



## REQUEST FOR PROPOSAL

### RFP 720-1727 Call Center, Breach Notification and Credit Monitoring Services

**Proposal Submittal Deadline: Friday, June 2nd, 2017 at 2:30 PM CST**

The University of Texas System  
Systemwide Compliance

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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 (“**UT System**” and “**University**”) 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 217,000 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 70,000 health care professionals, researchers student advisors and support staff, the UT System is one of the largest employers in the state.

The UT System ranks third 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 third in the nation in federal research expenditures. In addition, the UT System is home to three (3) 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.

Chancellor William H. McRaven’s ambitious vision for the UT System includes eight “Quantum Leaps,” that address many of the most significant challenges of our time, including building the nation’s next generation of leaders through core education in leadership and ethics; leading a brain health revolution by accelerating discoveries and treatments for neurological diseases; elevating higher education’s role in national security; driving unprecedented levels of collaboration between higher and K-12 education; and increasing student access and success.

Other numerous 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 the fall of 2015. And UT is the only system of higher education in the nation establishing not one (1), but two (2) 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 do so thanks to our generous donors and the leadership of the Chancellor, the Board of Regents and UT presidents.

#### 1.2 Background and Special Circumstances

UT System consists of eight (8) academic institutions, six (6) health science centers, University of Texas Investment Management Company (“**UTIMCO**”), and UT System Administration (“**Requesting Institutions**”). Requesting Institutions collect and store student data protected by FERPA, patient data protected by HIPAA, PCI data, and other personally identifiable information on students, faculty, staff, alumni, and donors. In addition, some institutions conduct research governed by contractual or federal regulations.

All of these Institutions’ operations are heavily dependent upon their information infrastructures and can be adversely impacted by data breaches, denial of service attacks or other negative cyber events.

Each of these institutions operates autonomously as its own state agency, but are governed by the policies of the UT System and the Board of Regents rules. Each institution has its own Information Security Officer and Chief Information Officer and makes its own choices regarding infrastructure architectures, tools, 3rd party vendors, etc. Each institution is responsible for maintaining an incident response plan.

However, there are a few key systems and infrastructure that are shared across some of the institutions:

- The UT System wide area network serves as the ISP for thirteen (13) of the sixteen (16) institutions and is managed by UT Austin on behalf of the UT System.
- A single installation of PeopleSoft Financials and HCM applications are used by seven (7) institutions.
- A single installation of Campus Solutions application is used by three (3) institutions.
- There are three (3) data centers that are used by multiple institutions: UT Austin, UT Arlington, and MD Anderson - Houston. Some institutions also operate their own local data centers. There are also a few central organizations that compile, manage, and store information on behalf of the entire UT System.
  - ✓ Office of Employee Benefits (employee benefits information);
  - ✓ Office of Strategic Initiatives (student and faculty demographics).

The table below lists many office or campus locations within the UT System.

**The University of Texas System**

<b>Institution or Organization</b>	<b>Primary Location</b>	<b>Other offices</b>	<b>Website</b>
UT System Administration	Austin, TX	Irving, TX; Midland, TX	<a href="http://www.utsystem.edu">www.utsystem.edu</a>
University of Texas Investment Management Company (UTIMCO)	Austin, TX		<a href="http://www.utimco.org">www.utimco.org</a>
UT Arlington (UTA)	Arlington, TX		<a href="http://www.uta.edu">www.uta.edu</a>
UT Austin (UTAUS)	Austin, TX	Port Aransas, TX; Ft. Davis, TX	<a href="http://www.utexas.edu">www.utexas.edu</a>
UT Dallas (UTD)	Dallas, TX		<a href="http://www.utdallas.edu">www.utdallas.edu</a>
UT El Paso (UTEP)	El Paso, TX		<a href="http://www.utep.edu">www.utep.edu</a>
UT Permian Basin (UTPB)	Odessa, TX		<a href="http://www.utpb.edu">www.utpb.edu</a>
UT Rio Grande Valley (UTRGV)	Brownsville, TX	Edinburgh, TX; Harlingen, TX; South Padre Island, TX; McAllen, TX; Rio Grande City, TX	<a href="http://www.utrgv.edu">www.utrgv.edu</a>
UT San Antonio (UTSA)	San Antonio, TX		<a href="http://www.utsa.edu">www.utsa.edu</a>
UT Tyler (UTT)	Tyler, TX		<a href="http://www.uttyler.edu">www.uttyler.edu</a>
UT Southwestern Medical Center	Dallas, TX		<a href="http://www.utsouthwestern.edu">www.utsouthwestern.edu</a>
UT Medical Branch at Galveston (UTMB)	Galveston, TX		<a href="http://www.utmb.edu">www.utmb.edu</a>
UT Health Science Center at Houston (UTHSCH)	Houston, TX	Austin, Dallas, San Antonio, El Paso and Brownsville. 80 clinic locations in Houston area	<a href="http://www.uth.edu">www.uth.edu</a>
UT Health Science Center at San Antonio (UTHSCSA)	San Antonio, TX		<a href="http://www.uthscsa.edu">www.uthscsa.edu</a>
UT MD Anderson Cancer Center (UTMDACC)	Houston, TX		<a href="http://www.mdanderson.org">www.mdanderson.org</a>
UT Health Science Center at Tyler (UTHSCT)	Tyler, TX		<a href="http://www.uthscsa.edu">www.uthscsa.edu</a>

The University is seeking proposals from qualified vendors to provide high quality, cost efficient response support in the event of a data breach. That support would include at a minimum: Call Center, Notification letters, and Credit Monitoring. In addition, preferred support may include Identify Theft Insurance and Identity Restoration Services.

Services would need to be made available to any and all of Institutions that elect to utilize these services.

The intent of this RFP is to select one (1) or multiple firms to provide services described in **Section 5.3** of this RFP.

### **1.3 Objective of Request for Proposal**

The University of Texas System is soliciting proposals in response to this Request for Proposal No. 720-1727 (this “**RFP**”), from qualified vendors to provide Call Center, Breach Notification and Credit Monitoring 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. In particular, Proposer should note UT System is composed of fourteen (14) 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 could give rise to additional purchase volumes. As a result, in submitting its proposal in response to this RFP, Proposer should consider proposing pricing and other commercial terms that take into account such higher volumes and other expanded opportunities that could result from the eventual inclusion of other institutions in the purchase contemplated by this RFP.

## 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 Friday, June 2nd, 2017 (the “**Submittal Deadline**”).

#### 2.2 University Contact Person

Proposers will direct all questions or concerns regarding this RFP to the following University contact (“**University Contact**”):

**Darya Vienne**  
**Email: [dvienne@utsystem.edu](mailto:dvienne@utsystem.edu)**

University specifically instructs all interested parties to restrict all contact and questions regarding this RFP to written communications delivered to (i) University Contact, or (ii) if questions relate to Historically Underutilized Businesses, to HUB Coordinator (ref. **Section 2.5** of this RFP). *University Contact must receive all questions or concerns no later than 2:30 p.m. CST on Tuesday, May 23rd, 2017.* University will have a reasonable amount of time to respond to questions or concerns. It is University’s intent to respond to all appropriate questions and concerns; however, University reserves the right to decline to respond to any question or concern.

#### 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 (15%);
- C. Vendor Capabilities to Meet Scope of Work and Additional Services (30%);
- D. Service Quality and Operational Plan (20%);
- E. Staffing / Resources / Capacity / Support (5%).

## 2.4 Key Events Schedule

Issuance of RFP Friday, May 12<sup>th</sup>, 2017

**Mandatory Pre-Proposal Conference** Friday, May 19<sup>th</sup>, 2017

Deadline for Questions / Concerns (ref. **Section 2.2** of this RFP) 2:30 p.m. CST on Tuesday, May 23<sup>rd</sup>, 2017

Submittal Deadline (ref. **Section 2.1** of this RFP) 2:30 p.m. CST on Friday, June 2<sup>nd</sup>, 2017

## 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 [34 TAC §20.285](#), and has determined that subcontracting opportunities are probable under this RFP.

2.5.3 A HUB Subcontracting Plan (“**HSP**”) is a required as part of Proposer’s proposal. The HSP will be developed and administered in accordance with University’s Policy on Utilization of Historically Underutilized Businesses attached as **APPENDIX THREE** and incorporated for all purposes.

*Each Proposer must complete and return the HSP in accordance with the terms and conditions of this RFP, including **APPENDIX THREE**. 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: Cynthia Booker  
Coordinator, HUB Technical Assistant  
Phone: 409-772-1353  
Email: [cbooker@utsystem.edu](mailto:cbooker@utsystem.edu)

Contractor will not be permitted to change its HSP *unless*: (1) Contractor completes a new HSP in accordance with the terms of **APPENDIX THREE**, setting forth all modifications requested by Contractor, (2) Contractor provides the modified HSP to University,



(3) University approves the modified HSP *in writing*, and (4) all agreements resulting from this RFP are amended in writing to conform to the modified HSP.

2.5.4 Proposer must submit two (2) originals of the HSP to University at the same time it submits its proposal to University (ref. **Section 3.2** of this RFP.) **The originals of the HSP must be submitted under separate cover (mailed independently) and in two (2) separate envelopes (the “HSP Envelopes”).** Proposer must ensure that the top outside surface of HSP Envelopes clearly indicating:

2.5.4.1 the RFP No. (ref. **Section 1.3** of this RFP) and the Submittal Deadline (ref. **Section 2.1** of this RFP), both located in the lower left hand corner of the top surface of the envelope,

2.5.4.2 the name and the return address of the Proposer, and

2.5.4.3 the phrase “HUB Subcontracting Plan”.

Any proposal submitted in response to this RFP that is not accompanied by two (2) separate HSP Envelopes meeting the above requirements may be rejected by University and returned to Proposer unopened as non-responsive due to material failure to comply with advertised specifications.

University will open Proposer’s HSP Envelopes prior to opening the proposal to confirm Proposer submitted the HSP. Proposer’s failure to submit two (2) completed and signed originals of Proposer’s HUB Subcontracting Plan may result in University’s rejection of the proposal as non-responsive due to material failure to comply with advertised specifications; such a proposal will be returned to the Proposer unopened (ref. **Section 1.5 of APPENDIX ONE** to this RFP). **Note:** The requirement that Proposer provide two (2) originals of the HSP under this **Section 2.5.4** is separate from and does not affect Proposer’s obligation to provide University with the number of copies of its proposal as specified in **Section 3.1** of this RFP.

**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 include copies of those pages in HSP Envelopes.** Failure to do so will slow the evaluation process and may result in DISQUALIFICATION.

## 2.6 Mandatory Pre-Proposal Conference

University will hold a pre-proposal conference at 10:00 a.m., Central Time on May 19th, 2017.

This pre-proposal conference is MANDATORY. Only vendors who participated in the pre-proposal conference will be allowed to submit proposal.

Call-in Information

Call-in number: (877)226-9790

Participant Code: 6269693

## SECTION 3

### SUBMISSION OF PROPOSAL

#### 3.1 Number of Copies

- A. One (1) complete paper copy of its *entire* proposal.

The paper copy of the proposal should contain the mark "original" on the front cover of the proposal. An original signature by an authorized officer of Proposer must appear on the Execution of Offer (ref. Section 2 of APPENDIX ONE) of the submitted paper copy of the proposal.

***University does not consider electronic signatures to be valid therefore the original signature must be a "wet signature."***

- B. One (1) complete electronic copy of its entire proposal in a single .pdf file on USB Flash Drive. USB Flash Drive must include a protective cover and be labeled with Proposer's name and RFP number.

In addition, Proposer must submit one (1) complete electronic copy of the proposal in a single .pdf file on separate USB Flash Drive on which all proposed pricing information, provided in response to Section 6, has been removed.

#### 3.2 Submission

Proposals must be received by University on or before the Submittal Deadline (ref. **Section 2.1** of this RFP) and should be delivered to:

The University of Texas System Administration  
210 West Sixth St.  
Suite B. 140E  
Austin, Texas 78701-2891  
**Attn: Darya Vienne**

**NOTE: Show the Request for Proposal number and submittal date in the lower left-hand corner of sealed bid envelope (box / container).**

Proposals must be typed on letter-size (8-1/2" x 11") paper, and must be submitted in a 3-ring binder. Preprinted material should be referenced in the proposal and included as labeled attachments. Sections within a proposal should be divided by tabs for ease of reference.

#### 3.3 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.

#### 3.4 Terms and Conditions

- 3.4.1 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:

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

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

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

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

### **3.5 Submittal Checklist**

Proposer is instructed to complete, sign, and return the following documents as a part of its proposal. If Proposer fails to return each of the following items with its proposal, then University may reject the proposal:

3.5.1 Signed and Completed Execution of Offer (ref. **Section 2** of **APPENDIX ONE**).

3.5.2 Signed and Completed Pricing and Delivery Schedule (ref. **Section 6** of this RFP).

3.5.3 Responses to Proposer's General Questionnaire (ref. **Section 3** of **APPENDIX ONE**).

3.5.4 Signed and Completed Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**).

3.5.5 Responses to questions and requests for information in the Specifications and Additional Questions Section (ref. **Section 5** of this RFP).

3.5.6 Signed and completed originals of the HUB Subcontracting Plan or other applicable documents (ref. **Section 2.5** of this RFP and **APPENDIX THREE**).

3.5.7 Responses to questions and requests for information in **APPENDIX SIX**.

3.5.8 Responses to questions and requests for information in **APPENDIX SEVEN**.

3.5.9 Responses to questions and requests for information in **APPENDIX NINE**.

## SECTION 4

### GENERAL TERMS AND CONDITIONS

The terms and conditions contained in the attached Sample Agreement (ref. **APPENDIX TWO**) or, in the sole discretion of University, terms and conditions substantially similar to those contained in Sample Agreement, will constitute and govern any agreement that results from this RFP. If Proposer takes exception to any terms or conditions set forth in Sample Agreement, Proposer will submit redlined **APPENDIX TWO** as part of its proposal in accordance with **Section 5.2.1** 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 three (3) year base term, with the option to renew for two (2) 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:** It may be determined that having Services provided by various Contractors is more appealing to the University. Therefore, University reserves the right to make multiple awards against this RFP.

#### 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 Sample 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 EIGHT**. *Proposer may learn more about these disclosure requirements, including the use of the TEC electronic filing system, by reviewing the 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.**
- 5.2.3 In its proposal, Proposer must indicate whether it will consent to include in the Agreement the “Access by Individuals with Disabilities” language that is set forth in **APPENDIX FIVE, Access by Individuals with Disabilities**. If Proposer objects to the inclusion of the “Access by Individuals with Disabilities” language in the Agreement, Proposer must, as part of its proposal, specifically identify and describe in detail all of the reasons for Proposer’s objection. NOTE THAT A GENERAL OBJECTION IS NOT AN ACCEPTABLE RESPONSE TO THIS QUESTION.

- 5.2.4 In its proposal, Proposer must respond to each item listed in **APPENDIX SIX, Electronic and Information Resources (EIR) Environment Specifications**. **APPENDIX SIX** will establish specifications, representations, warranties and agreements related to the EIR that Proposer is offering to provide to University. Responses to **APPENDIX SIX** will be incorporated into the Agreement and will be binding on Contractor.
- 5.2.5 In its proposal, Proposer must respond to each item listed in **APPENDIX SEVEN, Security Characteristics and Functionality of Contractor's Information Resources**. **APPENDIX SEVEN** will establish specifications, representations, warranties and agreements related to the EIR that Proposer is offering to provide to University. Responses to **APPENDIX SEVEN** will be incorporated into the Agreement and will be binding on Contractor.

### 5.3 Scope of Work

Contractor will provide the following services to University:

#### 5.3.1 Notification Services

Notify affected individuals of a Triggering Event\* as agreed and instructed by Institution(s).

- A. Send out notifications to the affected individuals within the time frame required by HIPAA, FERPA and other applicable federal or state law or rule (such as Texas Business and Commerce Code §§521.053).
- B. Remove duplicate records relating to impacted individuals, and provide duplicative data list and final notification list for approval by Institution(s).
  - 99% of records are accurate;
  - Completed within five (5) calendar days in receipt of data;
  - Format: XML or CSV.
- C. Prepare mail and / or email notifications, as instructed by Institution, for all impacted individuals upon approval of the final list by Institution.
  - Institution approved content and format;
  - Ability to maintain or regenerate a copy of the notifications distributed to impacted individuals.
- D. Distribute notification in alphabetical order. Establish a unique P.O. Box return address for distributed mail. The return address shall contain an Institution identifier.
  - Distribute within five (5) calendar days of receipt;
  - U.S. Mail, or if also required by Institution, email from an Institution domain.
- E. Return a list of failed notifications to Institution.
  - No less than fourteen (14) days after all notifications have been sent, redistribute previously failed notifications to impacted individuals;
  - Distribute within five (5) calendar days after receiving additional identifying information from Institution.

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\***Triggering Event** - An event that triggers data breach notification laws. Common examples are a malicious breach of a server by an outside party, or simply an unencrypted computer being lost that holds private health information or SSNs. Those data breaches put individuals at risk because of exposure.

### 5.3.2 Call Center Service

Customer service representatives must have excellent customer service skills and be able to communicate clearly in English and Spanish.

- A. Call center must be operational prior to notification of impacted individuals.
- B. Contractor must provide toll-free telephone numbers for each Triggering Event.
- C. Contractor must use scripts and materials provided and / or approved by the Institution.
- D. Contractor must maintain a call log.

### 5.3.3 Credit and Identity Theft Monitoring

Contractor must offer credit and identity theft monitoring in accordance with the following preferred qualifications:

- A. Obtain and make available credit reports from all three (3) national credit reporting agencies (i.e., Experian, Equifax, and TransUnion) to enrolled individuals.
  - Initial credit report for impacted individuals should be made available within forty-eight (48) hours of enrollment into credit monitoring services;
  - Subsequent reports should be made available in accordance with the Fair Credit Reporting Act and other applicable credit laws.
- B. Identify and notify impacted individuals of findings or changes no later than twenty-four (24) hours after occurrence.
- C. Services must be provided in accordance with all applicable laws.

## 5.4 Additional Questions Specific to this RFP

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

### **Vendor Experience (15%)**

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 including any large scale breaches.

3. Provide Proposer's company business profile including years in business, structure of organization, client base, company growth over the last three (3) years, number of employees and other relative information.
4. Describe Proposer's ability to provide services to large sophisticated entities, as well as smaller entities with less in house resources. In addition, address the various strategies used to comply with various federal and state privacy and data security laws and regulations.
5. Provide a list of Security and Privacy Liability Insurance Carriers that have approved Proposer to provide the services listed in this RFP in the event of a security breach.

### **Vendor Capabilities to Meet Scope of Work and Additional Services (30%)**

6. Describe in detail how Proposer's product or service meets the preferred qualifications listed in Scope of Work.
7. Provide details how Proposer's product or service comply with HIPAA, FERPA and other applicable federal or state laws and rules (such as [Texas Business and Commerce Code §§521.053](#)).
8. Confirm whether Proposer will sign a HIPAA Business Associate Agreement ("BAA") with the affected UT System entity if the breach involves patient data.
9. Describe the key strengths of Proposer's services.
10. Describe what identify theft insurance Proposer provides, if any. If offered, provide a summary of how enrolled participants initiate the service and a full description of the benefits included. Provide costs for identity theft insurance in **Section 6.2**.
11. Describe what identity restoration services Respondent provides, if any. If offered, provide details of what is covered and the process enrolled participants must follow to file a claim. Provide costs for identity theft insurance in **Section 6.2**.
12. Provide copy of marketing material or sample brochure.

### **Service Quality and Operational Plan (20%)**

13. Describe Proposer's data breach response strategy.
14. Explain how quickly Proposer is able to respond from time of customer notification.
15. Describe how Proposer is able to quickly scale up or down depending on the size of the breach.
16. Describe how Proposer will work with Institution(s) before, during, and after a data breach. Include information such as personnel who will be involved at various stages.
17. Describe how Proposer will work with Institution(s) before, during, and after a data breach. Include information such as response times.
18. Describe how Proposer will work with Institution(s) before, during, and after a data breach. Include information such as processes and timelines.
19. Describe how Proposer will work with Institution(s) before, during, and after a data breach. Include information such as methods of communication and assistance.



20. Describe how Proposer will work with Institution(s) before, during, and after a data breach. Include information such as availability for tabletop exercises / drills; and other information vital to understanding the service Proposer provides.
21. Describe Proposer's ability to coordinate actions with other companies. For example, if Proposer were selected to perform services in two (2) of the services areas included in this RFP, how would Proposer coordinate with the company supplying services in the third area.
22. Describe Proposer's capability to set up a web page with FAQs, applicable forms, updates, etc.

#### **Breach notifications to affected individuals**

23. Describe the process used to notify affected individuals in the case of a Triggering Event, and ability to meet varying legal compliance standards. Provide a sample Notice Template.
24. What tools and processes does Proposer use to determine current address of potentially impacted individuals? Does Proposer offer Address Look-Up Service? If so, note the additional charges in **Section 6.2**.
25. Explain how long does it take on average for letter notifications to be mailed out and a call center to be set-up. How many mailings can Proposer process per day?
26. Explain reporting Proposer provides on return mail numbers.
27. Provide details on what will be the role expected of Requesting Institutions in preparing for notification.
28. What return address is typically used for distributed mail (e.g. what city and state)? What options or strategies does Proposer follow or recommend to alleviate impacted individuals' concerns that the notification itself may be a scam?

#### **Call Center Support for Affected Individuals**

29. Describe Proposer's Call Center infrastructure, set-up process, training of call-center representatives, languages supported, and process for escalation. (e.g. does Proposer provide a unique toll-free number? How quickly can the call center become operational from the time UT System provides an FAQ? Etc.?).
30. What is the expected average wait time in the call queue?
31. Explain how Proposer's customer service quality assurance is monitored, and what is the process for addressing problems. Does Proposer record calls? Does Proposer provide specialized training to fit Institutions' service expectations? Provide details.
32. Describe Proposer's quality control efforts.
33. Explain if Proposer offers the opportunity to escalate certain calls which need special handling.
34. Explain how will Requesting Institution(s) receive reports indicating the number of calls to the call center. Be specific.

#### **Credit and Identity Theft Monitoring for Affected Individuals**

35. Provide a description of the credit and identity theft monitoring services – how to enroll, how long, types of monitoring offered and any other relevant information.

36. Describe the alert / notification process used to notify individuals enrolled in credit monitoring services. Provide details on the methods, time frames, and information provided.
37. Explain how will Proposer work with Requesting Institution(s) if there are issues (e.g., affected individuals have trouble enrolling).
38. If minors are affected, explain if Proposer offers products tailored to minors.
39. Explain if Proposer will contractually guarantee no up-sale whatsoever to Institutions callers.

**Staffing / Resources / Capacity / Support (5%)**

40. Provide information on key staff who will be involved on working on Institution(s) accounts including roles, responsibilities, and resumes. Additionally, describe the minimum qualifications and training for call center customer service representatives and identity restoration personnel.
41. Provide Proposer's call centers location. Explain if Proposer have global call-center capabilities. In what languages is Proposer able to provide service?
42. Explain what does the customer experience look like if the call center is closed or when the call center is at capacity (no available lines)?
43. Are Proposer's call centers and / or customer service able to operate 24 / 7 / 365? If not, what are the hours of availability of the Proposer's both customer service and call center?
44. Describe Proposer's ability to scale and / or provide burst capacity.
45. Describe the largest breach Proposer have coordinated and how it was managed.

## SECTION 6

### PRICING AND DELIVERY SCHEDULE

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

**To:** The University of Texas System

**RFP No.:** 720-1727 Call Center, Breach Notification and Credit Monitoring 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 estimated total cost for each of the following scenarios:

##### A. Scenario 1

An unencrypted laptop is stolen. It was determined from looking at the last backup of the laptop that a copy of the research database containing the protected health information of three (3) million individuals was stored on the unencrypted stolen laptop.

Additional information:

1. Information such as name, SSN, DOB, and in some cases emails were included in the database.
2. The data might include some duplicate records.
3. Requesting Institution has the address of record (email) to 25% of affected individuals.
4. Requesting Institution has the address of record (physical address) to 25% of affected individuals.
5. Requesting Institution only has a phone number as a contact to 25% of affected individuals.
6. Requesting Institution does NOT have the address of record to the remaining 750,000 individuals, which leaves Requesting Institution without a way to contact them.
7. 10% of the individuals are minors.
8. 2% of the individuals are deceased.
9. 1% of the individuals are forging nationals.
10. Affected individuals reside in all 50 states to include Texas, California, and Massachusetts.

**TOTAL COST FOR SCENARIO 1**

\$ \_\_\_\_\_

**B. Scenario 2 – Lost data scenario**

1. Unencrypted thumb drive lost that held 5,000 student's SSNs and grades.
2. Malicious theft is unlikely, but the professor who lost the thumb drive says he "can't find it and checked everywhere it might be," he self-reported it after watching annual awareness training video.
3. Though the campus IT department provides tools for encrypting thumb drives, these were apparently not being utilized for the drive in question.
4. The student records at risk were used in the course of the professor performing his regular expected job duties.
5. Some of the students have international addresses and phone numbers and are studying in the U.S.
6. 250 of the lost records required locator services (mail returned as undeliverable).

**TOTAL COST FOR SCENARIO 2**

\$ \_\_\_\_\_

**C. Scenario 3 – Malicious intent scenario**

1. Hacking of a server where patient health information was held for 15,000 patients.
2. The successful hacking of the server took place due to weaknesses in the software programming of web pages.
3. The vulnerable software vulnerabilities had been reported to the IT department by the security team, and were scheduled for repair. However, conflicting projects caused this effort to be postponed a few times.
4. The hacking activity happened several weeks ago, and was only confirmed after some of the patient health information was noticed in an online community where hackers trade records and tools.
5. Once detected, the IT and security teams took the compromised server offline and confirmed that no surrounding systems had been affected.
6. The school newspaper and then a local TV station learned of the story and want to interview Requesting Institution management. The affected patients are upset and scared.
7. 2,500 of the affected individuals required locator services (mail returned as undeliverable)

**TOTAL COST FOR SCENARIO 3**

\$ \_\_\_\_\_

**6.2 Detailed Rates and Costs**

Provide rate structure for notification, call center, and credit and identity theft monitoring as specified in **Section 5.3** of this RFP. Include:

- A. Pricing details for each service Proposer provides (one-time costs and per affected individual costs). Details must include a subscription cost per active student for credit monitoring.

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- B. Provide explanation of how pricing is determined for each service, including any pricing models, applicable package or volume discounts, etc.

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- C. Provide optional item pricing (e.g. web pages with FAQ).

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Provide costs for other services or other factors, including items that may cause the initial proposed estimates to increase:

- D. Additional fees per number of letter templates.

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- E. Fees for Address Look-Up Service, return mail follow-up (if not included above).

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- F. Provide cost for Identity theft insurance (if offered).

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- G. Provide cost for Identity restoration services (if offered).

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**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.*

Proposer must also submit two (2) copies of the HUB Subcontracting Plan (also called the HSP) as required by **Section 2.5** of this RFP.

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 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.
- 2.2 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.: 720-1727 Call Center, Breach Notification and Credit Monitoring 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.:** Call Center, Breach Notification and Credit Monitoring Services

**RFP No.:** 720-1727

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**  
**AGREEMENT**  
**(INCLUDED AS SEPARATE ATTACHMENT)**

**APPENDIX THREE**  
**HUB SUBCONTRACTING PLAN**  
**(INCLUDED AS SEPARATE ATTACHMENT)**

**APPENDIX FOUR**  
**CAMPUS MAP**  
**(INTENTIONALLY OMITTED)**

## APPENDIX FIVE

### ACCESS BY INDIVIDUALS WITH DISABILITIES

Contractor represents and warrants (**EIR Accessibility Warranty**) the electronic and information resources and all associated information, documentation, and support Contractor provides to University under this Agreement (**EIRs**) comply with applicable requirements set forth in [1 TAC Chapter 213](#), and [1 TAC §206.70](#) (ref. [Subchapter M, Chapter 2054, Government Code](#).) To the extent Contractor becomes aware that EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants it will, at no cost to University, either (1) perform all necessary remediation to make EIRs satisfy the EIR Accessibility Warranty or (2) replace EIRs with new EIRs that satisfy the EIR Accessibility Warranty. If Contractor fails or is unable to do so, University may terminate this Agreement and, within thirty (30) days after termination, Contractor will refund to University all amounts University paid under this Agreement.

## APPENDIX SIX

### ELECTRONIC AND INFORMATION RESOURCES ENVIRONMENT SPECIFICATIONS

The specifications, representations, warranties and agreements set forth in Proposer's responses to this **APPENDIX SIX** will be incorporated into the Agreement.

#### Basic Specifications

1. If the EIR will be hosted by University, please describe the overall environment requirements for the EIR (size the requirements to support the number of concurrent users, the number of licenses and the input/output generated by the application as requested in the application requirements).
  - A. Hardware: If Proposer will provide hardware, does the hardware have multiple hard drives utilizing a redundant RAID configuration for fault tolerance? Are redundant servers included as well?
  - B. Operating System and Version:
  - C. Web Server: Is a web server required? If so, what web application is required (Apache or IIS)? What version? Are add-ins required?
  - D. Application Server:
  - E. Database:
  - F. Other Requirements: Are any other hardware or software components required?
  - G. Assumptions: List any assumptions made as part of the identification of these environment requirements.
  - H. Storage: What are the space/storage requirements of this implementation?
  - I. Users: What is the maximum number of users this configuration will support?
  - J. Clustering: How does the EIR handle clustering over multiple servers?
  - K. Virtual Server Environment: Can the EIR be run in a virtual server environment?
2. If the EIR will be hosted by Proposer, describe in detail what the hosted solution includes, and address, specifically, the following issues:
  - A. Describe the audit standards of the physical security of the facility; and
  - B. Indicate whether Proposer is willing to allow an audit by University or its representative.
3. If the user and administrative interfaces for the EIR are web-based, do the interfaces support Firefox on Mac as well as Windows and Safari on the Macintosh?
4. If the EIR requires special client software, what are the environment requirements for that client software?
5. Manpower Requirements: Who will operate and maintain the EIR? Will additional University full time employees (FTEs) be required? Will special training on the EIR be required by Proposer's technical staff? What is the estimated cost of required training.
6. Upgrades and Patches: Describe Proposer's strategy regarding EIR upgrades and patches for both the server and, if applicable, the client software. Included Proposer's typical release schedule, recommended processes, estimated outage and plans for next version/major upgrade.

#### Security

1. Has the EIR been tested for application security vulnerabilities? For example, has the EIR been evaluated against the Open Web Application Security Project (**OWASP**) Top 10 list that includes flaws like cross site scripting and SQL injection? If so, please provide the scan results and specify the tool used. University will not take final delivery of the EIR if University determines there are serious vulnerabilities within the EIR.
2. Which party, Proposer or University, will be responsible for maintaining critical EIR application security updates?
3. If the EIR is hosted, indicate whether Proposer's will permit University to conduct a penetration test on University's instance of the EIR.
4. If confidential data, including HIPAA or FERPA data, is stored in the EIR, will the data be encrypted at rest and in transmittal?

### Integration

1. Is the EIR authentication Security Assertion Markup Language (**SAML**) compliant? Has Proposer ever implemented the EIR with Shibboleth authentication? If not, does the EIR integrate with Active Directory? Does the EIR support TLS connections to this directory service?
2. Does the EIR rely on Active Directory for group management and authorization or does the EIR maintain a local authorization/group database?
3. What logging capabilities does the EIR have? If this is a hosted EIR solution, will University have access to implement logging with University's standard logging and monitoring tools, RSA's Envision?
4. Does the EIR have an application programming interface (**API**) that enables us to incorporate it with other applications run by the University? If so, is the API .Net based? Web Services-based? Other?
5. Will University have access to the EIR source code? If so, will the EIR license permit University to make modifications to the source code? Will University's modifications be protected in future upgrades?
6. Will Proposer place the EIR source code in escrow with an escrow agent so that if Proposer is no longer in business or Proposer has discontinued support, the EIR source code will be available to University.

### Accessibility Information

Proposer must provide the following, as required by [1 TAC §213.38\(b\)](#):

1. Accessibility information for the electronic and information resources (**EIR**)<sup>1</sup> products or services proposed by Proposer, where applicable, through one of the following methods:
  - (A) URL to completed Voluntary Product Accessibility Templates (**VPATs**)<sup>2</sup> or equivalent reporting templates;
  - (B) accessible electronic document that addresses the same accessibility criteria in substantially the same format as VPATs or equivalent reporting templates; or
  - (C) URL to a web page which explains how to request completed VPATs, or equivalent reporting templates, for any product under contract; and
2. Credible evidence of Proposer's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, Proposer's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results.

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<sup>1</sup> Electronic and information resources are defined in [§2054.451, Government Code](#) and [1 TAC §213.1 \(6\)](#).

<sup>2</sup> Voluntary Product Accessibility Templates are defined in [1 TAC §213.1 \(19\)](#). For further information, see this [VPAT document](#) provided by the Information Technology Industry Council.

## APPENDIX SEVEN

### SECURITY CHARACTERISTICS AND FUNCTIONALITY OF CONTRACTOR'S INFORMATION RESOURCES

The specifications, representations, warranties and agreements set forth in Proposer's responses to this **APPENDIX SEVEN** will be incorporated into the Agreement.

**"Information Resources"** means any and all computer printouts, online display devices, mass storage media, and all computer-related activities involving any device capable of receiving email, browsing Web sites, or otherwise capable of receiving, storing, managing, or transmitting Data including, but not limited to, mainframes, servers, Network Infrastructure, personal computers, notebook computers, hand-held computers, personal digital assistant (PDA), pagers, distributed processing systems, network attached and computer controlled medical and laboratory equipment (i.e. embedded technology), telecommunication resources, network environments, telephones, fax machines, printers and service bureaus. Additionally, it is the procedures, equipment, facilities, software, and Data that are designed, built, operated, and maintained to create, collect, record, process, store, retrieve, display, and transmit information.

**"University Records"** means records or record systems that Proposer (1) creates, (2) receives from or on behalf of University, or (3) has access, and which may contain confidential information (including credit card information, social security numbers, and private health information (**PHI**) subject to Health Insurance Portability and Accountability Act (**HIPAA**) of 1996 (Public Law 104-191), or education records subject to the Family Educational Rights and Privacy Act (**FERPA**).

#### General Protection of University Records

1. Describe the security features incorporated into Information Resources (ref. **Section 5.2.4** of this RFP) to be provided or used by Proposer pursuant to this RFP.
2. List all products, including imbedded products that are a part of Information Resources and the corresponding owner of each product.
3. Describe any assumptions made by Proposer in its proposal regarding information security outside those already listed in the proposal.

*Complete the following additional questions if the Information Resources will be hosted by Proposer:*

4. Describe the monitoring procedures and tools used for monitoring the integrity and availability of all products interacting with Information Resources, including procedures and tools used to, detect security incidents and to ensure timely remediation.
5. Describe the physical access controls used to limit access to Proposer's data center and network components.
6. What procedures and best practices does Proposer follow to harden all systems that would interact with Information Resources, including any systems that would hold or process University Records, or from which University Records may be accessed?
7. What technical security measures does the Proposer take to detect and prevent unintentional, accidental and intentional corruption or loss of University Records?
8. Will the Proposer agree to a vulnerability scan by University of the web portal application that would interact with Information Resources, including any systems that would hold or process University Records, or from which University Records may be accessed? If Proposer objects, explain basis for the objection to a vulnerability scan.
9. Describe processes Proposer will use to provide University assurance that the web portal and all systems that would hold or process University Records can provide adequate security of University Records.
10. Does Proposer have a data backup and recovery plan supported by policies and procedures, in place for Information Resources? If yes, briefly describe the plan, including scope and frequency of backups, and how often the plan is updated. If no, describe what alternative methodology Proposer uses to ensure the restoration and availability of University Records.
11. Does Proposer encrypt backups of University Records? If yes, describe the methods used by Proposer to encrypt backup data. If no, what alternative safeguards does Proposer use to protect backups against unauthorized access?
12. Describe the security features incorporated into Information Resources to safeguard University Records containing confidential information.

*Complete the following additional question if Information Resources will create, receive, or access University Records containing PHI subject to HIPAA:*

13. Does Proposer monitor the safeguards required by the HIPAA Security Rule (45 C.F.R. § 164 subpts. A, E (2002)) and Proposer's own information security practices, to ensure continued compliance? If yes, provide a copy of or link to the Proposer's HIPAA Privacy & Security policies and describe the Proposer's monitoring activities and the frequency of those activities with regard to PHI.

### **Access Control**

1. How will users gain access (i.e., log in) to Information Resources?
2. Do Information Resources provide the capability to use local credentials (i.e., federated authentication) for user authentication and login? If yes, describe how Information Resources provide that capability.
3. Do Information Resources allow for multiple security levels of access based on affiliation (e.g., staff, faculty, and student) and roles (e.g., system administrators, analysts, and information consumers), and organizational unit (e.g., college, school, or department)? If yes, describe how Information Resources provide for multiple security levels of access.
4. Do Information Resources provide the capability to limit user activity based on user affiliation, role, and/or organizational unit (i.e., who can create records, delete records, create and save reports, run reports only, etc.)? If yes, describe how Information Resources provide that capability. If no, describe what alternative functionality is provided to ensure that users have need-to-know based access to Information Resources.
5. Do Information Resources manage administrator access permissions at the virtual system level? If yes, describe how this is done.
6. Describe Proposer's password policy including password strength, password generation procedures, password storage specifications, and frequency of password changes. If passwords are not used for authentication or if multi-factor authentication is used to Information Resources, describe what alternative or additional controls are used to manage user access.

*Complete the following additional questions if Information Resources will be hosted by Proposer:*

7. What administrative safeguards and best practices does Proposer have in place to vet Proposer's and third-parties' staff members that would have access to the environment hosting University Records to ensure need-to-know-based access?
8. What procedures and best practices does Proposer have in place to ensure that user credentials are updated and terminated as required by changes in role and employment status?
9. Describe Proposer's password policy including password strength, password generation procedures, and frequency of password changes. If passwords are not used for authentication or if multi-factor authentication is used to Information Resources, describe what alternative or additional controls are used to manage user access.

### **Use of Data**

*Complete the following additional questions if Information Resources will be hosted by Proposer:*

1. What administrative safeguards and best practices does Proposer have in place to vet Proposer's and third-parties' staff members that have access to the environment hosting all systems that would hold or process University Records, or from which University Records may be accessed, to ensure that University Records will not be accessed or used in an unauthorized manner?
2. What safeguards does Proposer have in place to segregate University Records from system data and other customer data and/or as applicable, to separate specific University data, such as HIPAA and FERPA protected data, from University Records that are not subject to such protection, to prevent accidental and unauthorized access to University Records ?
3. What safeguards does Proposer have in place to prevent the unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access, or disclosure of University Records?
4. What procedures and safeguards does Proposer have in place for sanitizing and disposing of University Records according to prescribed retention schedules or following the conclusion of a project or termination of a contract to render University Records unrecoverable and prevent accidental and unauthorized access to University Records? Describe the degree to which sanitizing and disposal processes addresses University data that may be contained within backup systems. If University data contained in backup systems is not fully sanitized, describe processes in place that would prevent subsequent restoration of backed-up University data.

### **Data Transmission**

1. Do Information Resources encrypt all University Records in transit and at rest? If yes, describe how Information Resources provide that security. If no, what alternative methods are used to safeguard University Records in transit and at rest?



*Complete the following additional questions if Information Resources will be hosted by Proposer:*

2. How does data flow between University and Information Resources? If connecting via a private circuit, describe what security features are incorporated into the private circuit. If connecting via a public network (e.g., the Internet), describe the way Proposer will safeguard University Records.
3. Do Information Resources secure data transmission between University and Proposer? If yes, describe how Proposer provides that security. If no, what alternative safeguards are used to protect University Records in transit?

#### **Notification of Security Incidents**

*Complete the following additional questions if Information Resources will be hosted by Proposer:*

1. Describe Proposer's procedures to isolate or disable all systems that interact with Information Resources in the event a security breach is identified, including any systems that would hold or process University Records, or from which University Records may be accessed.
2. What procedures, methodology, and timetables does Proposer have in place to detect information security breaches and notify University and other customers? Include Proposer's definition of security breach.
3. Describe the procedures and methodology Proposer has in place to detect information security breaches, including unauthorized access by Proposer's and subcontractor's own employees and agents and provide required notifications in a manner that meets the requirements of the state breach notification law.

#### **Compliance with Applicable Legal & Regulatory Requirements**

*Complete the following additional questions if Information Resources will be hosted by Proposer:*

1. Describe the procedures and methodology Proposer has in place to retain, preserve, backup, delete, and search data in a manner that meets the requirements of state and federal electronic discovery rules, including how and in what format University Records are kept and what tools are available to University to access University Records.
2. Describe the safeguards Proposer has in place to ensure that systems (including any systems that would hold or process University Records, or from which University Records may be accessed) that interact with Information Resources reside within the United States of America. If no such controls, describe Proposer's processes for ensuring that data is protected in compliance with all applicable US federal and state requirements, including export control.
3. List and describe any regulatory or legal actions taken against Proposer for security or privacy violations or security breaches or incidents, including the final outcome.

**APPENDIX EIGHT**

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

This is a sample Texas Ethics Commission's FORM 1295 – CERTIFICATE OF INTERESTED PARTIES. Contractor must use the Texas Ethics Commission electronic filing web page (at [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)) 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 Name of business entity filing form, and the city, state and country of the business entity's place of business.</b>			
<b>2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.</b>			
<b>3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.</b>			
4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary
<b>5 Check only if there is NO Interested Party.</b> <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		_____ Title of officer administering oath	
<b>ADD ADDITIONAL PAGES AS NECESSARY</b>			

**APPENDIX NINE**  
**INFORMATION SECURITY THIRD-PARTY ASSESSMENT SURVEY**  
**(INCLUDED AS SEPARATE ATTACHMENT)**

## NON-EXCLUSIVE SERVICES AGREEMENT BETWEEN UNIVERSITY AND CONTRACTOR

This Agreement between University and Contractor (**Agreement**) is made and entered into effective as of \_\_\_\_\_, 2017 (**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**"), and \_\_\_\_\_ having Federal Tax Identification Number \_\_\_\_\_ ("**Contractor**").

University and Contractor hereby agree as follows:

### 1. Scope of Work

- 1.1 Contractor acknowledges that this Agreement is a non-exclusive agreement. Neither University nor an Institution is obligated to request services from Contractor under this Agreement. CONTRACTOR UNDERSTANDS AND AGREES THAT UNIVERSITY HAS MADE NO REPRESENTATION, ASSURANCE, WARRANTY OR GUARANTY THAT UNIVERSITY OR REQUESTING INSTITUTION WILL REQUEST CONTRACTOR TO PERFORM ANY SERVICE AND THAT UNIVERSITY OR REQUESTING INSTITUTION HAVE AND DO SPECIFICALLY DISCALIM ANY SUCH REPRESENTATIONS, WARRANTIES, ASSURANCES OR GUARANTIES.
- 1.2 Contractor will perform services within the scope of the work ("**Work**") set forth in **Exhibit A**, Scope of Work, attached and incorporated for all purposes, only on request of an Institution (the "**Requesting Institution**") and in accordance with a fully executed Project Addendum, as described in Paragraph 2 below. Contractor will perform the Work pursuant to the Requesting Institution and in accordance with the schedule ("**Schedule**") for the Work set out in the executed Project Addendum and all other terms and conditions of this Agreement. Contractor will perform the work in a professional, diligent and workmanlike manner in accordance with Agreement and Project Addendum. University and the Requesting Institution will have no obligation to accept late performance or waive timely performance by Contractor.
- 1.3 Contractor will not replace or substitute staff for those staff Contractor has identified to University without notifying University, including the reasons for such replacement or substitution and the qualifications of replacement personnel. Any such substitution or replacement that University reasonably finds unacceptable, and which is not rectified to University's satisfaction, may result in election of University not to enter into a Project Addendum with Contractor or to terminate an affected active Project Addendum without liability to University.
- 1.4 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 (collectively, **Applicable Laws**), for the performance of Work.

### 2. Projects

- 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 B**, 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. Once a Project Addendum is executed by both parties, Contractor will perform the Work set forth in that Project Addendum until that Work is complete or this Agreement or that Project Addendum is otherwise terminated.
- 2.2 To enable Requesting Institution to make a determination whether to request the service of Contractor for any particular Project Addendum, Contractor, at the request of Requesting Institution and at a mutually convenient time and place, will make an oral presentation of no more than two (2) hours to Requesting Institution personnel. The purpose of the presentation will be to summarize Contractor's proposal for and approach to the specific Work that the Requesting Institution is considering obtaining from Contractor under a Project Addendum. Provided, however, provision of such an oral presentation does not guarantee that Requesting Institution will select or engage Contractor to provide services under a Project Addendum.

## 2 Term

The term of this Agreement will begin on the Effective Date, \_\_\_\_\_, 2017 and expire on \_\_\_\_\_ (the "**Term**").

## 3 Payment Terms

- 3.1 At least ten (10) days after the end of each calendar month during the term of this Agreement, Contractor will submit to University an invoice at the appropriate time covering the services performed for Requesting Institution in compliance with **Exhibit B**, Project Addendum, and **Exhibit C**, Payment for Services. Each invoice will be accompanied by documentation that Requesting Institution may reasonably request to support the invoice amount. 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 Requesting Institution approves the amount or any portion of the amount, Requesting Institution will promptly pay (each a "**Progress Payment**") to Contractor the amount approved so long as Contractor is not in default under this Agreement. If Requesting Institution disapproves any invoice amount, Requesting Institution will give Contractor specific reasons for its disapproval in writing.
- 3.2 Within ten (10) days after final completion and acceptance of Work by Requesting Institution or as soon thereafter as possible, Contractor will submit a final invoice ("**Final Invoice**") setting forth all amounts due and remaining unpaid to Contractor. Upon approval of the Final Invoice by Requesting Institution, University will pay ("**Final Payment**") to Contractor the amount due under the Final Invoice.

- 3.3 Notwithstanding any provision of this Agreement to the contrary, Requesting Institution will not be obligated to make any payment (whether a Progress Payment or Final Payment) to Contractor if Contractor is in default under this Agreement.
- 3.4 The cumulative amount of all Progress Payments and the Final Payment (defined below) will not exceed the Contract Amount in **Exhibit C**, Payment for Services.
- 3.5 No payment made by 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.
- 3.6 Intentionally Deleted.
- 3.7 Requesting Institution will have the right to verify the details in Contractor's invoices and supporting documentation, either before or after payment, by receiving copies of the books and records of Contractor sufficient to substantiate invoices and supporting documentation at mutually convenient times.
- 3.8 Section 51.012, Texas Education Code, authorizes Requesting Institution to make payments through electronic funds transfer methods. Contractor agrees to accept payments from Requesting Institution through those methods, including the automated clearing house system ("**ACH**"). Contractor agrees to provide Contractor's banking information to Requesting Institution in writing on Contractor letterhead signed by an authorized representative of Contractor. Prior to the first payment, Requesting Institution will confirm Contractor's banking information. Changes to Contractor's bank information must be communicated to Requesting Institution in accordance with **Section 11** 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.

#### **4 Tax Exemption**

University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the Services in accordance with Section 151.309, *Tax Code*, and Title 34 *Texas Administrative Code* ("**TAC**") Section 3.322.

#### **5 Contractor's Obligations**

- 5.1 Contractor will perform the Services in compliance with all applicable federal, state and local, laws, regulations, and ordinances ("**Applicable Laws**") and professional standards such as the American Institute of Certified Public Accountants ("**AICPA**"). 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, *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.

- 5.2 Contractor represents, warrants and agrees that (a) it will use commercially reasonable efforts to perform the Services in a good and workmanlike manner and in accordance with commercially reasonable standards of Contractor's profession or business, and (b) all of the Services to be performed will be of the quality that prevails among similar businesses engaged in providing similar services in major United States urban areas under the same or similar circumstances.
- 5.3 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 in connection with the purposes for which the material is furnished.
- 5.4 Contractor warrants and agrees that the Services will be performed pursuant to the terms of the Agreement and applicable professional standards. Contractor's duties and obligations under this Agreement will at no time be in any way diminished by reason of any approval by Requesting Institution nor will Contractor be released from any liability by reason of any approval by Requesting Institution, it being agreed that Requesting Institution at all times is relying upon Contractor's skill and knowledge in performing the Services.
- 5.5 Contractor will, at its own cost, correct all material defects in the Services as soon as practical after Contractor becomes aware of the defects. If Contractor fails to correct material defects in the Services within a reasonable time, then Requesting Institution may correct the defective Services at Contractor's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Services that Requesting Institution may have at law or in equity.
- 5.6 Contractor will maintain a staff of properly trained and experienced personnel to deliver satisfactory performance under this Agreement. Contractor will cause all persons connected with Contractor directly in charge of the Services to be duly registered and / or licensed under all applicable federal, state and local, laws, regulations, and ordinances. Contractor will assign to the Project a designated representative who will be responsible for the administration and coordination of the Services. Contractor will furnish efficient business administration and coordination and perform the Services in an expeditious and economical manner consistent with the interests of Requesting Institution.
- 5.7 Contractor represents that if (i) it is a corporation, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate 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; or (ii) if it is a partnership, limited partnership, limited liability partnership, or limited liability company then it has all necessary power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

- 5.8 Contractor represents and warrants that all of Contractor's Personnel contributing to the Work Material (ref. **Section 25**) under this Agreement will be required as required by Contractor's policies to (i) acknowledge in writing the ownership of Contractor (for the benefit of Requesting Institution) of the Work Material and each element thereof produced by the 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.
- 5.9 Contractor represents and warrants that: (i) the Services 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 Requesting Institution; (ii) Requesting Institution 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.
- 5.10 If this Agreement requires Contractor's presence on Requesting Institution's premises or in Requesting Institution's facilities, Contractor agrees to cause its representatives, agents, employees and subcontractors to become aware of, fully informed about, and in full compliance with all applicable Requesting Institution rules and policies as such rules and policies have been provided to Contractor prior to the commencement of the relevant Work, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.

## **6 Family Code Child Support Certification**

Pursuant to Section 231.006, *Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

## **7 Tax Certification**

If Contractor is a taxable entity as defined by Chapter 171, *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.

## **8 Payment of Debt or Delinquency to the State**



Pursuant to Sections 2107.008 and 2252.903, *Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement 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 such debt or delinquency is paid in full.

## 9 **Loss of Funding**

Performance by University under this Agreement 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 University shall issue written notice to Contractor and University may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.

## 10 **Notices**

Except as otherwise provided in 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 will be in writing and will be sent via registered or certified mail, overnight courier, confirmed facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below), and notice will be deemed given (i) if mailed, when deposited, postage prepaid, in the United States mail, (ii) if sent by overnight courier, one business day after delivery to the courier, (iii) if sent by facsimile (to the extent a facsimile number is set forth below), when transmitted, and (iv) if sent by email (to the extent an email address is set forth below), when received:

If to University:

The University of Texas System

Austin, Texas 78701-2982

*with copy to:* Dr. Scott Kelley  
Executive Vice Chancellor for Business Affairs  
The University of Texas System  
201 West 7<sup>th</sup> Street, 8<sup>th</sup> Floor  
Austin, Texas 78701-2982

If to Contractor:

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

Notwithstanding any other requirements for notices given by a party under this Agreement, if Contractor intends to deliver written notice to University pursuant to Section 2251.054, *Government Code*, then Contractor will send that notice to University as follows:

If to University:

The University of Texas System

Austin, Texas 78701-2982

with copy to:

Dr. Scott Kelley  
Executive Vice Chancellor for Business Affairs  
The University of Texas System  
201 West 7<sup>th</sup> Street, 8<sup>th</sup> Floor  
Austin, Texas 78701-2982

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

## 11 State Auditor's Office

Contractor understands that acceptance of funds under this Agreement 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 pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), *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 permitted subcontractors.

## 12 Venue; Governing Law

Travis County, Texas, shall be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

## 13 Breach of Contract Claims

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

13.1.1 Contractor's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement 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 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 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 the other officer of University as may be designated from time to time by University by written notice thereof 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.

13.1.2 If the parties are unable to resolve their disputes under Section 14.1.1, 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 by University.

13.1.3 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, *Civil Practices and Remedies Code*. The parties hereto specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit and (ii) University has not waived its right to seek redress in the courts.

13.2 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.

13.3 University and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

## **14 Compliance with Law**

Contractor will perform the Services in compliance with all applicable federal, state and local, laws, regulations, and ordinances. 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, *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.

**15 Records**

Records of Contractor's costs, any reimbursable expenses pertaining to the Services and payments will be available to University or its authorized representative during business hours and will be retained for four (4) years after final payment or abandonment of the Services, unless University otherwise instructs Contractor in writing.

**16 Insurance**

16.1 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:

16.1.1 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. of the information page of the Workers' Compensation policy the state in which Work is to be performed for University.

16.1.2 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.

- 16.1.3 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;

If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

- 16.1.4 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. The Umbrella / Excess Liability policy will be excess over and at least as broad as the underlying coverage as required under **Sections 16.1.1** Employer's Liability; **16.1.2** Commercial General Liability; and **16.1.3** 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.

- 16.1.5 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.

- 16.1.6 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 Requesting Institution in its care, custody or control away from Requesting Institution'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.

16.2 Contractor will deliver to University:

- 16.2.1 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.

16.2.1.1 **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, University and Requesting Institution 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.

16.2.1.2 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System, The University of Texas System, University and Requesting Institution. **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, University and Requesting Institution. 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 16**.

16.2.1.3 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.

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

Name: Eric Agnew

Address: 210 West 6<sup>th</sup> St., RM B140E, Austin, Texas 78701

Facsimile Number: 512-499-5424

Email Address: eagnew@utsystem.edu

16.3 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. *Except* as provided in this **Section 16.3**.

16.3.1 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 the policy.

## 17 Indemnification

17.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS THE UNIVERSITY OF TEXAS SYSTEM, AND ITS 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, (COLLECTIVELY "CLAIMS") BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM CONTRACTOR'S NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR RESULTING IN BODILY INJURY OR DAMAGE TO TANGIBLE PERSONAL PROPERTY. 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.

17.2 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 AGREES TO REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

## 18 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 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.

## 19 Undocumented Workers

The *Immigration and Nationality Act* (8 *United States Code* 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 *Code of Federal Regulations* 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 law. 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 law, University may terminate this Agreement in accordance with **Section 27**. 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.

## 20 Force Majeure

Neither party hereto will be liable or responsible to the other 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**”).

## 21 Entire Agreement; Modifications

This Agreement supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. 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.

## 22 Captions

The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

## 23 Waivers

No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.



## 24 Ownership and Use of Work Material

- 24.1 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 Services (collectively, "**Work Material**"), whether or not accepted or rejected by University, are the sole property of University and for its exclusive use and re-use at any time without further compensation and without any restrictions.
- 24.2 Contractor grants and assigns to University 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 in any steps University may take to obtain or enforce patent, copyright, trademark or like protections with respect to the Work Material.
- 24.3 Contractor will deliver all Work Material to University upon expiration or termination of this Agreement. University will have the right to use the Work Material for the completion of the Services or otherwise. University may, at all times, retain the originals of the Work Material. The Work Material will not to be used by any person other than University on other projects unless expressly authorized by University in writing.
- 24.4 The Work Material will not be used or published by Contractor or any other party unless expressly authorized by University in writing. Contractor will treat all Work Material as confidential.
- 24.5 All title and interest in the Work Material will vest in University and will be deemed to be a work made for hire and made in the course of the Services rendered under this Agreement. To the extent that title to any Work Material may not, by operation of law, vest in University or Work Material may not be considered works made for hire, Contractor hereby irrevocably assigns, conveys and transfers to University and its successors, licensees and assigns, all rights, title and interest worldwide in and to the Work Material and all proprietary rights therein, including all copyrights, trademarks, service marks, patents, trade secrets, moral rights, all contract and licensing rights and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known. In the event Contractor has any rights in the Work Material which cannot be assigned, Contractor agrees to waive enforcement worldwide of the rights against University, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to University with the right to sublicense. These rights are assignable by University.
- 24.6 Notwithstanding any other provisions of this Agreement: (a) all tools software and/or programs owned by Contractor, or which have been licensed to Contractor by a third party that either: 1) existed prior to the effective date of this agreement and the Services; 2) are not related to the Services or to Contractor's services in connection with the Services; or 3) were created by the Contractor (or its licensor) totally separate from the Services or Contractor's work in connection with the Services are collectively "**Contractor IP**"; (b) Contractor IP is the sole property of Contractor (or its licensor) and Contractor (or its licensor) will at all times retain sole and exclusive title to and ownership

to Contractor IP. Contractor hereby grants to University a non-exclusive, worldwide, perpetual, irrevocable, sub-licensable, royalty-free license to use the Contractor IP in connection with the Services or with Contractors work in connection with the Services.

- 24.7 To the extent that particular Work Material comprises an improvement, enhancement or modification to preexisting Contractor IP, whether or not patentable, copyrightable as a derivative work, or otherwise protectable as intellectual property (hereafter “**Work Product Improvements to Contractor IP**”), University grants to Contractor a non-exclusive, worldwide, perpetual, irrevocable, sub-licensable, royalty-free license to the Work Product Improvements to Contractor IP.

**25 Confidentiality and Safeguarding of University Records; Press Releases; Public Information.** Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems (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 25.8**. 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 25.9**. 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, (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 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 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, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.

- 25.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to University 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 regarding the impermissible use or disclosure.
- 25.2 **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 will be (1) returned to University, 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 with written notice of Contractor's intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to University in writing the destruction of University Records. Notwithstanding anything to the contrary contained in this Agreement, Contractor will retain one copy of the work papers as required by the professional standards.

- 25.3 **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.
- 25.4 **Press Releases.** Except when defined as part of the Services, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of University in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of University.
- 25.5 **Public Information.** University strictly adheres 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, Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public.
- 25.6 **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.
- 25.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.
- 25.8 **FERPA Compliance.** Some of the Requesting Institution' Records Contractor receives, creates or maintains for or on behalf of Requesting Institution 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 Requesting Institution's FERPA Data, Contractor must execute **EXHIBIT F Sample FERPA Confidentiality and Security Addendum**, FERPA Confidentiality and Security Addendum. **EXHIBIT F**, FERPA Confidentiality and Security Addendum, contains terms required by University 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 retains the right to control Contractor's access, use, and disclosure of all FERPA Data. Except to the extent **Section 25** conflicts with **EXHIBIT F**, FERPA Confidentiality and Security

Addendum, Contractor will comply with **Section 265** in connection with all FERPA Data. To the extent that **EXHIBIT F**, FERPA Confidentiality and Security Addendum, conflicts with any term contained in this Agreement, the terms of **EXHIBIT F**, FERPA Confidentiality and Security Addendum, will control.

- 25.9 **HIPAA Compliance.** University is a HIPAA Covered Entity and some of the information Contractor receives, maintains or creates for or on behalf of University 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**) in **EXHIBIT E**, HIPAA Business Associate Agreement. To the extent that the BAA conflicts with any term contained in this Agreement, the terms of the BAA will control.

## **26 Default and Termination**

- 26.1 In the event of a material failure by a party to this Agreement to perform in accordance with the terms of this Agreement (“**default**”), the 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.
- 26.2 University may, without cause, terminate this Agreement at any time upon giving thirty (30) 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 Services duly performed from the time of the last payment date to the termination date in accordance with this Agreement; provided, that, Contractor has delivered all Work Material to University. Notwithstanding any provision in this Agreement to the contrary, University will not 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.
- 26.3 Termination under **Sections 26.1** or **26.2** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.
- 26.4 If Contractor fails to cure any default within fifteen (15) days after receiving written notice of the default, University 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, any and all reasonable expenses incurred in connection with University’s curative actions.
- 26.5 Either Party may terminate this Agreement, or any particular Services, immediately upon written notice to the other party if the terminating party reasonably determines that it can no longer provide or receive the Services in accordance with applicable law.

## **27 Binding Effect**

This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

## **28 Severability**

In case any provision of this Agreement 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, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

## **29 Limitation of Liability**

EXCEPT FOR UNIVERSITY'S OBLIGATION (IF ANY) TO PAY CONTRACTOR CERTAIN FEES AND EXPENSES UNIVERSITY WILL HAVE NO LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING ANY DUTY OR OBLIGATION OF UNIVERSITY 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, OR THE UNIVERSITY OF TEXAS SYSTEM, OR ANYONE CLAIMING UNDER UNIVERSITY 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. TO THE EXTENT AUTHORIZED BY THE LAWS OF THE STATE OF TEXAS, UNIVERSITY (AND ANY OTHERS FOR WHOM SERVICES ARE PROVIDED) MAY NOT RECOVER FROM CONTRACTOR, IN CONTRACT OR TORT, UNDER STATUTE OR OTHERWISE, ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES IN CONNECTION WITH CLAIMS ARISING OUT OF THIS AGREEMENT OR OTHERWISE RELATING TO THE SERVICES, INCLUDING ANY AMOUNT FOR LOSS OF PROFIT OR GOODWILL, WHETHER OR NOT THE LIKELIHOOD OF SUCH LOSS OR DAMAGE WAS CONTEMPLATED. UNIVERSITY (AND ANY OTHERS FOR WHOM SERVICES ARE PROVIDED) MAY NOT RECOVER FROM CONTRACTOR, IN CONTRACT OR TORT, UNDER STATUTE OR OTHERWISE, AGGREGATE DAMAGES IN EXCESS OF THE FEES ACTUALLY PAID FOR THE SERVICES THAT DIRECTLY CAUSED THE LOSS IN CONNECTION WITH CLAIMS ARISING OUT OF THIS AGREEMENT OR OTHERWISE RELATING TO THE SERVICES. THIS LIMITATION DOES NOT APPLY TO ANY INDEMNIFICATION OBLIGATION STATED IN SECTION 18 OF THIS AGREEMENT OR LOSSES CAUSED BY CONTRACTOR'S FRAUD OR WILLFUL MISCONDUCT OR TO THE EXTENT PROHIBITED BY APPLICABLE LAW OR PROFESSIONAL REGULATIONS.

## **30 Assignment and Subcontracting**

Except as specifically provided in **EXHIBIT D**, Historically Underutilized Business Subcontracting Plan, attached and incorporated for all purposes, Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) 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; and (b) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Texas law, including Chapter 2161, *Government Code*, and 34 Texas Administrative Code ("**TAC**") Sections 20.101 through 20.108. The benefits and burdens of this Agreement are assignable by University.

## 31 Historically Underutilized Business Subcontracting Plan

**Historically Underutilized Business Subcontracting Plan.** Contractor agrees to use good faith efforts to subcontract the Services 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 in the format required by Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, “TPSS”). Submission of compliance reports will be required as a condition for payment under this Agreement. If University determines that Contractor has failed to subcontract as set out in the HSP, University 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 determines that Contractor failed to implement the HSP in good faith, University, in addition to any other remedies, may report nonperformance to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108. University may also revoke this Agreement for breach and make a claim against Contractor.

31.1 **Changes to the HSP.** If at any time during the term of this Agreement, 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 must be amended in accordance with **Section 31** to replace the HSP with the revised subcontracting plan.

31.2 **Expansion of the Services.** If University expands the scope of the Services through a change order or any other amendment, University will determine if the additional Services contains probable subcontracting opportunities *not* identified in the initial solicitation for the Services. 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 Section 20.14 before (a) this Agreement may be amended to include the additional Services; or (b) Contractor may perform the additional Services. If Contractor subcontracts any of the additional subcontracting opportunities identified by University without prior authorization and without complying with 34 TAC Section 20.14, Contractor will be deemed to be in breach of this Agreement under **Section 26** and will be subject to any remedial actions provided by Texas law including Chapter 2161, *Government Code* and 34 TAC Section 20.14. University may report nonperformance under this Agreement to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108.

## 32 Responsibility for Individuals Performing Services; Criminal Background Checks

Each individual who is assigned to perform the Services under this Agreement 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 Services under this Agreement. Prior to commencing the Services, Contractor will (1) provide University with a list (“List”) of all individuals who may be assigned to perform the Services on University’s

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 Services is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University'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 Services on University's premises.

Prior to commencing performance of the Services under this Agreement, Contractor will provide University a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will provide University an updated certification letter each time there is a change in the individuals on the List.

### **33 Limitations**

THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING THOSE TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'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 EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

### **34 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 such expiration or termination.

### **35 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. Contractor will not bind nor attempt to bind University 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.

### **36 Project Notifications and Reports:**

Contractor will, upon execution of any project addendum (**Exhibit B**) under this Agreement, send a fully executed copy to:

The University of Texas System

Austin, Texas 78701-2982

**Contractor Reports**

In addition to the reports and deliverables required under the agreement between the Contractor and the Institution who contracts for specific services, Contractor shall, on a quarterly basis, submit a report detailing all projects performed for any Requesting Institution, which will include the project name, project status (open / closed), total fees billed, total expenses billed, and completion date.

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

**UNIVERSITY:**

**CONTRACTOR:**

**THE UNIVERSITY OF TEXAS SYSTEM**

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

By:  
Name:  
Title:

**Attach:**

**EXHIBIT A – Scope of Work**

**EXHIBIT B – Project Addendum**

**EXHIBIT C – Payment for Services**

**EXHIBIT D – HUB Subcontracting Plan**

**EXHIBIT E – Sample Business Associate Agreement Provisions**

**EXHIBIT F – Sample FERPA Confidentiality and Security Addendum**



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

At University's request, Contractor will perform the Work providing \_\_\_\_\_  
services related to \_\_\_\_\_ including:

## **EXHIBIT B**

### **PROJECT ADDENDUM**

This Project Addendum (this "**Addendum**") is attached to and incorporated into the previously executed Non-Exclusive Services 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 undersigned Requesting Institution and Contractor agree to the terms and conditions set forth in the Agreement effective \_\_\_\_\_. All of the terms and conditions of the Agreement are incorporated into this Addendum for all purposes. 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.

While the Agreement is non-exclusive in terms of University's ability to work with other firms, this Addendum establishes an exclusive, retained search for the particular recruitment described in this Addendum. In addition to termination of a recruitment in accordance with the Agreement, the Requesting Institution may elect to terminate a recruitment and related Project Addendum following delivery of a diverse pool of qualified candidates or any other milestone. In the event of a termination of this Project Addendum for any reason, any exclusivity created by the Project Addendum is extinguished and University may renew, continue, or begin another search for the position covered by the Project Addendum and Contractor will have no rights based on the terminated Project Addendum.

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

Contractor is aware of UTS 187

( <http://www.utsystem.edu/bor/procedures/policy/policies/uts187.html> ) and understands the University's commitment to diversity in recruiting. In performing the Services, Contractor agrees to take all actions necessary to support this commitment.

Project:

Subject to the terms of the Agreement, Contractor will perform the following services:

[Designate services to be performed based on the list of Services 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 any exclusive rights of Contractor based on this Addendum will be terminated. 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:

Fees and Reimbursable Expenses and Disbursements (note: may not exceed cap specified in **Exhibit C**):

The Fee Cap for this Project is equal to \$ \_\_\_\_\_ The Expense Cap for this Project is \$ \_\_\_\_\_

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

[NAME OF REQUESTING INSTITUTION]

[CONTRACTOR'S NAME]

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

By:

Name:

Name:

Title:

Title:

Date:

Date:

**EXHIBIT C**

**PAYMENT FOR SERVICES**

**SERVICE FEES:**

**EXHIBIT D**  
**HUB SUBCONTRACTING PLAN**

## EXHIBIT E

### SAMPLE BUSINESS ASSOCIATE AGREEMENT PROVISIONS

**IF THE SERVICES UNDER AN ADDENDUM INVOLVE SERVICES THAT WILL INCLUDE USE, CREATION AND/OR MAINTENANCE OF A SYSTEM INSTITUTION'S PROTECTED HEALTH INFORMATION BY A CONTRACTING VENDOR, A BUSINESS ASSOCIATE AGREEMENT THAT CONFORMS TO THIS TEMPLATE AND THE INSTITUTION'S REQUIREMENTS MUST BE EXECUTED AS PART OF THE ADDENDUM.**

### SAMPLE BUSINESS ASSOCIATE AGREEMENT PROVISIONS

This Business Associate Agreement (the "Agreement"), is made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between Business Associate and Covered Entity (as defined below and collectively the "Parties") to comply with the Health Insurance Portability and Accountability Act of 1996) privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160 and 164 subparts A and E ("the Privacy Rule") and security standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160, 162 and 164, subpart C ("the Security Rule"), and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009.

### RECITALS

WHEREAS, Business Associate has entered into the Underlying Agreement ("Underlying Agreement") to which this Agreement is attached under which Business Associate shall provide the services described in the Underlying Agreement ("Services") to Covered Entity;

WHEREAS, in connection with these Services, Covered Entity discloses to Business Associate certain protected health information that is subject to protection under the HIPAA Rules; and

WHEREAS, the HIPAA Rules require that Covered Entity receive adequate assurances that Business Associate will comply with certain obligations with respect to the PHI received in the course of providing services to or on behalf of Covered Entity.

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Definitions. Terms used herein, but not otherwise defined, shall have meaning ascribed by the Privacy Rule and the Security Rule.

Breach. "Breach" shall have the same meaning as the term "breach" in 45 C.F.R. §164.402.

Business Associate. "Business Associate" shall mean **[insert name of Business Associate]**.

Covered Entity. "Covered Entity" shall mean **[insert institution that is the party to the agreement]**.

Designated Record Set. “Designated Record Set” shall mean a group of records maintained by or for a Covered Entity that is: (i) the medical records and billing records about Individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the covered entity to make decisions about Individuals. For purposes of this definition, the term “record” means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.

HIPAA Rules. The Privacy Rule and the Security Rule and amendments codified and promulgated by the HITECH Act are referred to collectively herein as “HIPAA Rules.”

Individual. “Individual” shall mean the person who is the subject of the protected health information.

Protected Health Information (“PHI”). “Protected Health Information” or PHI shall have the same meaning as the term “protected health information” in 45 C.F.R. §160.103, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of covered entity pursuant to this Agreement.

Required by Law. “Required by Law” shall mean a mandate contained in law that compels a use or disclosure of PHI.

Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her Designee.

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

Sensitive Personal Information. “Sensitive Personal Information” shall mean 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; driver’s license number or government-issued identification number; or 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 b) information that identifies an individual and relates to: the physical or mental health or condition of the individual; the provision of health care to the individual; or payment for the provision of health care to the individual.

Subcontractor. “Subcontractor” shall have the same meaning as the term “subcontractor” in 45 C.F.R. §160.103.

Unsecured PHI. “Unsecured PHI” shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5.

Purposes for which PHI May Be Disclosed to Business Associate. In connection with the services provided by Business Associate to or on behalf of Covered Entity described in this Agreement, Covered Entity may disclose PHI to Business Associate for the purposes of the Services (“Services”). Obligations of Covered Entity. If deemed applicable by Covered Entity, Covered Entity shall:

provide Business Associate a copy of its Notice of Privacy Practices (“Notice”) produced by Covered Entity in accordance with 45 C.F.R. 164.520 as well as any changes to such Notice;

provide Business Associate with any changes in, or revocation of, authorizations by Individuals relating to the use and/or disclosure of PHI, if such changes affect Business Associate’s permitted or required uses and/or disclosures;

notify Business Associate of any restriction to the use and/or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of PHI;

not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy rule if done by the Covered entity;

notify Business Associate of any amendment to PHI to which Covered Entity has agreed that affects a Designated Record Set maintained by Business Associate [**Note- Parties should determine if a Designated Record set is involved in the services**]. The Parties have determined that that Business Associate [will, will not] maintain a Designated Record Set on behalf of Covered Entity;

if Business Associate maintains a Designated Record Set, provide Business Associate with a copy of its policies and procedures related to an Individual’s right to: access PHI; request an amendment to PHI; request confidential communications of PHI; or request an accounting of disclosures of PHI; and,

notify individuals of breach of their Unsecured PHI in accordance with the requirements set forth in 45 C.F.R. §164.404. [**Note: Depending how contract is negotiated, the Covered Entity could delegate duty to notify individuals of a breach to the Business Associate will notify individual of breach. If Business Associate is to notify, obtain institution’s Privacy Officer’s approval and address other issues such as the form of the notice, evaluation of harm, and who will be responsible for the associated costs.**]

Obligations of Business Associate. Business Associate agrees to comply with applicable federal and state confidentiality and security laws, specifically the provisions of the HIPAA Rules applicable to business associates, including:



1. Use and Disclosure of PHI. Except as otherwise permitted by this Agreement or applicable law, Business Associate shall not use or disclose PHI except as necessary to provide Services described above to or on behalf of Covered Entity, and shall not use or disclose PHI that would violate the HIPAA Rules if used or disclosed by Covered Entity. Also, knowing that there are certain restrictions on disclosure of PHI. Provided, however, Business Associate may use and disclose PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities. Business Associate shall in such cases:
  - (a) provide information and training to members of its workforce using or disclosing PHI regarding the confidentiality requirements of the HIPAA Rules and this Agreement;
  - (b) obtain reasonable assurances from the person or entity to whom the PHI is disclosed that: (a) the PHI will be held confidential and further used and disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity; and (b) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been breached; and
  - (c) agree to notify the designated Privacy Officer of Covered Entity of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HIPAA Rules.
2. Data Aggregation. In the event that Business Associate works for more than one Covered Entity, Business Associate [is, is not] permitted to use and disclose PHI for data aggregation purposes [Note include if Business Associate will analyze data as part of the services:], however, only in order to analyze data for permitted health care operations, and only to the extent that such use is permitted under the HIPAA Rules.
3. De-identified Information. 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. Moreover, Business Associate shall review and comply with the requirements defined under Section E. of this Agreement .
4. Safeguards.
  - (a) Business Associate shall maintain appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this Agreement or as Required by Law. Business Associate shall implement administrative, physical and technical safeguards that have been approved by Covered Entity as a reasonable and appropriate to protect the confidentiality, integrity, and availability of any paper or electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity.
  - (b) Business Associate shall assure that all PHI be secured when accessed by Business Associate's employees, agents or subcontractor. Any access

to PHI by Business Associate's employees, agents or subcontractors shall be limited to legitimate business needs while working with PHI.

5. Minimum Necessary. Business Associate shall ensure that all uses and disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed; and, the use of limited data sets when possible.
6. Disclosure to Agents and Subcontractors. If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor, Business Associate shall require the agent or subcontractor to agree to the same restrictions and conditions as apply to Business Associate under this Agreement. Business Associate shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the paper or electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity. Business Associate shall be liable to Covered Entity for any acts, failures or omissions of the agent or subcontractor in providing the services as if they were Business Associate's own acts, failures or omissions, to the extent permitted by law. Business Associate further expressly warrants that its agents or subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.
7. Individual Rights Regarding Designated Record Sets. **[Note- Parties should determine if a Designated Record set is involved in the services. If so include:]** If Business Associate maintains a Designated Record Set on behalf of Covered Entity Business Associate agrees as follows:
  - (a) Individual Right to Copy or Inspection. Business Associate agrees that if it maintains a Designated Record Set for Covered Entity that is not maintained by Covered Entity, it will permit an Individual to inspect or copy PHI about the Individual in that set as directed by Covered Entity to meet the requirements of 45 C.F.R. § 164.524. If the PHI is in electronic format, the Individual shall have a right to obtain a copy of such information in electronic format and, if the Individual chooses, to direct that an electronic copy be transmitted directly to an entity or person designated by the individual in accordance with HITECH section 13405 (c). Under the Privacy Rule, Covered Entity is required to take action on such requests as soon as possible, but not later than 30 days following receipt of the request. Business Associate agrees to make reasonable efforts to assist Covered Entity in meeting this deadline. The information shall be provided in the form or format requested if it is readily producible in such form or format; or in summary, if the Individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying health information may be charged. If Covered Entity maintains the requested records, Covered Entity, rather than Business Associate shall permit access according to its policies and procedures implementing the Privacy Rule.

- (b) Individual Right to Amendment. Business Associate agrees, if it maintains PHI in a Designated Record Set, to make amendments to PHI at the request and direction of Covered Entity pursuant to 45 C.F.R. §164.526. If Business Associate maintains a record in a Designated Record Set that is not also maintained by Covered Entity, Business Associate agrees that it will accommodate an Individual's request to amend PHI only in conjunction with a determination by Covered Entity that the amendment is appropriate according to 45 C.F.R. §164.526.
- (c) Accounting of Disclosures. Business Associate agrees to maintain documentation of the information required to provide an accounting of disclosures of PHI, whether PHI is paper or electronic format, in accordance with 45 C.F.R. §164.528 and HITECH Sub Title D Title VI Section 13405 (c), and to make this information available to Covered Entity upon Covered Entity's request, in order to allow Covered Entity to respond to an Individual's request for accounting of disclosures. Under the Privacy Rule, Covered Entity is required to take action on such requests as soon as possible but not later than 60 days following receipt of the request. Business Associate agrees to use its best efforts to assist Covered Entity in meeting this deadline but not later than 45 days following receipt of the request. Such accounting must be provided without cost to the individual or Covered Entity if it is the first accounting requested by an individual within any 12 month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the individual in advance of the fee and is afforded an opportunity to withdraw or modify the request. Such accounting is limited to disclosures that were made in the six (6) years prior to the request (not including disclosures prior to the compliance date of the Privacy Rule) and shall be provided for as long as Business Associate maintains the PHI. [If Business Associate will not maintain a Designated Record Set, replace language in this section with:] The Parties agree that Business Associate will not maintain a Designated Record Set on behalf of Covered Entity.

8. Internal Practices, Policies and Procedures.

- a. Except as otherwise specified herein, Business Associate shall make available its internal practices, policies and procedures relating to the use and disclosure of PHI, received from or on behalf of Covered Entity to the Secretary or his or her agents for the purpose of determining Covered Entity's compliance with the HIPAA Rules, or any other health oversight agency, or to Covered Entity. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified by Covered Entity or the Secretary.
- b. Upon reasonable notice Covered Entity shall have the right to audit and inspect Business Associate's internal practices, policies and procedures and compliance with this Agreement. Business Associate shall cooperate in such audits and shall provide copies of any documents reasonably requested by Covered Entity related to this Agreement, the Underlying Agreement, or any of Covered Entity's

PHI, at no charge to Covered Entity. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect Business Associate's policies 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 rights under this Agreement. This Section shall survive the termination or expiration of this Agreement.

9. Notice of Privacy Practices. Business Associate shall abide by the limitations of Covered Entity's Notice of which it has knowledge. Any use or disclosure permitted by this Agreement may be amended by changes to Covered Entity's Notice; provided, however, that the amended Notice shall not affect permitted uses and disclosures on which Business Associate relied prior to receiving notice of such amended Notice.
10. Withdrawal of Authorization. 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.
11. Knowledge of HIPAA Rules. Business Associate agrees to review and understand the HIPAA Rules as it applies to Business Associate, and to comply with the applicable requirements of the HIPAA Rule, as well as any applicable amendments.
12. Information Breach Notification for PHI. Business Associate expressly recognizes that Covered Entity has certain reporting and disclosure obligations to the Secretary and the Individual in case of a security breach of unsecured PHI. Where Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses or discloses unsecured paper or electronic PHI, Business Associate immediately following the "discovery" (within the meaning of 45 C.F.R. §164.410(a)) of a breach of such information, shall notify Covered Entity of such breach. Initial notification of the breach does not need to be in compliance with 45 C.F.R. §164.404(c); however, Business Associate must provide Covered Entity with all information necessary for Covered Entity to comply with 45 C.F.R. §164.404(c) without reasonable delay, and in no case later than 30 days following the discovery of the breach. Business Associate shall be liable for the costs associated with such breach if caused by the Business Associate's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Business Associate's agents, officers, employees or subcontractors.
13. Breach Notification to Individuals. Business Associate's duty to notify Covered Entity of any breach does not permit Business Associate to notify those individuals

whose PHI has been breached by Business Associate without the express written permission of Covered Entity to do so. Any and all notification to those individuals whose PHI has been breached shall be made under the direction, review and control of Covered Entity. The Business Associate will notify the Privacy Officer via telephone with follow-up in writing to include; name of individuals whose PHI was breached, information breached, date of breach, form of breach, etc. The cost of the notification will be paid by the Business Associate. **[Include language if Covered Entity will provide notifications.]**

14. Information Breach Notification for Other Sensitive Personal Information. In addition to any other required reporting under this Section D, Business Associate shall notify Covered Entity of any breach of computerized Sensitive Personal Information (as determined pursuant to Title 11, subtitle B, chapter 521, Subchapter A, Section 521.053, Texas Business & Commerce Code) to assure Covered Entity's compliance with the notification requirements of Title 11, Subtitle B, Chapter 521, Subchapter A, Section 521.053, Texas Business & Commerce Code. Accordingly, Business Associate shall be liable for all costs associated with any breach caused by Business Associate's negligent or willful acts or omissions, or those negligent or willful acts or omissions of Business Associate's agents, officers, employees or subcontractors.
15. Training. Business Associate shall provide information and training to members of its "workforce", as defined by 45 CFR §160.103, regarding using or disclosing PHI and the confidentiality requirements of the HIPAA Rules, the MRPA and this Agreement.
16. No Offshore Work. In performing Services on or 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.

Permitted Uses and Disclosures by Business Associates. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Business Associates Agreement or in a Master Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. Also, Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with the HIPAA Rules.

1. Use. Business Associate will not, and will ensure that its directors, officers, employees, contractors and other agents do not, use PHI other than as permitted or required by Business Associate to perform the Services or as required by law, but in no event in any manner that would constitute a violation of the Privacy Standards or Security standards if used by Covered Entity.

2. Disclosure. Business Associate will not, and will ensure that its directors, officers, employees, contractors, and other agents do not, disclose PHI other than as permitted pursuant to this arrangement or as required by law, but in no event disclose PHI in any manner that would constitute a violation of the Privacy Standards or Security Standards if disclosed by Covered Entity.
3. Business Associate acknowledges and agrees that Covered Entity owns all right, title, and interest in and to all PHI, and that such right, title, and interest will be vested in Covered Entity. Neither Business Associate nor any of its employees, agents, consultants or assigns will have any rights in any of the PHI, except as expressly set forth above. Business Associate represents, warrants, and covenants that it will not compile and/or distribute analyses to third parties using any PHI without Covered Entity's express written consent.

F. Application of Security and Privacy Provisions to Business Associate.

1. Security Measures. Sections 164.308, 164.310, 164.312 and 164.316 of Title 45 of the Code of Federal Regulations dealing with the administrative, physical and technical safeguards as well as policies, procedures and documentation requirements that apply to Covered Entity shall in the same manner apply to Business Associate. Any additional security requirements contained in Sub Title D of Title IV of the HITECH Act that apply to Covered Entity shall also apply to Business Associate. Pursuant to the foregoing requirements in this section, the Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the paper or electronic PHI that it creates, has access to, or transmits. Business Associate will also ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect such information. Business Associate will ensure that PHI contained in portable devices or removable media is encrypted.
2. Annual Guidance. For the first year beginning after the date of the enactment of the HITECH Act and annually thereafter, the secretary shall annually issue guidance on the most effective and appropriate technical safeguards for use in carrying out the sections referred to in subsection (a) and the security standards in subpart C of part 164 of title 45, Code of Federal Regulations. Business Associate shall, at their own cost and effort, monitor the issuance of such guidance and comply accordingly.
3. Privacy Provisions. The enhanced HIPAA privacy requirements including but not necessarily limited to accounting for certain PHI disclosures for treatment, restrictions on the sale of PHI, restrictions on marketing and fundraising communications, payment and health care operations contained Subtitle D of the HITECH Act that apply to the Covered entity shall equally apply to the Business Associate.
4. Application of Civil and Criminal Penalties. If Business Associate violates any security or privacy provision specified in subparagraphs (1) and (2) above, sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to Business Associate with respect to such violation in the same manner that such sections apply to Covered Entity if it violates such provisions.

#### G. Term and Termination.

1. Term. This Agreement shall be effective as of the Effective Date and shall be terminated when all PHI provided to Business Associate by Covered Entity, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.
2. Termination for Cause. Upon Covered entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - a. Provide an opportunity for Business associate to cure the breach or end the violation and terminate this Agreement, whether it is in the form of a stand alone agreement or an addendum to a Master Services Agreement, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or
  - b. Immediately terminate this Agreement whether it is in the form of a stand alone agreement or an addendum to a Master Services Agreement if Business associate has breached a material term of this Agreement and cure is not possible.
3. Effect of Termination. Upon termination of this Agreement for any reason, Business Associate agrees to return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, maintained by Business Associate in any form. If Business Associate determines that the return or destruction of PHI is not feasible, Business Associate shall inform Covered Entity in writing of the reason thereof, and shall agree to extend the protections of this Agreement to such PHI and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible for so long as Business Associate retains the PHI. This provision shall also apply to any PHI that is in the possession of any subcontractors and/or agents of Business Associate.

#### H. Miscellaneous.

1. Indemnification. To the extent permitted by law, Business Associate agrees to indemnify and hold harmless Covered Entity from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, attorney's fees, defense costs, and equitable relief), for any damage or loss incurred by Covered Entity arising out of, resulting from, or attributable to any acts or omissions or other conduct of Business Associate or its agents in connection with the performance of Business Associate's or its agents' duties under this Agreement. This indemnity shall apply even if Covered Entity is alleged to be solely or jointly negligent or otherwise solely or jointly at fault; provided, however, that a trier of fact finds Covered Entity not to be solely or jointly negligent or otherwise solely or jointly at fault. This indemnity shall not be construed to limit Covered Entity's rights, if any, to common law indemnity.

Covered Entity shall have the option, at its sole discretion, to employ attorneys selected by it to defend any such action, the costs and expenses of which shall be the responsibility of Business Associate. Covered Entity shall provide Business

Associate with timely notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist Business Associate in establishing a defense to such action.

These indemnities shall survive termination of this Agreement, and Covered Entity reserves the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel of its own choosing.

2. Mitigation. If Business Associate violates this Agreement or either of the HIPAA Rules, Business Associate agrees to mitigate any damage caused by such breach.
3. Rights of Proprietary Information. Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.
4. Survival. The respective rights and obligations of Business Associate under this Agreement shall survive the termination of this Agreement.
5. Notices. Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representative as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

If to Covered Entity:

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

Attn: \_\_\_\_\_

Phone Number: \_\_\_\_\_

If to Business Associate:

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

Attn: \_\_\_\_\_

Phone Number: \_\_\_\_\_

6. Amendments. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time as necessary, in order to allow Covered Entity's to comply with the requirements of the HIPAA Rules.



7. Choice of Law. This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the State of Texas, without regard to applicable conflict of laws principles.
8. Assignment of Rights and Delegation of Duties. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary, however, Covered Entity retains the right to assign or delegate any of its rights or obligations hereunder to any of its wholly owned subsidiaries, affiliates or successor companies. Assignments made in violation of this provision are null and void.
9. Nature of Agreement. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, (ii) any fiduciary duty owed by one Party to another Party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties.
10. No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.
11. Equitable Relief. Any disclosure of misappropriation of PHI by Business Associate in violation of this Agreement will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain. Business Associate therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining Business Associate from any such further disclosure or breach, and for such other relief as Covered Entity shall deem appropriate. Such rights are in addition to any other remedies available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate, and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.
12. Severability. The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.
13. No Third Party Beneficiaries. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.
14. Headings. The descriptive headings of the articles, sections, subsections, exhibits and schedules of this Agreement are inserted for convenience only, do not constitute a part

of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

15. Entire Agreement. This Agreement, together with all Exhibits, Riders and amendments, if applicable, which are fully completed and signed by authorized persons on behalf of both Parties from time to time while this Agreement is in effect, constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes all previous written or oral understandings, agreements, negotiations, commitments, and any other writing and communication by or between the Parties with respect to the subject matter hereof. In the event of any inconsistencies between any provisions of this Agreement in any provisions of the Exhibits, Riders, or amendments, the provisions of this Agreement shall control.
16. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules and any applicable state confidentiality laws. The provisions of this Agreement shall prevail over the provisions of any other agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement or the HIPAA Rules.
17. Regulatory References. A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.

Agreed to:

**BUSINESS ASSOCIATE**

**COVERED ENTITY**

By: \_\_\_\_\_  
(Authorized Signature)

By: \_\_\_\_\_  
(Authorized Signature)

Name: \_\_\_\_\_  
(Type or Print)

Name: \_\_\_\_\_  
(Type or Print)

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

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

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

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

## EXHIBIT F

### SAMPLE FERPA CONFIDENTIALITY AND SECURITY ADDENDUM

IF THE SERVICES UNDER AN ADDENDUM INVOLVE SERVICES THAT WILL CREATE, RECEIVE OR MAINTAIN, RECORDS OR RECORD SYSTEMS FROM OR ON BEHALD OF UNIVERSITY THAT (a) ARE SUBJECT TO FERPA OR (b) CONTAIN PERSONALLY IDENTIFIABLE INFORMATION FROM “EDUCATION RECORDS” AS DEFINED BY AND SUBJECT TO FERPA BY A CONTRACTING VENDOR, A FERPA CONFIDENTIALITY AND SECURITY ADDENDUM THAT CONFORMS TO THIS TEMPLATE MUST BE EXECUTED AS PART OF THE 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 [Identify underlying contract to which the Addendum is attached.](“**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/bor/procedures/policy/policies/uts165.html>, 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 Contracto
- 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 [Option: or Secure Destruction] 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 [Option: 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 [Option: or Securely Destroyed]. [Option: "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 at [ ]**

**Contractor [ ]**

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

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

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

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

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

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

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

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



THE UNIVERSITY of TEXAS SYSTEM  
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

Office of HUB Programs  
512-499-4530  
[www.utsystem.edu/hub](http://www.utsystem.edu/hub)

## Exhibit H – Policy on Utilization Historically Underutilized Businesses

HUB Subcontracting Plan for:

- Commodities
- Special Trades
- Other Services
- Miscellaneous Professional Services

OFPC Managed Projects /UT System Administration Only

Revision dated January 1, 2017



THE UNIVERSITY of TEXAS SYSTEM  
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

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V.	HUB Subcontracting Opportunity Notification Form	Page 16
VI.	Prime Contractor Progress Assessment Report (PAR)*	Page 17

\* **Note 1:** *If awarded a contract, the Prime Contractor Progress Assessment Report (PAR) is a required form with each payment application submitted. This form is a condition of payment.*

For questions or clarifications regarding the HUB Subcontracting Plan, please contact:

Cynthia Booker  
HUB Coordinator  
409-772-1353  
[cbooker@utsystem.edu](mailto:cbooker@utsystem.edu)

**UT System Administration**  
**Historically Underutilized Subcontracting Plans (HSP)**  
Other Services-26%,

All Texas State agencies and institutions of higher education (universities) are required to make a good faith effort to include minority and/or women owned businesses in their procurement opportunities. The State of Texas uses the term Historically Underutilized Businesses (HUB) to distinguish State certified minority and/or women owned businesses.

Statement of Probability - Subcontracting Opportunities are probable in connection with this solicitation

**For nonexclusive master agreement please follow instructions on pg. 8 Letter of HUB Commitment for Indefinite Quantity/Indefinite Duration Contracts**

**Choose OPTION 1 and follow the directions below.**

**Option 1 - Complete a Self-Performing HSP as follows:**

**Section 1**

- Respondent and Requisition Information. Complete as indicated on the form. VID # refers to the tax ID number.

**Section 2A**

- Mark the 'NO', I will not be sub-consulting any portion of the contract, and I will be fulfilling the entire contract with my own resources. Continue to Section 3.

**Section 3**

- Mark the "NO" box and in the space provided indicate how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.

\_\_\_\_\_ has the resources to complete all scopes of this RFP with our own equipment, supplies, materials and personnel. If sub-contracting opportunities are identified at a future date, we will immediately contact the project manager and HUB Coordinator and commit to perform a Good Faith Effort through solicitation of HUB firms and submit an amended HUB Subcontracting Plan.

**Section 4**

- Sign the form. Include your e-mail address and contact phone number should UT System HUB have any questions.

**Option 2 – Complete if all sub-consulting opportunities are performed by ONLY HUB vendors.**

**Section 1**

- Respondent and Requisition Information. Complete as indicated on the form. VID # refers to the tax ID number.

**Section 2A**

- Mark the 'YES', I will be sub-contracting portions of the contract.

**Section 2B**

- List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to HUB vendors.

**Section 2C**

- Mark "YES".

**Section 4**

- Sign the form. Include your e-mail address and contact phone number should UT System HUB have any questions.



## **Good-Faith Effort (Attachment A)**

### **Section A-1**

- Complete this attachment for each sub-consulting opportunity listed in Section 2B.

### **Section A2**

- List the sub-consultants you selected to perform this subcontracting opportunity listed above in Section A-1. Please include their VID #, State of Texas HUB certificate, the appropriate \$ amount and the contract percentage.

### **Option 3 – Complete if sub-consulting opportunities by both HUB and non-HUB vendors meet or exceed the HUB goals stated above.**

#### **Section 1**

- Respondent and Requisition Information. Complete as indicated on the form. VID # refers to the tax ID number.

#### **Section 2A**

- Mark the ‘YES’, I will be subcontracting portions of the contract.

#### **Section 2B**

- List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to HUB vendors and Non HUB vendors

#### **Section 2C**

- Mark “NO”.

#### **Section 2D**

- Mark “YES”.

#### **Section 4**

- Sign the form. Include your e-mail address and contact phone number should UT System HUB have any questions.

## **Good-Faith Effort (Attachment A)**

- Complete this attachment for each sub-consulting opportunity listed in Section 2B.

### **Section A1**

- List the name of the sub-consulting opportunity listed on the corresponding line in Section 2B.

### **Section A2**

- List the sub-consultants you selected to perform this subcontracting opportunity listed above in Section A-1. Please include their VID #, State of Texas HUB certificate, the appropriate \$ amount and the contract percentage.

### **Option 4 - Complete a Sub-Contracting HSP as follows:**

#### **Section 1**

- Respondent and Requisition Information. Complete as indicated on the form. VID # refers to the tax ID number.

#### **Section 2A**

- Mark the ‘YES’, I will be subcontracting portions of the contract.

#### **Section 2B**

- List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to HUB vendors and Non HUB vendors

#### **Section 2C**

- Mark “NO”.

## Section 2D

- Mark "NO".

## Section 4

- Sign the form. Include your e-mail address and contact phone number should UT System HUB have any questions.

## Good-Faith Effort (Attachment B)

- Complete this attachment for each sub-consulting opportunity listed in Section 2B.

## Section B1

- List the name of the sub-consulting opportunity listed on the corresponding line in Section 2B.

## Section B3

- Subsection (b) - List 3 three HUBs you notified regarding the portion of work indicated in Section B1. **NOTE: Attach addressed and dated supporting documentation in the form of letters, fax transmittals, e-mails etc. demonstrating evidence of the Good Faith Effort performed. Please note that you must give the subcontractor 7 working days to respond to your request. Holidays and skeleton crew days do not count as working days.**

Subsection (d) – Indicate the names of two minority or women’s organization you contacted. **NOTE: Include copies of correspondence as well as the date the notice is sent and indicate if the notice was accepted or rejected.** The minority organizations at the link below, have expressed their willingness to accept notices of subcontracting opportunities from vendors to distribute to their minority and woman-owned business members. <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>

## Section B4

List the sub-consultant you selected to perform the portion of the work indicated in Section 3. Include the expected percentage of work to be subcontracted, the dollar value and whether company selected is a HUB. If company selected is not a HUB, provide written justification of your selection process in Section B4, sub-section b.

***Responses that do not include an HSP will be rejected as a material failure to comply with advertised specifications in accordance with the request for qualifications.***

**Determination of Good Faith Effort in developing an HSP for commodities contracts includes but is not limited to the following:**

1. Divide the contract work into reasonable lots or portions to the extent consistent with prudent industry practices.
2. The respondent shall notify HUBs of subcontracting opportunities that the respondent intends to subcontract in writing. Notice shall include the following:
  - a. Scope of work
  - b. Specifications
  - c. Identify a contact person with phone number and emailThe respondent shall provide potential HUB subcontractors no less than seven (7) working days from receipt of notice to respond.
3. The respondent shall use the Centralized Master Bidders List (CMBL), HUB Directory, Internet resources, and/or other directories as identified by the agency when searching for HUB subcontractors. Respondents may also rely on the services of minority/ women and community organizations, contractor groups, local, state and federal business assistance offices in identifying qualified HUB subcontractors. Search the CMBL at: <https://mycpa.cpa.state.tx.us/tpasscmbsearch/tpasscmbsearch.do>
4. The respondent shall provide notice of subcontracting opportunities to minority/women trade organizations or development centers to assist in identifying HUBs by disseminating subcontracting opportunities to their membership. Minority and business contacts may be found at: <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>

Notice must be provided no less than seven (7) working days prior to the submission of the response.

Notice shall include the following:

- a. Scope of work
  - b. Specifications
  - c. Identify a contact person
5. The respondent shall provide notice to three or more HUBs per each subcontracting opportunity that provide the type of work required for each subcontracting opportunity identified in the contract specifications or any other subcontracting opportunity the respondent cannot complete with its own equipment, supplies, materials, and/or employees. The respondent must keep and provide official written documentation (i.e. fax transmittals, email, etc. to demonstrate compliance).
6. Provide written justification of the selection process if a non HUB subcontractor is selected.
7. Encourage selected non-certified minority or woman owned business subcontractors to apply for HUB certification. If the minority or woman owned vendor is not a State certified HUB you may refer the firm to the HUB office for additional information on becoming HUB certified or the State HUB website <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>

### **HUB Subcontracting Plan Required Documents**

HUB forms may also be downloaded at: <http://www.utsystem.edu/offices/historically-underutilized-business/hub-forms>

### **Changes to the Plan**

Once the HUB Plan has been submitted any changes to the HSP must be approved in writing by the UT System project manager and HUB Coordinator **prior** to any work commencing by the new subcontractor. Once the contract has been awarded the HSP is considered part of the contract. Violations to the HSP can be deemed a breach of contract by UT System.

### **Reporting – After Award**

Prime contractor payment requests shall include: Prime Contractor Progress Assessment Report (PAR) identify all HUB and non-HUB subcontractor payments. PAR form and instructions for completion can be found at: <http://www.utsystem.edu/offices/historically-underutilized-business/hub-forms>

RESPONDENT'S BUSINESS LETTERHEAD

Date

Regional HUB Coordinator  
The University of Texas System  
Office of HUB Programs  
201 W. 6<sup>th</sup> Street, Room B.140E  
Austin, Texas 78701

RE: Historically Underutilized Business Plan for (Project Title): \_\_\_\_\_  
Project Number: \_\_\_\_\_-\_\_\_\_\_

Dear ,

I am pleased to forward this HUB Subcontracting Plan as an integral part of our response in connection with your invitation for Request for Proposals referencing the above project.

I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs). I also understand the State of Texas Annual Procurement Goal according to 34 Texas Administrative Code Section 20.284, and the goal as stated in the Agency Special Instructions section of the HUB Subcontracting Plan, page 8.

Subcontractors	No. of Subcontractors	Total Subcontract \$ Value	Total Estimated HUB	% Minority Owned	% Woman Owned	% Service Disabled Veteran
HUB						
NON-HUB						
TOTAL						

I understand the above HUB percentages must represent Texas Comptroller HUB certification standards. For each of the listed HUB firms, I have attached a Texas Comptroller HUB Certification document.

During the course of this contract should we discover additional subcontractors claiming Historically Underutilized Business status or if for some reason a HUB is unable to fulfill its contractual obligation with us, we will notify you immediately in order to take the appropriate steps to amend this HUB subcontracting Plan.

Sincerely,

Project Executive

cc: Project Manager

BUSINESS LETTERHEAD

Date

Regional HUB Coordinator  
Office of HUB Programs  
The University of Texas System  
201 W. 6<sup>th</sup> Street, Room B.140E  
Austin, TX 78701

RE: Historically Underutilized Business Plan for (Project Title): \_\_\_\_\_  
Project Number: \_\_\_\_\_ - \_\_\_\_\_

Dear ,

I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs). In accordance with the requirements outlined in the HUB Subcontracting Plan (HSP), I am pleased to forward this HUB Subcontracting Plan as an integral part of our proposal in connection with your invitation for request for qualifications/proposals, referencing Project Number \_\_\_\_\_.

The Good Faith Effort for AE services will be documented by a two (2) part HUB Subcontracting Plan (HSP) process as described in the instructions located on page 2-3 of The University of Texas Exhibit H Policy on Utilization of Historically Underutilized Businesses (HUBs) for Hybrid Delivery Professional Services.

An HSP for Part One AE services shall consist of a Letter of HUB Commitment (page 7) and the HUB Subcontracting Plan (pages 8-16) with the appropriate sections completed per the instructions located on pages 2-5 of The University of Texas Exhibit H Policy on Utilization of Historically Underutilized Businesses (HUBs) for Professional Services.

As the scope of work/project is defined under this IDIQ/Miscellaneous Services contract, Part Two of the process will require a revised HUB Subcontracting Plan (HSP) if the work/project value over the duration of the work/project exceeds \$100,000. A Good Faith Effort will be required per instructions in Attachment B (pages 13-14).

Sincerely,

Project Manager/Executive

BUSINESS LETTERHEAD

Date

Regional HUB Coordinator  
Office of HUB Programs  
The University of Texas System  
201 W. 6<sup>th</sup> Street, Room B.140E  
Austin, TX 78701

RE: Historically Underutilized Business Plan for (Project Title): \_\_\_\_\_  
RFP Number: \_\_\_\_\_

Dear ,

I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs). In accordance with the requirements outlined in the HUB Subcontracting Plan (HSP), I am pleased to forward this HUB Subcontracting Plan as an integral part of our proposal in connection with your invitation for request for qualifications/proposals, referencing RFP Number \_\_\_\_\_.

The Good Faith Effort will be documented by a two-part HUB Subcontracting Plan (HSP) process. Part one (1) of the HSP submission will reflect self-performance with the appropriate sections completed per the instructions in Option One (1) of the HSP Quick Checklist located on page 2 of The University of Texas Exhibit H Policy on Utilization of Historically Underutilized Businesses (HUBs).

As the scope of work/project is defined under this ID/IQ contract, part two (2) of the process will require a revised HUB Subcontracting Plan (HSP). The Good Faith Effort will be documented per instructions in Attachment A/B (Options Two, Three and Four of the HSP Quick Check List pages 2, 3 and 4). The revised HUB Subcontracting Plan will be submitted to the HUB Coordinator prior to execution of each contract process. Documentation of subcontracted work will be provided with each pay request.

Sincerely,

Project Administrator



# HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

**- - Agency Special Instructions/Additional Requirements - -**

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract\*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

In accordance with 34 TAC §20.13(d)(1)(D)(iii), the goals below are the applicable goals for The University of Texas System Administration only effective January 1, 2016.

## Other Services-26%

- Respondents shall submit a completed HUB Subcontracting Plan (HSP) to be considered responsive. Failure to submit a completed HSP shall result in the bid, proposal or other expression of interest to be considered Non-responsive.
- Prime Contractor Progress Assessment Report (PAR) shall be submitted with each request for payment as a condition of payment. A copy of the UT System Contract Management System (UTCMS) Compliance Report shall be attached to the State of Texas HUB PAR and shall be submitted with each request for payment as a condition of payment.
- Please note that phone logs are no longer acceptable documentation of Good Faith Effort. Only fax, email and certified letter are acceptable.

### **SECTION 1: RESPONDENT AND REQUISITION INFORMATION**

a. Respondent (Company) Name: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_  
 Point of Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_ Fax #: \_\_\_\_\_

b. Is your company a State of Texas certified HUB?  - Yes  - No

c. Requisition #: \_\_\_\_\_ Bid Open Date: \_\_\_\_\_

(mm/dd/yyyy)

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b of this SECTION and continue to Item c of this SECTION.)
- **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract\*** in place with for **more than five (5) years, meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**SECTION 3: SELF PERFORMING JUSTIFICATION** (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

**SECTION 4: AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature	Printed Name	Title	Date (mm/dd/yyyy)
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**Reminder:**

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.



# HSP Good Faith Effort - Method A (Attachment A)

Enter your company's name here: _____	Requisition #: _____
---------------------------------------	----------------------

**IMPORTANT:** If you responded "Yes" to **SECTION 2, Items c or d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the format <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>

## SECTION A-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

## SECTION A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <https://mycpa.cpa.state.tx.us/tpasscmlsearch/tpasscmlsearch.do>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

# HSP Good Faith Effort - Method B (Attachment B)

Enter your company's name here: _____	Requisition #: _____
---------------------------------------	----------------------

**IMPORTANT:** If you responded “No” to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method B (Attachment B)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>

## SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

## SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, continue to SECTION B-4.)
- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

## SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be “day zero” and does not count as one of the seven (7) working days.

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas’ Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <https://mycpa.cpa.state.tx.us/tpasscmbsearch/tpasscmbsearch.do>. HUB status code “A” signifies that the company is a Texas certified HUB.
- b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company’s Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID <small>(Do not enter Social Security Numbers.)</small>	Date Notice Sent <small>(mm/dd/yyyy)</small>	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program’s webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>
- d.** List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent <small>(mm/dd/yyyy)</small>	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

# HSP Good Faith Effort - Method B (Attachment B) Cont.

Enter your company's name here: _____	Requisition #: _____
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**SECTION B-4: SUBCONTRACTOR SELECTION**

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <https://mycpa.cpa.state.tx.us/tpasscmbsearch/tpasscmbsearch.do>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is not a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



# HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

**SECTION A: PRIME CONTRACTOR'S INFORMATION**

Company Name: _____	State of Texas VID #: _____
Point-of-Contact: _____	Phone #: _____
E-mail Address: _____	Fax #: _____

**SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION**

Agency Name: _____	
Point-of-Contact: _____	Phone #: _____
Requisition #: _____	Bid Open Date: _____ (mm/dd/yyyy)

**SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION**

**1. Potential Subcontractor's Bid Response Due Date:**

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than \_\_\_\_\_ on \_\_\_\_\_.

Central Time Date(mm/dd/yyyy)

*In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).*

*(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)*

**2. Subcontracting Opportunity Scope of Work:**

  
  

**3. Required Qualifications:**  - NotApplicable

**4. Bonding/Insurance Requirements:**  - NotApplicable

**5. Location to review plans/specifications:**  - NotApplicable

# HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report

Contract/Requisition Number: \_\_\_\_\_

Date of Award: \_\_\_\_\_  
(mm/dd/yyyy)

Object Code: \_\_\_\_\_  
(Agency Use Only)

Contracting Agency/University Name: \_\_\_\_\_

Contractor (Company) Name: \_\_\_\_\_

State of Texas VID #: \_\_\_\_\_

Point of Contact: \_\_\_\_\_

Phone #: \_\_\_\_\_

Reporting (Month) Period: \_\_\_\_\_ Total Amount Paid this Reporting Period to \$ -

## ***Report HUB and Non-HUB subcontractor information***

<b>Subcontractor's Name</b>	<b>Subcontractor's VID or HUB Certificate Number</b>	<b>*Texas Certified HUB? (Yes or No)</b>	<b>Total Contract \$ Amount from HSP with Subcontractor</b>	<b>Total \$ Amount Paid This Reporting Period to Subcontractor</b>	<b>Total Contract \$ Amount Paid to Date to Subcontractor</b>	<b>Object Code (Agency Use Only)</b>
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Signature: \_\_\_\_\_

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

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





**INFORMATION SECURITY**

**THIRD-PARTY ASSESSMENT SURVEY**

**NOTE:** Please complete the survey below and return with Proposal.

Administrator Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 Address : \_\_\_\_\_ Website: \_\_\_\_\_  
 IT Security Contact: \_\_\_\_\_ Email: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Location of Data Center: \_\_\_\_\_ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Location of Recovery Center: \_\_\_\_\_ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Years in Business: \_\_\_\_\_ Number of Employees: \_\_\_\_\_ Number of Customers Using the Product: \_\_\_\_\_  
 UT Entity's Sponsoring Dept. **Systemwide Compliance**

**Name & Description of Service/Product:** \_\_\_\_\_  
 \_\_\_\_\_  
**Describe the Target Users for the Service/Product:** \_\_\_\_\_  
 \_\_\_\_\_  
**Technical Description** (client, agent, SSL, FTP, hosted website, ASP, cloud computing, etc.): \_\_\_\_\_  
 \_\_\_\_\_  
**Other Customer Software Required to Run the Product/Service:** \_\_\_\_\_  
 \_\_\_\_\_  
**Describe Pertinent Outsourced/Contracted Service Arrangements:** (such as: support, cloud services, third-party applications, etc.) \_\_\_\_\_  
 \_\_\_\_\_  
**Describe Security Features/Testing/External Assessments:** \_\_\_\_\_  
 \_\_\_\_\_

**Note: Respond "yes" or "no" to the questions below. Explain Proposer's answer in the Comments column.**

A. Data Centers	Answer	Comments
1. Has contract with third-party for data center services. If yes, specify type of service provided by data center provider: a. Managed Hosting (full responsibility for admin, mgmt, architecture, hardware and software), b. Managed Services (same as Managed Hosting but with administrator access to infrastructure and responsibility at the application level), c. Co-Location (Administrator has full responsibility of hardware but leveraging private data suites, cages, etc.)		
2. Number of years doing business with data center service provider?		
B. Policies, Standards and Procedures	Answer	Comments
1. Has formal written Information Security Policies.		
2. Will provide copies of the Information Security Policies.		
3. Will provide, if asked, examples of security documents, which you have indicated you maintain.		
4. Can provide supporting documentation of certifications and results of a third-party external Information Security assessment conducted within the past 2 years (SAS-70, SSAE-16, penetration test, vulnerability assessment, etc.)		
5. Maintains incident response procedures.		
6. Policy protects client information against unauthorized access; whether stored, printed, spoken, or transmitted.		
7. Policy prohibits sharing of individual accounts and passwords.		
8. Policy implements the following Information Security concepts: need to know, least privilege, and checks and balances.		
9. Receives and implements protections for security vulnerability alerts (such as CERTs).		
10. Requires system administrators to be educated and qualified.		
11. Implements AAA (Authentication, Authorization, Accounting) for all users.		
12. Performs background checks for individuals handling sensitive information.		
13. Termination or job transfer procedures immediately protect unauthorized access to information.		
14. Provides customer support with escalation procedures.		
15. Documented change control processes.		

16. Requires contractors, subcontractors, vendors, outsourcing ventures, or other external third-party contracts to comply with policies and customer		
17. Policy implements federal, state, and local regulatory requirements.		
18. Maintains a routine user Information Security awareness program.		
19. There is a formal routine Information Security risk management program for risk assessments and risk management.		
<b>C. Architecture</b>	<b>Answer</b>	<b>Comments</b>
1. Will provide a network architecture drawing for the customer solution, which demonstrates the defense-in-depth strategies.		
2. Implements and monitors firewall protections.		
3. Maintains routers and ACLs.		
4. Provides network redundancy.		
5. IDS/IPS technology is implemented and alerts are assessed.		
6. There is a DMZ architecture for Internet systems.		
7. Web applications that 'face' the Internet are on DMZ servers are separate from internal servers that house sensitive customer information.		
8. Maintains enterprise-wide virus/malware protection.		
9. There is an enterprise patch management system.		
10. Provides dedicated customer servers or explain how this is accomplished in a secure virtual or segmented configuration.		
11. Remote access is achieved over secure connections.		
12. Test environments both physical and logical are separated from production environments.		
13. Will provide architectural software solution data flow diagrams, which include implemented security controls.		
14. Wireless networks are encrypted, require user authentication, and there are secured/controlled access points.		
<b>D. Configurations</b>	<b>Answer</b>	<b>Comments</b>
1. All computers systems involved are kept current with security patches and have up-to-date malware protection.		
2. Encryption, with the strength of at least 256 bit, is used, required, and monitored when sensitive information is transmitted over untrusted or public connections.		
3. System banners are displayed prior to access and require the user's acknowledgment and agreement concerning: unauthorized use is prohibited, system are monitored, policies are enforced, and there is no expectation of privacy.		
4. Computers have password-protected screen savers that activate automatically to prevent unauthorized access when unattended.		
5. All unnecessary services are removed from computers.		
6. Servers run anti-intrusion software (such as tripwire, etc.).		
7. All administrator-supplied default passwords or similar "published" access codes for all installed operating systems, database management systems, network devices, application packages, and any other commercially produced IT products have been changed or disabled.		
8. Passwords have a minimum of 8 characters, expire, and have strength requirements.		
9. Passwords are never stored in clear text or are easily decipherable.		
10. All system operating systems and software are routinely checked to determine whether appropriate security settings are enabled.		
11. File and directory permissions are managed for least privilege and need-to-know accesses.		
12. Redundancy or high availability features are implemented for critical functions.		
13. All user access is authenticated with either a password, token or biometrics.		
14. All system changes are approved, tested and logged.		
15. Production data is not used for testing unless the data has been		
16. Application security follows industry best practices (such as OWASP).		
17. For system's support users, the account lockout feature is set for successive failed logon attempts.		
18. Split tunneling is prohibited when connecting to customer systems or networks.		
<b>E. Product Design</b>	<b>Answer</b>	<b>Comments</b>
1. If the product integrates with portable devices, sensitive information or information protected by law is encrypted when stored on these portable devices and requires password access.		

2. Access to sensitive information or information protected by law, across a public connection is encrypted with a secured connection and requires user authentication.		
3. If the product manages Protected Health Information (PHI), the product and company processes are HIPAA compliant.		
4. Management of any payment card information is compliant with the Payment Card Industry (PCI) Standards.		
5. Web applications are scanned, tested, and monitored for common application security vulnerabilities.		
6. Software, applications, and databases are kept current with the latest security patches.		
7. This product has been and can be Shibbolized.		
8. This product integrates with Active Directory or LDAP		
9. Encryption, with the strength of at least 256 bit, is available for stored data if the customer so desires.		
<b>F. Access Control</b>	<b>Answer</b>	<b>Comments</b>
1. Access is immediately removed or modified when personnel terminate, transfer, or change job functions.		
2. Achieves individual accountability by assigning unique IDs and prohibits password sharing.		
3. Critical data or systems are accessible by at least two trusted and authorized individuals.		
4. Access permissions are reviewed at least monthly for all server files, databases, programs, etc.		
5. Users only have the authority to read or modify those programs or data, which they need to perform their assigned duties.		
<b>G. Monitoring</b>	<b>Answer</b>	<b>Comments</b>
1. Access logs for all servers, sensitive databases, and sensitive files are reviewed at least monthly for anomalies.		
2. System event logging is implemented on all servers and records at a minimum who, what, and when.		
3. After normal business hours system activity and access (physical or logical) is reviewed and analyzed at least monthly.		
4. System logs are reviewed for failed logins or failed access attempts at least monthly.		
5. Dormant accounts on systems are reviewed and removed at least monthly.		
6. Network and firewall logs are reviewed at least monthly.		
7. Wireless access is reviewed at least monthly.		
8. Scanning is done routinely for rogue access points.		
9. IDS/IPS systems are actively managed and alert notifications have been implemented.		
10. Vulnerability scanning is performed routinely.		
11. Password complexity checking is done routinely.		
<b>H. Physical Security</b>	<b>Answer</b>	<b>Comments</b>
1. Access to secure areas are controlled such as: key distribution management, paper/electronic logs, or a receptionist always present when the doors are opened.		
2. Access to server rooms are controlled and follow need-to-know and least privilege concepts.		
3. Computer rooms have special safeguards in place i.e., cipher locks, restricted access, room access log.		
4. Disposal of printed confidential or sensitive information is shredded or otherwise destroyed securely.		
5. Customer information is either prohibited or encrypted (PHI, student data, SSN, etc.) on laptop computers or other portable devices.		
6. Desktops which display sensitive information are positioned to protect from unauthorized viewing.		
7. All visitors are escorted in computer rooms or server areas.		
8. Appropriate environmental controls been implemented where possible to manage the equipment risks such as: alarms, fire safety, cooling, heating, smoke detector, battery backup, etc.		
9. There are no external signs indicating the content or value of the server room or any room containing sensitive information.		
10. There are secure processes for destroying sensitive data on hard drives, tapes or removable media when it is no longer needed.		
<b>I. Contingency</b>	<b>Answer</b>	<b>Comments</b>
1. There is a written contingency plan for mission critical computing operations.		

2. Emergency procedures and responsibilities are documented and stored securely at multiple sites.		
3. The contingency plan is reviewed and updated at least annually.		
4. You have identified what computing services must be provided within specified critical timeframes in case of a disaster.		
5. Cross-functional dependencies been identified so as to determine how the failure in one system may negatively impact another one.		
6. You have written backup procedures and processes.		
7. You periodically test the integrity of backup media.		
8. Backup media is stored in a secure manner and access is controlled.		
9. You maintain a documented and tested disaster recovery plan.		
10. You have off-site storage and documented retrieval procedures for backups.		
11. You have rapid access to backup data.		
12. Backup media is appropriately labeled to avoid errors or data exposures.		
<b>J. BUSINESS RELATIONSHIPS</b>	<b>Answer</b>	<b>Comments</b>
1. Confidential agreements have been signed before proprietary and/or sensitive information is disclosed.		
2. Business associate contracts or agreements are in place and contain appropriate risk coverage for customer requirements.		
3. Business associates are aware of customer security policies and what is required of them.		
4. Business associates agreements document agreed transfer of customer's data when the relationship terminates.		
5. Contractual agreements will or do include the UT Entity's required information security language.		
6. By contractual agreement, the provider's outsource service arrangements and changes are made know to the customer and require preapproval when it involves management changes of the customer's data (such as: cloud services, offshoring, etc.).		
7. Contractual agreements accommodate customer requirements/restrictions concerning the physical storage location customer data and/or physical routing of sensitive information.		
8. Contractual language requires release of customer information to government agencies or other authorities must be managed by the customer.		
9. Technologies or management of customer information facilitates customer open records and records retention requirements.		
10. Technologies or management of customer information can facilitate customer requests for investigations, and if necessary, forensic analysis to include a documented chain of custody.		
11. Contracts protect customer correspondence with the provider (such as: email, voice, SMS, IM, etc.) and release requires customer approval.		

DEFINITION	EXAMPLES	QUALIFIERS
<p><b>ePHI (electronic Protected Health Information) -</b> Individually identifiable health information in the electronic form which may be stored, processed or transmitted.</p>	<ul style="list-style-type: none"> <li>• Billing records</li> <li>• Hospital/medical records (in and out patient)</li> <li>• Lab, pathology and/or radiology results</li> <li>• Mental Health records</li> <li>• Physician/clinic records</li> <li>• PHI previously collected for research purposes</li> </ul>	<ul style="list-style-type: none"> <li>• Address</li> <li>• Account number</li> <li>• Any vehicle or device serial number</li> <li>• Certificate/license number</li> <li>• Date of birth</li> <li>• E-mail address</li> <li>• Fax number</li> <li>• Finger or voice prints</li> <li>• Health plan</li> <li>• Internet Protocol (IP) address number</li> <li>• Name</li> <li>• Name of employers</li> <li>• Name of relatives</li> <li>• Photographic images</li> <li>• Postal address</li> <li>• Social security number</li> <li>• Telephone number</li> <li>• Web universal resource locator (URL)</li> </ul>
<p><b>PII (Personally Identifiable Information) -</b> Information that can be traced back to a specific individual user, eg, name, postal address, e-mail address, telephone number, or Social Security number.</p>	<p>Full name (if not common) National identification number Telephone number Street address E-mail address IP address (in some cases)</p>	
<p><b>SSN (Social Security Number) -</b> A number issued by the US government to people for payroll deductions for old age, survivors, and disability insurance.</p>	<p>123-45-6789</p>	
<p><b>Payment Card Information -</b> refers to the credit cards, debit cards and charge cards issued by a financial institution and reflects a relationship between cardholder and financial institution.</p>	<p>Credit Card, Debit Card, etc.</p>	

**UTHSCSA Mission Critical Information -**

Indispensable applications such as databases or process control software that are deemed essential to the functionality of UTHSCSA's education, research, or patient care missions.

**Business Critical Information -** Indispensable applications such as databases or process control software that are deemed essential to the functionality of a specific department.

**Intellectual Property -** Property rights created through intellectual and/or discovery efforts of a creator that are generally protectable by law.

Patent, trademark, copyright, trade secret, trade dress, product, logo.

**Other Sensitive Information -** Information other than the previous categories with little financial impact; however, its unauthorized disclosure, alteration, loss, or destruction will at least cause perceivable damage to someone or something.

Internal departmental communications, contractual information, negotiations, legal concerns, investigations, etc.