Contractor is a taxable entity as defined by [Chapter 171, Texas Tax Code](#) (“**Chapter 171**”), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 12.4 **Payment of Debt or Delinquency to the State.** Pursuant to Sections [§§2107.008 and 2252.903, Texas Government Code](#), Contractor agrees that any payments owing to Contractor under this Agreement and all Project Addenda may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until the debt or delinquency is paid in full.
- 12.5 **Loss of Funding.** Performance by University and the Requesting Institutions of their duties and obligations under this Agreement and all Project Addenda may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “**Legislature**”) and/or allocation of funds by the Board of Regents of The University of Texas System (the “**Board**”). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then (1) University or a Requesting Institution will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation hereunder or (2) a Requesting Institution will issue written notice to Contractor and the Requesting Institution may terminate any or all of the Project Addenda it has entered into with Contractor without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University or the Requesting Institutions.
- 12.6 **Entire Agreement; Modifications.** This Agreement (including all exhibits, schedules, supplements and other attachments) and all Project Addenda supersede all prior agreements, written or oral, between Contractor, University, and the Requesting Institutions and will constitute the entire agreements and understandings between the parties with respect to the subject matter of this Agreement and the Project Addenda. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by both University and Contractor. Each Project Addendum and each of its provisions will be binding upon Contractor and the Requesting Institution that is a party to that Project Addendum and may not be waived, modified, amended or altered except by a writing signed by both that Requesting Institution and Contractor.

- 12.7 **Force Majeure.** None of the parties to this Agreement or any Project Addendum will be liable or responsible to the others for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("**force majeure occurrence**"). Provided, however, in the event of a force majeure occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that University or a Requesting Institution may continue to operate during the occurrence.
- 12.8 **Captions.** The captions of sections and subsections in this Agreement or any Project Addendum are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
- 12.9 **Governing Law.** Travis County, Texas, will be the proper place of venue for suit on or in respect of this Agreement and all Project Addenda. This Agreement, all Project Addenda, all of the rights and obligations of the parties to this Agreement and all Project Addenda, and all of the terms and conditions of this Agreement and all Project Addenda will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.
- 12.10 **Waivers.** No delay or omission in exercising any right accruing upon a default in performance of this Agreement or any Project Addendum will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement or any Project Addendum will not be construed to be a waiver of any subsequent default under this Agreement or any Project Addendum.
- 12.11 **Confidentiality and Safeguarding of University Records; Press Releases; Public Information.** Under this Agreement or any Project Addendum, Contractor may (1) create, (2) receive from or on behalf of University or the Requesting Institutions, or (3) have access to, records or record systems of University and the Requesting Institutions (collectively, **University Records**). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws. Additional mandatory confidentiality and security compliance requirements with respect to University Records subject to the Family Educational Rights and Privacy Act, [20 United States Code \(USC\) §1232g](#) (**FERPA**) are addressed in **Section 12.37**. Additional mandatory confidentiality and security compliance requirements with respect to University Records subject to the [Health Insurance Portability and Accountability Act](#) and [45 Code of Federal Regulations \(CFR\) Part 160 and subparts A and E of Part 164](#) (collectively, **HIPAA**) are addressed in **Section 12.26**. Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement or the applicable Project Addendum, (b) required by Applicable Laws, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security that are no less rigorous than the standards by which Contractor protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all

Applicable Laws and the terms of this Agreement; and (4) comply with University Rules regarding access to and use of University's and the Requesting Institutions' computer systems, including UTS165 at <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy>. At the request of University or a Requesting Institution, Contractor agrees to provide University or that Requesting Institution with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.

- 12.11.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to University and all affected Requesting Institutions within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide University with all information requested by University and the affected Requesting Institutions regarding the impermissible use or disclosure.
- 12.11.2 **Return of University Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of University and/or the Requesting Institutions will be (1) returned to University and those Requesting Institutions, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Contractor will provide University and all affected Requesting Institutions with written notice of Contractor's intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to University and the Requesting Institutions in writing the destruction of University Records.
- 12.11.3 **Disclosure.** If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this **Section 12.11**.
- 12.11.4 **Press Releases.** Except when defined as part of the Work, Contractor will not make any press releases, public statements, or advertisement referring to Agreement, any Project Addendum, or the engagement of Contractor as an independent contractor of University and the Requesting Institutions in connection with the Agreement and the Project Addenda, or release any information relative to the Agreement or the Project Addenda for publication, advertisement or any other purpose without the prior written approval of University and the affected Requesting Institutions.
- 12.11.5 **Public Information.** University and the Institutions strictly adhere to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* ("TPIA"), Chapter 552, *Texas Government Code*. In accordance with Section 552.002 of TPIA and Section 2252.907, *Texas Government Code*, and at no additional charge to University or the Institutions, Contractor will make any information created or exchanged

with University or the Institutions pursuant to this Agreement and the Project Addenda (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University or an Institution that is accessible by the public.

12.11.6 **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University or a Requesting Institution reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, then without notice or opportunity to cure (1) University may immediately terminate this Agreement and/or (2) the Requesting Institution may terminate any or all of its Project Addenda.

12.11.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement or any Project Addenda for any reason.

12.12 **Binding Effect.** This Agreement and the Project Addenda will be binding upon and inure to the benefit of the parties thereto and their respective permitted assigns and successors.

12.13 **Records.** Records of Contractor's costs, reimbursable expenses pertaining to the Agreement and payments will be available to University or the Requesting Institutions or their authorized representatives during business hours and will be retained by Contractor for four (4) years after final Payment or abandonment of the Agreement or the Project Addenda (whichever is later), unless University or the Requesting Institutions otherwise instruct Contractor in writing.

12.14 **Notices.** Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement and the Project Addenda will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

If to University: Dr. Scott Kelley  
Executive Vice Chancellor for Business Affairs  
The University of Texas System  
210 West 7<sup>th</sup> Street  
Austin, TX 78701

*with copy to:* The Office of Risk Management  
The University of Texas System  
210 West 7<sup>th</sup> Street  
Austin, TX 78701  
Attention: Patrice Reisen-Hicks

If to Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If to a Requesting Institution: The address identified in that Requesting Institution's Project Addendum

or other person or address as may be given in writing by any party to the others in accordance with this Section.

Notwithstanding any other requirements for notices given by the parties under this Agreement, if Contractor intends to deliver written notice to University or any Requesting Institution pursuant to Section 2251.054, *Texas Government Code*, then Contractor will send that notice to (1) the Requesting Institution at its address identified in the applicable Project Addendum executed by that Requesting Institution and (2) University as follows:

If to University: Dr. Scott Kelley  
Executive Vice Chancellor for Business Affairs  
The University of Texas System  
210 West 7<sup>th</sup> Street  
Austin, TX 78701

*with copy to:* The Office of Risk Management  
The University of Texas System  
210 West 7<sup>th</sup> Street  
Austin, TX 78701  
Attention: Patrice Reisen-Hicks

or other person or address as may be given in writing by University or a Requesting Institution to Contractor in accordance with this Section.

12.15 **Severability.** In case any provision of this Agreement or any Project Addendum will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement or that Project Addendum, and this Agreement and the Project Addendum will be construed as if the invalid or unenforceable provision had not been included.

12.16 **State Auditor's Office.** Contractor understands that acceptance of funds under this Agreement or any Project Addendum constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "**Auditor**"), to conduct an audit or investigation in connection with those funds (§§[51.9335\(c\)](#), [73.115\(c\)](#) and [74.008\(c\)](#), *Texas Education Code*). Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with subcontractors.

12.17 **Limitation of Liability.** EXCEPT FOR UNIVERSITY'S OR AN INSTITUTION'S OBLIGATION (IF ANY) TO PAY CONTRACTOR CERTAIN FEES AND EXPENSES UNIVERSITY NOR ANY INSTITUTION WILL HAVE NO LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING

THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT OR ANY PROJECT ADDENDUM. NOTWITHSTANDING ANY DUTY OR OBLIGATION OF UNIVERSITY OR THE INSTITUTIONS TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR, NO PRESENT OR FUTURE AFFILIATED ENTERPRISE, SUBCONTRACTOR, AGENT, OFFICER, DIRECTOR, EMPLOYEE, REPRESENTATIVE, ATTORNEY OR REGENT OF UNIVERSITY, THE INSTITUTIONS, OR ANYONE CLAIMING UNDER UNIVERSITY OR THE INSTITUTIONS HAS OR WILL HAVE ANY PERSONAL LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT OR ANY PROJECT ADDENDUM.

**12.18 Survival of Provisions.** No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination, including **Sections 6.7, 9, 12.5, 12.9, 12.10, 12.11, 12.13, 12.16, 12.17, 12.19** and **12.21**.

**12.19 Breach of Contract Claims.**

12.19.1 To the extent that [Chapter 2260, Texas Government Code](#), as it may be amended from time to time ("**Chapter 2260**"), is applicable to this Agreement and the Project Addenda and is not preempted by other Applicable Laws, the dispute resolution process provided for in Chapter 2260 will be used, as further described herein, by University, the Requesting Institutions, and Contractor to attempt to resolve any claim for breach of contract made by Contractor:

12.19.1.1 Contractor's claims for breach of this Agreement or of a Project Addendum that the parties cannot resolve pursuant to other provisions of this Agreement, that Project Addendum, or in the ordinary course of business will be submitted to the negotiation process provided in [subchapter B](#) of Chapter 2260. To initiate the process, Contractor will submit written notice, as required by [subchapter B](#) of Chapter 2260, to University and the applicable Requesting Institutions in accordance with the notice provisions in this Agreement. Contractor's notice will specifically state that the provisions of [subchapter B](#) of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that University or a Requesting Institution allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the damages. Compliance by Contractor with [subchapter B](#) of Chapter 2260 is a required prerequisite to Contractor's filing of a contested case proceeding under [subchapter C](#) of Chapter 2260. The chief business officer of University, or another officer of University as may be designated from time to time by University by written notice to Contractor in accordance with the notice provisions in this Agreement, will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims.

- 12.19.1.2 If the parties are unable to resolve their disputes under **Section 12.19.1.1**, the contested case process provided in [subchapter C](#) of Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement or a Project Addendum by University or a Requesting Institution.
- 12.19.1.3 Compliance with the contested case process provided in [subchapter C](#) of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under [Chapter 107, Texas Civil Practices and Remedies Code](#). The parties hereto specifically agree that (i) neither the execution of this Agreement or any Project Addendum by University or the Requesting Institutions nor any other conduct, action or inaction of any representative of University or the Institutions relating to this Agreement or any Project Addendum constitutes or is intended to constitute a waiver of University's, the Requesting Institutions' or the state's sovereign immunity to suit and (ii) neither University nor any of the Institutions have waived their right to seek redress in the courts.
- 12.19.2 The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to [Chapter 2260](#), as currently effective, thereafter enacted or subsequently amended.
- 12.19.3 University, the Institutions, and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.
- 12.20 **Undocumented Workers.** The *Immigration and Nationality Act* ([8 USC §1324a](#)) ("**Immigration Act**") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the [Form I-9 Employment Eligibility Verification Form \(I-9 Form\)](#) as the document to be used for employment eligibility verification ([8 CFR §274a](#)). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by Applicable Laws. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by Applicable Laws, the University and the Requesting Institutions may terminate this Agreement and any or all Project Addenda in accordance with Section 8. Contractor represents and

warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

12.21 **Limitations.** THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY AND THE INSTITUTIONS (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT OR ANY PROJECT ADDENDUM, INCLUDING THOSE TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'S OR AN INSTITUTION'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY OR THE INSTITUTIONS EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

12.22 **Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy available at <http://www.utsystem.edu/policy/policies/int160.html>, University's Standards of Conduct Guide available at <http://www.utsystem.edu/systemcompliance/SOCcombined.pdf>, and applicable state ethics laws and rules available at [www.utsystem.edu/ogc/ethics](http://www.utsystem.edu/ogc/ethics). Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University or Institution employees to violate University's Conflicts of Interest Policy, provisions described by University's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

12.23 **INTENTIONALLY OMMITTED.**

12.24 **Enforcement.** Contractor agrees and acknowledges that University is entering into this Agreement and the Requesting Institutions will be entering into Project Addenda in reliance on Contractor's special and unique knowledge and abilities with respect to performing Work. Contractor's services provide a peculiar value to University and the Requesting Institutions. University and the Requesting Institutions cannot be reasonably or adequately compensated in damages for the loss of Contractor's Services. Accordingly, Contractor acknowledges and agrees that a breach by Contractor of the provisions of this Agreement or any Project Addenda will cause University and the Requesting Institutions irreparable injury and damage. Contractor, therefore, expressly agrees that University or the Requesting Institutions will be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement or any Project Addenda.

12.25 **INTENTIONALLY OMMITTED.**



12.26 **HIPAA Compliance.** University and the Institutions are HIPAA Covered Entities and some of the information Contractor receives, maintains or creates for or on behalf of University and the Institutions may constitute Protected Health Information (“PHI”) that is subject to HIPAA. Before Contractor may receive, maintain or create any University Records subject to HIPAA, Contractor will execute the HIPAA Business Associate Agreement (“BAA”) set forth in **EXHIBIT C**, HIPAA Business Associate Agreement, attached and incorporated for all purposes. To the extent that the BAA conflicts with any term contained in this Agreement or a Project Addendum, the terms of the BAA will control.

12.27 **Historically Underutilized Business Subcontracting Plan.** Contractor agrees to use good faith efforts to subcontract the Work in accordance with the Historically Underutilized Business Subcontracting Plan (“HSP”) (ref. **EXHIBIT D**). Contractor agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to University and the Requesting Institutions in the format required by Statewide Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor entity (collectively, “TPSS”). Submission of compliance reports will be required as a condition for payment under this Agreement. If University or a Requesting Institution determines that Contractor has failed to subcontract as set out in the HSP, University or that Requesting Institution will notify Contractor of any deficiencies and give Contractor an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. If University or a Requesting Institution determines that Contractor failed to implement the HSP in good faith, University or that Requesting Institution, in addition to any other remedies, may report nonperformance to the TPSS in accordance with [§§20.285\(g\)\(5\)](#), [20.585](#) and [20.586](#). University or that Requesting Institution may also revoke this Agreement or any Project Addendum for breach and make a claim against Contractor.

12.27.1 **Changes to the HSP.** If at any time during the Term of this Agreement or any Project Addendum, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with 34 TAC Section 20.14; (b) the changes must be reviewed and approved by University; and (c) if University approves changes to the HSP, this Agreement and all applicable or any Project Addenda must be amended in accordance with **Section 12.6** to replace the HSP with the revised subcontracting plan.

12.27.2 **Expansion of the Work.** If University expands the scope of the Work through a change order or any other amendment, University will determine if the additional Work contains probable subcontracting opportunities *not* identified in the initial solicitation for the Work. If University determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of [34 TAC §20.285](#) before (a) this Agreement may be amended to include the additional Work; or (b) Contractor may perform the additional Work. If Contractor subcontracts any of the additional subcontracting opportunities

identified by University without prior authorization and without complying with [34 TAC §20.285](#), Contractor will be deemed to be in breach of this Agreement under **Section 8** and will be subject to any remedial actions provided by Applicable Laws, including [Chapter 2161, Texas Government Code](#), and [34 TAC §20.285](#). University or any Institution may report nonperformance under this Agreement to the SPSS in accordance with [34 TAC §§20.285\(g\)\(5\)](#), [20.585](#) and [20.586](#).

- 12.28 **Responsibility for Individuals Performing Work; Criminal Background Checks.** Each individual who is assigned to perform the Work under this Agreement or any Project Addendum will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing the Work under this Agreement and the Project Addenda. Prior to commencing the Work, Contractor will (1) provide University and all applicable Requesting Institutions with a list ("**List**") of all individuals who may be assigned to perform the Work on University's or those Requesting Institutions' premises and (2) have an appropriate criminal background screening performed on all the individuals on the List. Contractor will determine on a case-by-case basis whether each individual assigned to perform the Work is qualified to do so. Contractor will not knowingly assign any individual to provide services on University's or any Requesting Institution's premises who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform the Work on University's or any Requesting Institution's premises.

Prior to commencing performance of the Work under this Agreement or a Project Addendum, Contractor will provide University and the applicable Requesting Institution a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will provide University and the Requesting Institutions an updated certification letter each time there is a change in the individuals on the List.

- 12.29 **Quality Assurance.** Contractor will (a) comply with all applicable standards of the Joint Commission ("**Joint Commission**"); (b) implement and monitor a quality assurance process that complies with Joint Commission standards; (c) comply with applicable Joint Commission privileging standards for licensed independent practitioners; (d) upon request, provide assurance to University and the Requesting Institutions of a licensed independent practitioner's privileging file; and (e) provide University and the Requesting Institutions with periodic reports of its quality assurance indicators and/or permit University and the Requesting Institutions to conduct periodic quality assurance audits of the Work.

12.30 **INTENTIONALLY OMMITTED.**

12.31 **INTENTIONALLY OMMITTED.**

12.32 **INTENTIONALLY OMMITTED.**

- 12.33 **INTENTIONALLY OMMITTED.**
- 12.34 **INTENTIONALLY OMMITTED.**
- 12.35 **INTENTIONALLY OMMITTED.**
- 12.36 **INTENTIONALLY OMMITTED.**
- 12.37 **FERPA Compliance.** Some of the University Records Contractor receives, creates or maintains for or on behalf of University or the Requesting Institutions constitute “Education Records” (as defined by [FERPA](#)), or “Personally Identifiable Information from Education Records” (as defined by FERPA) (collectively “**FERPA Data**”). Before Contractor may access, create or maintain any of University’s or the Requesting Institutions’ FERPA Data, Contractor must execute the FERPA compliance contract addendum (“**FERPA Confidentiality and Security Addendum**”), attached as **EXHIBIT E**, FERPA Confidentiality and Security Addendum, and incorporated for all purposes. The FERPA Confidentiality and Security Addendum contains terms required by University and the Requesting Institutions to ensure that Contractor complies with FERPA (including the requirements of [34 CFR §99.33\(a\)](#) and University Rules related to FERPA, including (i) a description of all FERPA Data subject to this Agreement, and (ii) recognition that University and the Requesting Institutions retain the right to control Contractor’s access, use, and disclosure of all FERPA Data. Except to the extent **Section 12.11** conflicts with the FERPA Confidentiality and Security Addendum, Contractor will comply with **Section 12.11** in connection with all FERPA Data. To the extent that the FERPA Confidentiality and Security Addendum conflicts with any term contained in this Agreement or any Project Addendum, the terms of the FERPA Confidentiality and Security Addendum will control.
- 12.38 Contractor agrees to comply with [§2252.908, Texas Government Code](#) (Disclosure of Interested Parties Statute), and [1 TAC §§46.1 through 46.5](#) (Disclosure of Interested Parties Regulations), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC, the University, and the Requesting Institutions with information required on the form promulgated by TEC. Contractor may learn more about these disclosure requirements, including the use of TEC’s electronic filing system, by reviewing the information on TEC’s website at <https://www.ethics.state.tx.us/data/forms/1295/1295.pdf>.
- 12.39 **Contractor Certification regarding Boycotting Israel.** To the extent applicable, Contractor certifies that, pursuant to [Chapter 2270, Texas Government Code](#), Contractor certifies that either (i) Contractor meets an exemption criteria under Section 2270.002; or (ii) Contractor does not boycott Israel and will not boycott Israel during the term of the Agreement. If Contractor meets an exemption, Contractor will provide the University written notice of the exemption before commencing work.
- 12.40 **Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement and

any or all Project Addenda may be terminated and payment withheld if this certification is inaccurate.

University and Contractor have executed and delivered this Agreement to be effective as of the Effective Date.

CONTRACTOR: THE UNIVERSITY OF TEXAS SYSTEM

By: \_\_\_\_\_ By: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**Attach:**

- EXHIBIT A** – Scope of Work
- EXHIBIT B** – Payment for Services (Fee Schedule)
- EXHIBIT C** – HIPAA Business Associate Agreement
- EXHIBIT D** – HUB Subcontracting Plan
- EXHIBIT E** – FERPA Confidentiality and Security Addendum
- EXHIBIT F** – Project Addendum

**EXHIBIT A**  
**SCOPE OF WORK**

**EXHIBIT B**

**PAYMENT FOR SERVICES  
(Fee Schedule)**

## EXHIBIT C

### HIPAA BUSINESS ASSOCIATE AGREEMENT

This **Business Associate Agreement** (“**Agreement**”), effective \_\_\_\_\_ (“**Effective Date**”), is entered into by and between **The University of Texas System** and \_\_\_\_\_, a \_\_\_\_\_ company doing business as “\_\_\_\_\_” (“**Business Associate**”, as more fully defined in section 1(c)) (each a “**Party**” and collectively the “**Parties**”).

#### RECITALS

WHEREAS, Covered Entity has entered or is entering into that certain \_\_\_\_\_ Agreement with Business Associate (“the Underlying Agreement”) by which it has engaged Business Associate to perform services;

WHEREAS, Covered Entity possesses Protected Health Information that is protected under HIPAA and the HIPAA Regulations, HITECH Act and state law, including the Medical Records Privacy Act (MRPA), and is permitted to manage such information only in accordance with HIPAA and the HIPAA Regulations, HITECH Act, and MRPA;

WHEREAS, Business Associate may receive such information from Covered Entity, or create, receive, maintain or transmit such information on behalf of Covered Entity, in order to perform certain of the services under the Underlying Agreement;

WHEREAS, the Parties desire to comply with health information privacy and security protections subsequent to the enactment of the HITECH Act, Subtitle D of the American Recovery and Reinvestment Act of 2009 which has established requirements for compliance with HIPAA. In particular, the requirements provide that: (1) Covered Entity give affected individuals notice of security breaches affecting their PHI, and Business Associate give notice to Covered Entity pursuant to the provisions below; (2) Business Associate comply with the HIPAA security regulations; and (3) additional and/or revised provisions be included in Business Associate Agreement;

WHEREAS, Under HIPAA and HITECH, Covered Entity is required to enter into protective agreements, generally known as “business associate agreements,” with certain downstream entities that will be entrusted with HIPAA-protected health information;

WHEREAS, Health information is further protected by state law, including the MRPA; and

WHEREAS, Covered Entity wishes to ensure that Business Associate will appropriately safeguard Protected Health Information.

NOW THEREFORE, Covered Entity and Business Associate agree as follows:

1. **Definitions.** The Parties agree that the following terms, when used in this Agreement, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA and the HIPAA Regulations and the MRPA. All capitalized terms used in this Agreement but not defined below shall have the meaning assigned to them under the HIPAA Regulations.

- a. "Breach" shall have the meaning given such term under 45 C.F.R. § 164.402 as such regulation is revised from time to time.
- b. "Breach of System Security" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of Sensitive Personal Information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data.
- c. "Business Associate" means, with respect to a Covered Entity, a person who:
  - 1) on behalf of such Covered Entity or of an Organized Health Care Arrangement (as defined under the HIPAA Regulations) in which the Covered Entity participates, but other than in the capacity of a member of the workplace of such Covered Entity or arrangement, creates, receives, maintains, or transmits PHI for a function or activity regulated by HIPAA, HIPAA Regulations, or MRPA including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities listed at 42 C.F.R. 3.20, billing, benefit management, practice management, and re-pricing; or
  - 2) provides, other than in the capacity of a member of the workforce of such Covered Entity, legal, actuarial, accounting, consulting, Data Aggregation, management, administrative, accreditation, or financial services to or for such Covered Entity, or to or for an Organized Health Care Arrangement in which the Covered Entity participates, where the provision of the service involves the disclosure of PHI from such Covered Entity or arrangement, or from another Business Associate of such Covered Entity or arrangement, to the person.
- d. "Data Aggregation" means, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of Covered Entity, the combining of such PHI by Business Associate with the PHI received by Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- e. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- f. "HIPAA Regulations" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164 subparts A and E ("The Privacy Rule") and the Security Standards as they may be amended from time to time, 45 C.F.R. Parts 160, 162 and 164, Subpart C ("The Security Rule").
- g. "HITECH Act" means the provisions of Division A, Title XIII of the American Recovery and Reinvestment Act of 2009, known as The Health Information Technology for Economic and Clinical Health, Act 42 U.S.C. §3000 et. seq., and implementing



regulations and guidance, including the regulations implemented in 78 Fed. Reg. 5566 (January 25, 2013).

h. “Individually Identifiable Health Information” means information that is a subset of health information, including demographic information collected from an individual, and:

1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

2) relates to past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

a) that identifies the individual; or

b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

i. “MRPA” means Texas Medical Records Privacy Act, as codified in Section 181 et seq. of the Texas Health and Safety Code and as implemented through regulations including the Standards Relating to the Electronic Exchange of Health Information, codified at Title 1, Section 390.1 et seq. of the Texas Administrative Code.

j. “Protected Health Information” or “PHI” means Individually Identifiable Health Information that is transmitted by electronic media; maintained in any medium described in the definition of the term electronic media in the HIPAA Regulations; or transmitted or maintained in any other form or medium. The term excludes Individually Identifiable Health Information in educational records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g; records described at 20 U.S.C. § 1232g(a)(4)(B)(iv); and employment records held by a Covered Entity in its role as employer and regarding a person who has been deceased more than 50 years.

k. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a routine basis, such as scans, “pings”, or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate.

l. “Sensitive Personal Information” means: (1) an individual’s first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: (a) social security number; (b) driver’s license number or government-issued identification number; (c) account number or credit or debit card number in combination with any required security code, access, code, or password that would permit access to an individual’s financial account; or (2) PHI information that identifies an individual and relates to: (a) the physical or mental health or condition of the individual; (b) the provision of health care to the individual; or (c) payment for the provision of health care to the individual.

m. "Unsecured PHI" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified in the guidance issued under Section 13402(h)(2) of the HITECH Act on the HHS web site.

2. Permitted Uses and Disclosures.

a. Compliance with Law. Covered Entity and Business Associate agree to comply with HIPAA, HIPAA Regulations, the HITECH Act, and the MRPA.

b. Performance of Services. Except as otherwise permitted by this Agreement, Business Associate may create, receive, maintain or transmit PHI on behalf of Covered Entity only in connection with the performance of the services contracted for in the Underlying Agreement or as Required by Law (as that term is defined by 45 C.F.R. § 164.103).

c. Proper Management and Administration. Business Associate may use PHI it receives in its capacity as Covered Entity's Business Associate for the proper management and administration of Business Associate in connection with the performance of services in the Underlying Agreement, as permitted by this Agreement or as Required by Law (as that term is defined by 45 C.F.R. § 164.103), and to carry out the legal responsibilities of Business Associate. Business Associate may also disclose Covered Entity's PHI for such proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate. Any such disclosure of PHI shall only be made in accordance with the terms of this Agreement, including Section 5(c) if to an agent or subcontractor of Business Associate, and only if Business Associate obtains reasonable written assurances from the person to whom the PHI is disclosed that: (1) the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and (2) Business Associate will be notified by such person of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

d. Data Aggregation. Business Associate may use and disclose PHI received by Business Associate in its capacity as Covered Entity's business associate in order to provide Data Aggregation services relating to Covered Entity's health care operations only with Covered Entity's permission.

e. Business Associate may use and disclose de-identified health information if written approval from the Covered Entity is obtained, and the PHI is de-identified in compliance with the HIPAA Rules.

3. Nondisclosure.

a. As Provided in Agreement. Business Associate shall not use or further disclose Covered Entity's PHI other than as permitted or required by this Agreement or as Required by Law (as that term is defined by 45 C.F.R. § 164.103).

- b. **Disclosures Required By Law.** Business Associate shall not, without prior written consent of Covered Entity, disclose any PHI on the possibility that such disclosure is required by law without notifying, to the extent legally permitted, Covered Entity so that the Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such a disclosure, Business Associate, shall, to the extent permissible by law, refrain from disclosing the PHI until Covered Entity has exhausted all alternatives for relief. Business Associate shall require reasonable assurances from persons receiving PHI in accordance with Section 2(c) that such persons will provide Covered Entity with similar notice and opportunity to object before disclosing PHI when a disclosure is required by law.
- c. **Additional Restrictions.** If Covered Entity notifies Business Associate that Covered Entity has agreed to be bound by additional restrictions on the uses or disclosures of Covered Entity's PHI pursuant to HIPAA or the HIPAA Regulations, Business Associate shall be bound by such additional restrictions and shall not disclose Covered Entity's PHI in violation of such additional restrictions to the extent possible consistent with Business Associate's obligations set forth in the Underlying Agreement.
- d. **Restrictions Pursuant to Subject's Request.** If Business Associate has knowledge that an individual who is the subject of PHI in the custody and control of Business Associate has requested restrictions on the disclosure of PHI, Business Associate must comply with the requested restriction if (a) the Covered Entity agrees to abide by the restriction; or (b) the disclosure is to a health plan for purposes of carrying out payment or health care operations and the PHI pertains solely to a health care item or service for which Covered Entity has been paid out of pocket in full. If the use or disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, or if an exception under the Privacy Rule expressly applies.
- e. **Remuneration.** Business Associate shall not directly or indirectly receive remuneration in exchange for disclosing PHI received from or on behalf of Covered Entity except as permitted by HITECH Act § 13405, the MRPA, and any implementing regulations that may be promulgated or revised from time to time.
- f. **Disclosure.** Business Associate shall not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. part 164, or MRPA, if done by the Covered Entity itself except as authorized under Section 2 of this Agreement.
4. **Minimum Necessary.** Business Associate shall limit its uses and disclosures of, and requests for, PHI, to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.
5. **Additional Business Associate Obligations.**

a. Safeguards. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. 164 with respect to electronic PHI to prevent use or disclosure of the PHI other than as provided for by this Agreement. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any paper or electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity.

b. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of the obligations.

c. Business Associate's Agents and Subcontractors.

1) Business Associate shall ensure that any agents and subcontractors to whom it provides PHI agree to only create, receive, maintain or transmit PHI on behalf of the Business Associate under the same restrictions that apply to Business Associate. Such agreement between Business Associate and subcontractor or agent must be in writing and must comply with the terms of this Agreement and the requirements outlined at 45 C.F.R. §164.504(e)(2); 45 C.F.R. §164.502(e)(1)(ii); 45 C.F.R. §164.314; and 45 C.F.R. §164.308(b)(2). Additionally, Business Associate shall ensure agent or subcontractor agree to and implement reasonable and appropriate safeguards to protect PHI.

2) If Business Associate knows of a pattern of activity or practice of its subcontractor or agent that constitutes a material breach or violation of the agent or subcontractor's obligation under the contract or other arrangement, the Business Associate must take steps to cure the breach and end the violation and if such steps are not successful, must terminate the contract or arrangement if feasible. If it is not feasible to terminate the contract, Business Associate must promptly notify the Covered Entity.

d. Reporting. Business Associate shall, as soon as practicable but not more than five (5) business days after becoming aware of any successful security incident or use or disclosure of Covered Entity's PHI or Sensitive Personal Information in violation of this Agreement, report any such use or disclosure to Covered Entity. With the exception of law enforcement delays that satisfy the requirements under 45 C.F.R. § 164.412 or as otherwise required by applicable state law, Business Associate shall notify Covered Entity in writing without unreasonable delay and in no case later than ten (10) calendar days upon discovery of a Breach of Unsecured PHI or Breach of Security System. Such notice must include, to the extent possible, the name of each individual whose Unsecured PHI or Sensitive Personal Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach. Business Associate shall also provide, to the extent possible, Covered Entity with any other available information that Covered Entity is required to include in its notification to individuals under 45 C.F.R. § 164.404(c) and Section 521.053, Texas Business & Commerce Code at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. For purposes of this

Agreement, a Breach of Unsecured PHI or Breach of Security System shall be treated as discovered by Business Associate as of the first day on which such breach is known to Business Associate (including any person, other than the individual committing the breach, who is an employee, officer, or other agent of Business Associate, as determined in accordance with the federal common law of agency) or should reasonably have been known to Business Associate following the exercise of reasonable diligence.

e. Mitigation. Business Associate shall have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect from any Use or Disclosure (as defined by 45 C.F.R. §160.103).

f. Sanctions. Business Associate shall apply appropriate sanctions in accordance with Business Associate's policies against any employee, subcontractor or agent who uses or discloses Covered Entity's PHI in violation of this Agreement or applicable law.

g. Covered Entity's Rights of Access and Inspection. From time to time upon reasonable notice, or upon a reasonable determination by Covered Entity that Business Associate has breached this Agreement, Covered Entity may inspect the facilities, systems, books and records of Business Associate related to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity or the safeguarding of such PHI to monitor compliance with this Agreement. Business Associate shall document and keep current such security measures and safeguards and make them available to Covered Entity for inspection upon reasonable request including summaries of any internal or external assessments Business Associate performed related to such security controls and safeguards. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Agreement, nor does Covered Entity's (1) failure to detect or (2) detection but failure to require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement or termination rights under this Agreement. This Section shall survive termination of this Agreement.

h. United States Department of Health and Human Services. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health and Human Services for purposes of determining Covered Entity's compliance with HIPAA and the HIPAA regulations, provided that Business Associate shall promptly notify Covered Entity upon receipt by Business Associate of any such request for access by the Secretary of the United States Department of Health and Human Services, and shall provide Covered Entity with a copy thereof as well as a copy of all materials disclosed pursuant thereto, unless otherwise prohibited by law.

i. Training. Business Associate shall provide such training in the privacy and security of PHI to its Workforce (as that term is defined by 45 C.F.R. § 160.103) as is required for Business Associate's compliance with HIPAA, HIPAA Regulations, HITECH, and the MRPA.

6. Obligation to Provide Access, Amendment and Accounting of PHI.

a. Access to PHI. Business Associate shall make available to Covered Entity, in the time and manner designated by the Covered Entity, such information as necessary to allow Covered Entity to meet its obligations under the HIPAA Regulations, PHI contained in a Designated Record Set held by Business Associate as Covered Entity may require to fulfill Covered Entity's obligations to provide access to, and copies of, PHI in accordance with HIPAA and the HIPAA Regulations and MRPAA. In the event that any individual requests access to PHI directly from Business Associate, Business Associate shall notify Covered Entity within five (5) business days that such request has been made.

b. Amendment of PHI. Business Associate shall make available to Covered Entity PHI contained in a Designated Record Set held by Business Associate as Covered Entity may require to fulfill Covered Entity's obligations to amend PHI in accordance with HIPAA and the HIPAA Regulations. In addition, Business Associate shall, as directed by Covered Entity, incorporate any amendments to Covered Entity's PHI into copies of such information maintained by Business Associate. In the event that any individual requests amendment of PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five (5) business days.

c. Accounting of Disclosures of PHI.

1) Record of Disclosures. Business Associate shall maintain a record of all disclosures of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, except for those disclosures identified in Section 6(c)(2) below, including the date of the disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure which includes an explanation of the reason for such disclosure. Business Associate shall make this record available to Covered Entity upon Covered Entity's request. If Business Associate maintains records in electronic form, Business Associate shall account for all disclosures made during the period of three (3) years preceding the request. In the event that any individual requests an accounting of disclosures of PHI directly from Business Associate, Business Associate shall notify Covered Entity within five (5) business days that such request has been made and provide Covered Entity with a record of disclosures within ten (10) days of an individual's request. If the request from an individual comes directly to Covered Entity and Covered Entity notifies Business Associate that it requires information from Business Associate in order to respond to the individual, Business Associate shall make available to Covered Entity such information as Covered Entity may require within ten (10) days from the time of request by Covered Entity.

2) Certain Disclosures Need Not Be Recorded. The following disclosures need not be recorded:

a) disclosures to carry out Covered Entity's treatment, payment and health care operations as defined under the HIPAA Regulations;

- b) disclosures to individuals of PHI about them as provided by the HIPAA Regulations;
- c) disclosures for Covered Entity's facility's directory, to persons involved in the individual's care, or for other notification purposes as provided by the HIPAA Regulations;
- d) disclosures for national security or intelligence purposes as provided by the HIPAA Regulations;
- e) disclosures to correctional institutions or law enforcement officials as provided by the HIPAA Regulations;
- f) disclosures that occurred prior to the later of (i) the Effective Date or (ii) the date that Covered Entity is required to comply with HIPAA and the HIPAA Regulations;
- g) disclosures pursuant to an individual's authorization in accordance with HIPAA and the HIPAA Regulations; and
- h) any other disclosures excepted from the right to an accounting by the HIPAA Regulations.

7. Material Breach, Enforcement and Termination.

- a. Term. This Agreement shall become effective on the Effective Date and shall continue unless or until this Agreement terminates, the Underlying Agreement terminates, or the Business Associate has completed performance of the services in the Underlying Agreement, whichever is earlier.
- b. Termination. Either Party may terminate this Agreement:
  - 1) immediately if the other Party is finally convicted in a criminal proceeding for a violation of HIPAA or the HIPAA Regulations;
  - 2) immediately if a final finding or stipulation that the other Party has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which the other Party has been joined; or completed performance of the services in the Underlying Agreement, whichever is earlier.
  - 3) pursuant to Sections 7(c) or 8(b) of this Agreement.
- c. Remedies. Upon a Party's knowledge of a material breach by the other Party, the non-breaching Party shall either:

- 1) provide an opportunity for the breaching Party to cure the breach and end the violation or terminate this Agreement and the Underlying Agreement if the breaching Party does not cure the breach or end the violation within ten (10) business days or a reasonable time period as agreed upon by the non-breaching party; or
- 2) immediately terminate this Agreement and the Underlying Agreement if cure is not possible.

d. Injunctions. Covered Entity and Business Associate agree that any violation of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law or in equity, Covered Entity shall be entitled to seek an injunction or other decree of specific performance with respect to any violation of this Agreement or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.

e. Indemnification. This indemnification provision is enforceable against the Parties only to the extent authorized under the constitution and laws of the State of Texas. The Parties will indemnify, defend and hold harmless each other and each other's respective employees, directors, officers, subcontractors, agents or other members of its 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 Agreement or of any warranty hereunder or from any negligence or wrongful acts or omissions, including failure to perform its obligations under MRPA, HIPAA, the HIPAA Regulations, and the HITECH Act by the indemnifying party or its employees, directors, officers, subcontractors, agents or other members of its workforce.

f. Breach of PHI and Breach of System Security. Business Associate will pay or reimburse Covered Entity for all costs and penalties incurred by Covered Entity in connection with any incident giving rise to a Breach of PHI and/or a Breach of System Security, including without limitation all costs related to any investigation, any notices to be given, reasonable legal fees, or other actions taken to comply with HIPAA, the HITECH Act, or any other applicable law or regulation, where (i) the PHI was in the custody or control of Business Associate when the Breach of PHI and/or Breach of System Security occurred, or (ii) the Breach of PHI and/or Breach of System Security was caused by the negligence or wrongful acts or omissions of Business Associate and its employees, directors, officers, subcontractors, agents or other members of its workforce.

## 8. General Provisions.

a. State Law. Nothing in this Agreement shall be construed to require Business Associate to use or disclose PHI without written authorization from an individual who is a subject of the PHI, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.

b. Amendment. Covered Entity and Business Associate agree to enter into good faith negotiations to amend this Agreement to come into compliance with changes in state and



federal laws and regulations relating to the privacy, security and confidentiality of PHI. Covered Entity may terminate this Agreement upon thirty (30) days written notice in the event that Business Associate does not promptly enter into an amendment that Covered Entity, in its sole discretion, deems sufficient to ensure that Covered Entity will be able to comply with such laws and regulations.

c. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

d. Ambiguities. The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with applicable law protecting the privacy, security, and confidentiality of PHI, including, without limitation, MRPA, HIPAA, the HIPAA Regulations, and the HITECH Act.

e. Primacy. To the extent that any provision of this Agreement conflicts with the provision of any other agreement or understanding between the Parties, this Agreement shall control.

f. Destruction/Return of PHI. Business Associate agrees that, pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I), upon termination of this Agreement or the Underlying Agreement, for whatever reason,

1) It will return or destroy all PHI, if feasible, received from or created or received by it on behalf of Covered Entity that Business Associate maintains in any form, and retain no copies of such information which for purposes of this Agreement shall mean all backup tapes. Prior to doing so, Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. An authorized representative of Business Associate shall certify in writing to Covered Entity, within thirty (30) days from the date of termination or other expiration of the Underlying Agreement, that all PHI has been returned or disposed of as provided above and that Business Associate or its subcontractors or agents no longer retain any such PHI in any form.

2) If it is not feasible for Business Associate to return or destroy said PHI, Business Associate will notify the Covered Entity in writing. The notification shall include a statement that the Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and the specific reasons for such determination. Business Associate shall comply with the Security Rule and extend any and all protections, limitations and restrictions contained in this Agreement to Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

3) If it is infeasible for Business Associate to obtain, from a subcontractor or agent any PHI in the possession of the subcontractor or agent, Business Associate must provide a written explanation to Covered Entity and require the

subcontractors and agents to agree to comply with the Security Rule and extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

g. Offshore Work. In performing the functions, activities or services for, or on behalf of Covered Entity, Business Associate shall not, and shall not permit any of its agents or subcontractors who receive Covered Entity's PHI to, transmit or make available any PHI to any entity or individual outside the United States without prior written consent of Covered Entity.

h. Integration. This Agreement embodies and constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments and understandings pertaining to the subject matter hereof.

i. Governing Law. This Agreement is governed by, and shall be construed in accordance with, applicable federal law and the laws of the State of Texas without regard to choice of law principles.

j. Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed below.

If to Covered Entity:  
The applicable U.T. Institution(s)'s Privacy Officer.

With copy to:  
The University of Texas System Privacy Officer  
Office of Systemwide Compliance

If to Business Associate: \_\_\_\_\_

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner herein above provided.

k. Privilege. Notwithstanding any other provision in this Agreement, this Agreement shall not be deemed to be an agreement by Business Associate to disclose information that is privileged, protected, or confidential under applicable law to the extent that such privilege, protection or confidentiality (a) has not been waived or (b) is not superseded by applicable law.

I. Multiple Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument. Facsimile and electronic (pdf) signatures shall be treated as if they are original signatures.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives in the manner legally binding upon them as of the date indicated below.

BUSINESS ASSOCIATE

COVERED ENTITY  
THE UNIVERSITY OF TEXAS

\_\_\_\_\_

By: \_\_\_\_\_

(Authorized Signature)

Name: \_\_\_\_\_

(Type or Print)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

(Authorized Signature)

Name: \_\_\_\_\_

(Type or Print)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT D**

**HUB SUBCONTRACTING PLAN**

## EXHIBIT E

### FERPA CONFIDENTIALITY AND SECURITY ADDENDUM

This FERPA Confidentiality and Security Addendum (“**Addendum**”) is made and entered into effective as of [REDACTED] (the “**Effective Date**”) by and between **The University of Texas** [REDACTED], a state agency and institution of higher education established under the laws of the State of Texas (“**University**”) and [REDACTED] (“**Contractor**”), (collectively, “**Parties**”). The purpose of this Addendum is to provide the terms under which Contractor is required to maintain the confidentiality and security of any and all University records subject to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (“**FERPA**”) which Contractor will create, receive, or maintain on behalf of University pursuant to the Non-Exclusive Emergency and Recovery Services Related To Disaster Recovery Services Agreement between the University and Contractor dated \_\_\_\_\_ (“**Underlying Agreement**”).

1. **FERPA.** The Parties understand and agree that:
  - 1.1 As part of the work (“**Work**”) that Contractor will provide pursuant to the Underlying Agreement, Contractor is expected to create, receive or maintain, records or record systems from or on behalf of University that (a) are subject to FERPA or (b) contain personally identifiable information from “Education Records” as defined by and subject to FERPA (collectively, “**FERPA Records**”) namely: **[Insert description of the types or categories of records subject to FERPA to be created, accessed and or maintained by Contractor.]** FERPA Records include all data in any form whatsoever, including electronic, written and machine readable form.
  - 1.2 Notwithstanding any other provision of the Underlying Agreement, this Addendum or any other agreement, all FERPA Records created, received or maintained by Contractor pursuant to the Underlying Agreement will remain the sole and exclusive property of University.
2. **FERPA Compliance.** In connection with all FERPA Records that Contractor may create, receive or maintain on behalf of University pursuant to the Underlying Agreement, Contractor is designated as a University Official with a legitimate educational interest in and with respect to such FERPA Records, only to the extent to which Contractor (a) is required to create, receive or maintain FERPA Records to carry out the Underlying Agreement, and (b) understands and agrees to all of the following terms and conditions *without reservation*:
  - 2.1 **Prohibition on Unauthorized Use or Disclosure of FERPA Records:** Contractor will hold University FERPA Records in strict confidence. Contractor will not use or disclose FERPA Records received from or on behalf of University, including any FERPA Records provided by a University student directly to Contractor, except as permitted or required by the Underlying Agreement or this Addendum.

- 2.2 **Maintenance of the Security of FERPA Records:** Contractor will use the administrative, technical and physical security measures, including secure encryption in the case of electronically maintained or transmitted FERPA Records, approved by University and that are at least as stringent as the requirements of UT System Information and Resource Use & Security Policy, UTS 165 at <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy>, to preserve the confidentiality and security of all FERPA Records received from, or on behalf of University, its students or any third party pursuant to the Underlying Agreement.
- 2.3 **Reporting of Unauthorized Disclosures or Misuse of FERPA Records and Information:** Contractor, within one (1) day after discovery, will report to University any use or disclosure of FERPA Records not authorized by this Addendum. Contractor's report will identify: (i) the nature of the unauthorized use or disclosure, (ii) the FERPA Records used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure. Contractor will provide such other information, including written reports, as reasonably requested by University. For purposes of this **Section 2.3**, an unauthorized disclosure or use includes any access or use of an "Education Record" (as defined by FERPA) by a Contractor employee or agent that the employee or agent does not require to perform Work or access by any employee or agent that does not involve the provision of Work.
- 2.4 **Right to Audit:** If University has a reasonable basis to believe that Contractor is not in compliance with the terms of this Addendum, University may audit Contractor's compliance with FERPA as Contractor's compliance relates to University's FERPA Records maintained by Contractor.
- 2.5 **Five Year Exclusion for Improper Disclosure of Education Records.** Under the federal regulations implementing FERPA, improper disclosure or redisclosure of personally identifiable information from University's "Education Records" (as defined by FERPA) by Contractor or its employees or agents may result in Contractor's complete exclusion from eligibility to contract with University for at least five (5) years.
3. **Return of FERPA Records.** Contractor agrees that no later than 30 days after expiration or termination of the Underlying Agreement or this Addendum for any reason, or within thirty (30) days after University's written request, Contractor will halt all access, use, creation, or processing of FERPA Records and will return to University or Securely Destroy all FERPA Records, including any copies created by Contractor or any subcontractor; and Contractor will certify in writing to University that all FERPA records have been returned to University or Securely Destroyed. "**Secure Destruction**," "**Securely Destroy**" and "**Securely Destroyed**" mean shredding, erasing or otherwise modifying a record so as to make it unreadable or indecipherable.

4. **Disclosure.** Contractor will restrict disclosure of FERPA Records solely to those employees, subcontractors, or agents of Contractor that have a need to access the FERPA Records in order for Contractor to perform its obligations under the Underlying Agreement or this Addendum. If Contractor discloses any FERPA Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with restrictions and obligations that align with the restrictions and obligations imposed on Contractor by the Underlying Agreement and this Addendum, including requiring each subcontractor or agent to agree to the same restrictions and obligations in writing.
5. **Termination.** This Addendum will remain in effect until the earlier of (a) expiration or termination of the Underlying Agreement, or (b) the date University terminates this Addendum by giving Contractor sixty (60) days' written notice of University's intent to terminate. **Sections 2, 3, 4, and 6** of this Addendum will survive expiration or termination of the Underlying Agreement and this Addendum.
6. **Breach.** In the event of a breach, threatened breach or intended breach of this Addendum by Contractor, University (in addition to any other rights and remedies available to University at law or in equity) will be entitled to preliminary and final injunctions, enjoining and restraining such breach, threatened breach or intended breach.
7. **Governing Law.** The validity, construction, and performance of this Addendum are governed by the laws of the State of Texas, and suit may be brought in **Travis** County, Texas to enforce the terms of this Addendum.
8. **Non-Assignment.** The rights and obligations of the Parties under this Addendum may not be sold, assigned or otherwise transferred.

**AGREED TO AND SIGNED BY THE PARTIES.**

**The University of Texas System**

**[Contractor]**

By: \_\_\_\_\_

by: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT F

### PROJECT ADDENDUM

This Project Addendum (this "**Addendum**") is made and entered into effective as of \_\_\_\_\_, 20\_\_ ("**Addendum Effective Date**") by \_\_\_\_\_, an agency and institution of higher education established under the laws of the State of Texas ("**Requesting Institution**"), and \_\_\_\_\_ ("**Contractor**"). This Addendum is attached to and incorporated into the previously executed Non-Exclusive Emergency and Recovery Services Related To Disaster Events Agreement (the "**Agreement**"), dated effective \_\_\_\_\_, 20\_\_ , between The University of Texas System (the "**University**") an agency and institution of higher education organized under the laws of the State of Texas, and Contractor.

By entering into this Addendum the Requesting Institution and Contractor agree to the terms and conditions set forth in the Agreement. All of the terms and conditions of the Agreement are incorporated into this Addendum for all purposes. Section 2.2 of the Agreement addresses any conflicts between the Agreement and this Addendum. Unless otherwise specified in this Addendum, all defined terms used in this Addendum have the same meaning as assigned to those terms in the Agreement.

Contractor is aware of the Requesting Institution's Conflicts of Interest Policy and Standards of Conduct Guide (ref. **Section 12.22** of the Agreement), and Contractor and its employees, agents, representatives, and subcontractors understand and will comply with these policies.

*Project:*

Subject to the terms of the Agreement, Contractor will perform the following services for Requesting Institution (the "Project"):

[Designate services to be performed based on the Services identified in **Exhibit A** to the Agreement.]

*Schedule:*

Contractor will commence performance of the Project beginning on \_\_\_\_\_, 20\_\_, and complete the Project no later than \_\_\_\_\_, 20\_\_, at which time rights of Contractor under or based on this Addendum will terminate. Contractor will deliver the Project in accordance with the following schedule of delivery dates:

[Specify each service and the corresponding delivery date.]

*Project Notification:*

Contractor will, upon execution this Addendum, send a fully executed copy of the Addendum to the attention of the University at the following address:

The Office of Risk Management  
The University of Texas System  
210 West 7<sup>th</sup> Street  
Austin, TX 78701



Attention: Patrice Reisen-Hicks

**Fees and Reimbursable Expenses and Disbursements :**

The Fee Cap for this Project is equal to \$

The Expense Cap for this Project is \$

The Contract Amount for this Addendum is equal to the sum total of the Fee Cap and the Expense Cap.

**Notices:**

Per Section 12.14 of the Agreement, the Requesting Institution's address(es) for notices is:

*[Identify address(es)]*

IN WITNESS WHEREOF, the Requesting Institution and Contractor have executed and delivered this Addendum to be effective as of the Addendum Effective Date.

**The University of Texas at \_\_\_\_\_**

**[Contractor]**

By: \_\_\_\_\_

by: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## ADDENDUM 1

DATE: May 5, 2020  
PROJECT: Disaster Recovery Services  
RFP NO: 720-1924  
OWNER: The University of Texas System Administration  
TO: Prospective Bidders

This Addendum forms part of Contract Documents and modifies Bid Documents dated June 19th, 2019 with amendments and additions noted below.

### **Questions and Answers:**

**1. Question:** In section 5.3C, #4, is there an assigned Command Center facility on each of your campuses? If yes, are you asking us to provide a supplementary mobile facility on an as-needed basis or for all crises? In addition, do you have specific requirements related to the mobile facility, or are you looking to us to provide recommendations?

**Answer:** *No. In certain circumstances, it may be requested. UT System is asking Proposer to articulate such facilities, if Proposer is requested to do so.*

**2. Question:** In section 5.3C, #4 and #5, are you asking us to provide the technology to support crisis comms, Joint Information System operations, radio communications and social media, the communications counsel to help you direct these functions during times of crises, or both?

**Answer:** *This would be at the discretion of the institution that would activate the contract in the event of a disaster. It is possible, however no likely.*

**3. Question:** Form: Certificate of Interested Parties - Please confirm that the Certificate of Interested Parties will only be submitted by the Contractor to the University with the signed agreement and does not need to be provided as part of the proposal.

**Answer:** *This is correct.*

**4. Question:** Section 1 – General Information, 1.2 Inquiries and Interpretations “University may at its sole discretion respond.....that information can be provided to that party”. Will client provide Addendums or notice of availability of Addendums by email as USPS mail may not allow sufficient time to receive and review Addendum prior to required Proposal submission date?

**Answer:** *Client will provide this information via email and/or USPS.*

- 5. Question:** **Section 6.3 – Delivery Schedule of Events and Time Periods** “Indicate number of calendar days needed to commence the Services from the execution of the services agreement: **Calendar Days**”. Is a resulting Agreement going to be pre-executed? If not, how does this apply?

**Answer:** *If Proposer is an awarded vendor and UT System has just fully executed an agreement with Proposer, how many days will Proposer need to start serve the UT Institutions after the agreement is fully executed?*

- 6. Question:** **Is client open to negotiate the terms and conditions at the contract stage with the awarded Proposer/Contractor?**

**Answer:** *UT System may enter in negotiation with awarded vendor based on the redlines that are provided with the proposal. No new redlines will be accepted once the Proposer is awarded.*

- 7. Question:** **Throughout the RFP and its attached, addenda, appendices, etc. client states that the terms and conditions contained in the RFP and the attached form of Agreement must be or are accepted by Proposer. Clarification: Proposer reserves the right to negotiate terms and conditions applicable to a final contract if Proposer is the successful Proposer.**

**Answer:** *See answer to question #6.*

- 8. Question:** **UT notes that the purpose of the solicitation is to select multiple contractors to provide support for disaster recovery. Does the system intend to competitively bid task orders in the event that multiple vendors are selected for the work?**

**Answer:** *This assumption is correct.*

- 9. Question:** **UT has included items in the scope of services, including crisis communications support and/or action planning, that seem to be outside of the stated need associated with disaster recovery documentation services. Will UT please clarify if this is intentional? If so, can vendors bid only on those services for which they are qualified?**

**Answer:** *Applicants must be respondent to all areas included in the Scope of Work. Additional items may strengthen your position in the evaluation process. However, failure to respond to all areas may negatively impact your overall score. This being that in certain circumstances, items such as crisis communications support and/or action planning may be requested by an institution. UT System is asking for you to articulate such projects or capabilities should you be requested to do so.*

**10. Question: Are vendors able to modify the formatting for the general questionnaire, provided we state each question prior to providing a response?**

**Answer:** Yes.

**11. Question: What is the HUB subcontracting goal for this opportunity?**

**Answer:** 26%.

**12. Question: Performance of this work will require specialized individuals, who may need to travel to and from the various institutions within the UT System. Will UT please confirm that travel and other direct costs will be reimbursed separately from hourly rates?**

**Answer:** *Yes, travel expenses are reimbursed as long as vendor complied with the paying university's travel policies.*

**13. Question: Is the Employee Dishonesty Insurance required if contractor employees will not have custody or control of any University or University System cash or investments?**

**Answer:** *If it pertains to requiring that a contractor be honest with the charges (not necessarily "cash or investments" then we would expect them to be honest in those transactions.*

**14. Question: Due to the timeline associated with questions and the need for vendors to incorporate responses, will UT consider extending the deadline for the proposal to at least one week after question responses are posted?**

**Answer:** *Due to the timeliness of this RFP, we are unable to grant an extension to the deadline of the proposal.*

**END OF ADDENDUM 1**