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## UT System RFP - Valuation Services for UT Horizon Fund Portfolio \*\*UPDATED 07/11/16\*\*

**Open Date:** 07/14/16 03:00 PM

**Agency Requisition Number:** OTC07142016

**NOTE:** You will need to download all of the following files for complete specifications and other required document, including a HUB subcontracting plan(if required).

Help: Right Click to and choose "save file as" or "save target as" to your computer.

-**Package 1** size: 150080 (in bytes) Type: Specification Format: Acrobat PDF Files

-**Package 2** size: 98050 (in bytes) Type: Addendum Format: Acrobat PDF Files

\*\*Update 07/11/16 - add FINAL Q&A Addendum(Package 2)\*\* \*\*Update 07/06/16 - add Q&A doc (Package 2)\*\*

The University of Texas System (UT System) is seeking to acquire the services of an advisory firm to provide valuation support for the UT Horizon Fund (UTHF), the venture capital fund of the UT System.

**Agency:** UNIVERSITY OF TEXAS SYSTEM (720)

**Open Date:** 07/14/16 03:00 PM

**Agency Requisition Number:** OTC07142016

**Previous Price Paid:** N/A

**Solicitation type:** 14 Days or more for entire solicitation package

**NIGP Commodity Code(s):**

Class-Item: 918 - 32

Class-Item: 918 - 49

Class-Item: 946 - 49

**Contact Information:**

**Contact Name:** Technology Commercialization

**Email:** [grp-rfpvq@utsystem.edu](mailto:grp-rfpvq@utsystem.edu)

Upload Date: 2016-06-29 11:00:53.917 Updated date: 2016-07-11 12:04:08.777

# The University of Texas System Request for Proposal for Valuation Services for UT Horizon Fund RFP # OTC07142016

**Overview.** In this Request for Proposal (RFP), The University of Texas System (UT System) is seeking to acquire the services of an advisory firm to provide valuation support for the UT Horizon Fund (UTHF), the venture capital fund of the UT System. *The expected value of this contract, including fee and travel reimbursement, will not exceed \$100,000.* The term of the anticipated contract will be from September 1, 2016 through August 31, 2017.

**Scope of Work.** UT System is seeking an advisory firm to provide external valuation support to the management of the UTHF, a venture capital fund formed to accelerate the success of UT System-based companies. The principal objectives of these efforts will be to provide data-driven analysis that captures changes in the value of the UTHF investment portfolio and to forecast future capital commitments along with expected returns. The firm will work with the UTHF team to review material financial events occurring in a pre-determined period of time. At a minimum, the selected advisory firm will perform the following tasks as part of the engagement:

1. Review relevant portfolio company information to gain familiarity with UTHF's investments and relevant industry verticals.
2. Construct, update, and maintain company financial models and capitalization tables.
3. Review and quantify the impact of changes on business and financial condition.
4. Utilize industry knowledge and professional relationships along with a review of precedent transactions (e.g., M&A and licensing) to develop holistic business valuations.
5. Lead quarterly update calls with UTHF team participation and present defensible assessments of company value, future capital requirements, expected exit values/timing, and fund proceeds.
6. Assist the UTHF team with quarterly performance assessments of the portfolio by identifying and maintaining an appropriate benchmark. Please describe the benchmark and the process/rationale behind the creation and use of this benchmark as part of your submission.

The advisory firm must be prepared to discuss its proposed deliverables with UTHF's investment professionals at its office in Austin, Texas.

**Specifications.** Any interested advisory firm (**proposer**) submitting an offer in response to this RFP must provide the following:

1. proposer's legal name, including type of entity (individual, partnership, corporation, etc.), address and other contact information;
2. background information regarding the proposer, including the number of years in business and the number of employees;

3. information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services, including information to assist UT System in assessing the proposer's familiarity with evaluating early to mid-stage companies;
4. the proposer's approach to accomplishing the stated scope of work;
5. the fees to be charged for providing services;
6. the earliest date by which the proposer could begin providing the services;
7. a list of three client references, including any complex institutions or systems of higher education for which proposer has provided services;
8. any unique benefits the proposer would offer UT System, and any other information proposer desires UT System to consider in connection with proposer's offer;
9. information to assist UT System in assessing the proposer's experience performing the requested services for other complex institutions or systems of higher education;
10. information to assist UT System in assessing whether the proposer will be impartial in the performance of the requested services;
11. information to assist UT System in assessing whether the proposer will have any conflicts of interest in performing the requested services;
12. information to assist UT System in assessing the overall cost to UT System for the requested services;
13. information regarding any prompt payment discount offered by proposer (UT System's standard payment terms for services are Net 30 days); and
14. information to assist UT System in assessing proposer's capability to perform the requested services.

**Selection Process.** UT System may select the successful proposal on the basis of the proposals initially submitted, without discussion, clarification or modification. In the alternative, UT System may select the successful proposal on the basis of negotiation with the proposers. In conducting any negotiations, UT System will avoid disclosing the contents of competing offers.

UT System is not obligated to select the proposer offering the most attractive economic terms if that proposer is not the most advantageous to UT System overall, as determined by UT System.

UT System reserves the right to (a) enter into a contract 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 offers and re-solicit offers, or (c) reject any and all offers and temporarily or permanently abandon this selection process, if deemed to be in the best interests of UT System. UT System will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by UT System. UT System reserves the right to accept or reject any or all offers, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP when deemed to be in UT System's best interest. Any alterations or changes in requirements or specifications will be posted as an addendum to this RFP.

**Criteria for Selection.** The successful proposal(s), if any, will be the proposal(s) submitted in response to this RFP, by the Submittal Deadline that is the most advantageous to UT System. The criteria to be considered by UT System in evaluating offers will be the proposer's demonstrated competence, knowledge and qualifications and the reasonableness of the proposer's fee.

Proposals will be evaluated by UT System personnel. The selection of the successful proposal, if any, will be based on the information provided by proposer in its offer. UT System may give consideration to any additional information if UT System deems such information relevant. Any proposer submitting a successful proposal will be required to enter into a contract acceptable to UT System.

The criteria to be considered by University in evaluating proposals and selecting Contractor, will be those factors listed below:

**Threshold Criteria Not Scored**

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

**Scored Criteria**

- The cost of goods and services (30%);
- The reputation of the proposer and of the proposer's goods or services (20%);
- The quality of the proposer's goods or services (20%);
- The extent to which the goods or services meet the University's needs (20%);
- The proposer's past relationship with UT System (10%)

**Proposer's Acceptance of Offer Evaluation Methodology.** Submission of an offer by a proposer indicates: (1) proposer's acceptance of the Selection Process, the Criteria for Selection, and all other requirements and specifications set forth in this RFP; and (2) proposer's recognition that some subjective judgments must be made by UT System during this RFP process.

**Public Information.** Proposers are hereby notified that UT System strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information. UT System may seek to protect from disclosure all information submitted in response to this RFP until such time as a final contract is executed. Upon execution of a final contract, UT System 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* (Chapter 552.001, *Gov. 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 Sections 552.101, 552.110, 552.113, and 552.131, *Gov. Code*.

**Group Purchase Authority:** Texas law authorizes institutions of higher education (defined by Section 61.003, Education Code) to use the group purchasing procurement method (ref. Sections 51.9335, 73.115, and 74.008, Education Code). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Proposer under this RFP. In particular, Proposer should note that University is part of The University of Texas System, and 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.

**Type of Agreement:** Contractor, if any, will be required to enter into a contract with University in a form *substantially similar* to the Sample Agreement between University and Contractor (the "Agreement") attached to this RFP as **APPENDIX ONE** and incorporated for all purposes. If Proposer takes exception to any terms or conditions set forth in the Agreement, Proposer will submit a list of the exceptions as part of its proposal. 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.

**NOTE: Exceptions cannot be taken to the RFP document itself, nor can it be redlined. These actions may result in Proposer's disqualification.**

**How to respond; Submittal Deadline:** To respond to this RFP, proposers must submit **(a) one (1) complete paper copy of its entire proposal, and (b) one (1) complete electronic copy of its entire proposal in a single .pdf file on a flash drive\*** to:

Jerry Fuller  
Director of Contracts and Procurement  
The University of Texas System Administration  
210 West Sixth St.  
Suite B. 140E  
Austin, Texas 78701-2891

**--The RFP No. must be clearly written on the box containing the proposal.--**

**\*Note: Email Proposal submissions will NOT be accepted.**

All offers must be received at the above address **no later than 3:00 p.m. local time in Austin, Texas, on Thursday, July 14, 2016** (Submittal Deadline). Submissions received after the Submittal Deadline will not be considered.

**Questions:** Proposers will direct all questions or concerns regarding this RFP to the following University email address:

[GRP-RFPVQ@utsystem.edu](mailto:GRP-RFPVQ@utsystem.edu)

Subject line of email: RFP OTC07142016, attn: Portfolio Valuation

University specifically instructs interested parties to restrict all contact and questions regarding this RFP **to written communications** delivered in accordance with this Section **on or before close of business July 7, 2016**, University will provide responses within a reasonable time following the time for submission of questions. It is University's intent to respond to timely submitted questions. University reserves the right, however, to decline to respond to any question.

University will post a Question and Answer document, periodically updated as needed, as an addendum, and may post other relevant documents to this RFP. Interested parties should periodically check the posting site for updates, if any, at:

[http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=125542](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=125542)

## APPENDIX ONE

### AGREEMENT BETWEEN UNIVERSITY AND CONTRACTOR

This Agreement between University and Contractor ("Agreement") is made and entered into effective as of \_\_\_\_\_ (the "Effective Date"), by and between The University of Texas System, an agency and institution of higher education established under the laws of the State of Texas ("University"), and \_\_\_\_\_ ("Contractor"), Federal Tax Identification Number \_\_\_\_\_.

University and Contractor hereby agree as follows:

University and Contractor hereby agree as follows:

#### 1. TERM

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

#### 2. CONTRACTOR SERVICES

- 2.1 The scope of the work ("Work") to be performed under this Agreement, only at the University's request, is set forth in **Exhibit A** attached and incorporated for all purposes.
- 2.2 Intentionally left blank.
- 2.3 CONTRACTOR UNDERSTANDS AND AGREES THAT THE UNIVERSITY HAS MADE NO REPRESENTATION, ASSURANCE, WARRANTY OR GUARANTY THAT THE UNIVERSITY WILL REQUEST CONTRACTOR TO PERFORM ANY SERVICE AND THAT THE UNIVERSITY HAS AND DOES SPECIFICALLY DISCLAIM ANY SUCH REPRESENTATIONS, WARRANTIES, ASSURANCES OR GUARANTIES.
- 2.4 The University and Contractor agree and acknowledge that the University is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to performing the Work. Contractor accepts the relationship of trust and confidence established between it and the University by this Agreement. Contractor covenants with the University to use its best efforts, skill, judgment, and abilities to perform the Work and to further the interests of the University in accordance with the University's requirements and procedures, in accordance with the highest standards of Contractor's profession or business and in compliance with all applicable national, federal, state and municipal, laws, regulations, codes, ordinances and orders and with those of any other body or authority having jurisdiction. Contractor warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the work.
- 2.5 Contractor warrants, represents, covenants, and agrees to maintain a staff of properly trained, credentialed, and experienced personnel to ensure satisfactory performance under

this Agreement. Contractor shall not replace or substitute other staff for those Contractor has identified to the University without the University's prior written consent.

### **3. Contractor's Obligations.**

- 3.1** Contractor will perform the Work in compliance with (a) all Applicable Laws, and (b) the *Rules and Regulations* of the Board of Regents of The University of Texas System at <http://www.utsystem.edu/bor/rules/>, the policies of The University of Texas System at <http://www.utsystem.edu/bor/procedures/policy/>; and the institutional rules (collectively, "**University Rules**"). Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for the firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor's response to University's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.
- 3.2** Contractor represents, warrants and agrees that (a) it will use its best efforts to perform the Work in a good and workmanlike manner and in accordance with the highest standards of Contractor's profession or business, and (b) all of the Work to be performed will be of the quality that prevails among similar businesses of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances.
- 3.3** Contractor will call to University's attention in writing all information in any materials supplied to Contractor (by University or any other party) that Contractor regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.
- 3.4** Contractor warrants and agrees that the Work will be accurate and free from any material defects. Contractor's duties and obligations under this Agreement will at no time be in any way diminished by reason of any approval by University nor will Contractor be released from any liability by reason of any approval by University, it being agreed that University at all times is relying upon Contractor's skill and knowledge in performing the Work.
- 3.5** Contractor will, at its own cost, correct all material defects in the Work as soon as practical after Contractor becomes aware of the defects. If Contractor fails to correct material defects in the Work within a reasonable time, then University may correct the defective Work at Contractor's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Work that University may have at law or in equity.
- 3.6** Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will cause all persons connected with Contractor directly in charge of the Work to be duly registered and/or licensed under all applicable 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 Work.

- 3.7** 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.
- 3.8** Contractor represents and warrants that: (i) the Work will be performed solely by Contractor, its full-time or part-time employees during the course of their employment, or independent contractors who have assigned in writing all right, title and interest in their work to Contractor for the benefit of University; (ii) University 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. Notwithstanding the foregoing or any other provision in this Agreement, Contractor shall have all ownership (including intellectual and copyright) rights in and to all of the following and the University shall not acquire any ownership interest (including any intellectual or copyright rights) of any kind in or to any of the following: (i) all information residing in Contractor's databases, including, without limitation, all candidate and client information, all assessments, and all notes.
- 3.9** If this Agreement requires Contractor's presence on University's premises or in University's facilities, Contractor agrees to cause its employees, representatives, agents, or subcontractors to become aware of, fully informed about, and in full compliance with all applicable University Rules, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.

#### 4. The Contract Amount

- 4.1 So long as Contractor has provided University with its current and accurate Federal Tax Identification Number in writing University will pay Contractor for the performance of the Work as more particularly set forth in **Exhibit C**, Payment for Services, attached and incorporated for all purposes. Contractor understands and agrees that payments under this Agreement may be subject to the withholding requirements of Section 3402(t) of the Internal Revenue Code. This Agreement is not valid for amounts over \$1,000,000 without the approval of The University of Texas System Board of Regents.
- 4.2 The Contract Amount includes all applicable federal, state or local sales or use taxes payable as a result of the execution or performance of this Agreement.
- 4.3 University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the Work in accordance with Section 151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* (“**TAC**”) Section 3.322.

#### 5. Payment Terms.

- 5.1 At least ten (10) days before the end of each calendar month during the term of this Agreement, Contractor will submit to University an invoice covering the services performed for University to that date, in compliance with **Exhibit C**, Payment for Services. Each invoice will be accompanied by documentation that University may reasonably request to support the invoice amount. University 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 University approves the amount or any portion of the amount, University will promptly pay (each a “**Progress Payment**”) to Contractor the amount approved so long as Contractor is not in default under this Agreement. If University disapproves any invoice amount, University will give Contractor specific reasons for its disapproval in writing.
- 5.2 Within ten (10) days after final completion of the Work and acceptance of the Work by University 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 University, University will pay (“**Final Payment**”) to Contractor the amount due under the Final Invoice.
- 5.3 Notwithstanding any provision of this Agreement to the contrary, University 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.
- 5.4 The cumulative amount of all Progress Payments and the Final Payment (defined below) will not exceed the Contract Amount as more particularly set forth in **Exhibit C**, Payment for Services.
- 5.5 No payment made by University 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.

**5.6 Intentionally left blank**

- 5.7** The acceptance of Final Payment by Contractor will constitute a waiver of all claims by Contractor except those previously made in writing and identified by Contractor as unsettled at the time of the Final Invoice for payment.
- 5.8** University will have the right to verify the details set forth in Contractor's invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Contractor at mutually convenient times; (b) examining any reports with respect to the Project; and (c) other reasonable action.
- 5.9** Section 51.012, *Texas Education Code*, authorizes University to make any payment through electronic funds transfer methods. Contractor agrees to receive payments from University through electronic funds transfer methods, including the automated clearing house system (also known as ACH). Prior to the first payment under this Agreement, University will confirm Contractor's banking information. Any changes to Contractor's banking information must be communicated to University in writing at least thirty (30) days in advance of the effective date of the change in accordance with **Section 12.14**.
- 5.10** Notwithstanding any other provision of this Agreement, University is entitled to a "**Prompt Payment Discount**" of \_\_\_% off of each payment that University submits within \_\_\_ days after University's receipt of Contractor's invoice for that payment.

**6. Ownership and Use of Work Material.**

- 6.1** All drawings, specifications, plans, computations, sketches, data, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by Contractor or any subcontractors in connection with the Work (collectively, "**Work Material**"), whether or not accepted or rejected by University, are the sole property of University and for its exclusive use and re-use at any time without further compensation and without any restrictions.
- 6.2** 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.
- 6.3** 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 Work or otherwise. University may, at all times, retain the originals of the Work Material. The Work Material will not be used by any person other than University on other projects unless expressly authorized by University in writing.
- 6.4** 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.

**6.5** 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 Work 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.

## **7. Default and Termination.**

- 7.1** 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.
- 7.2** University may, without cause, terminate this Agreement at any time upon giving seven (7) days’ advance written notice to Contractor. Upon termination pursuant to this Section, Contractor will be entitled to payment of an amount that will compensate Contractor for the Work satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement; 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.
- 7.3** Termination under **Sections 7.1** or **7.2** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.
- 7.4** 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.
- 7.5** In the event that this Agreement is terminated, then within thirty (30) days after termination, Contractor will reimburse University for all fees paid by University to Contractor that were (a) not earned by Contractor prior to termination, or (b) for goods or services that University did not receive from Contractor prior to termination.

## 8. Indemnification

- 8.1** 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 REQUESTING INSTITUTION, THE UNIVERSITY AND THE UNIVERSITY OF TEXAS SYSTEM BOARD OF REGENTS, AND THEIR RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY “**INDEMNITEES**”) FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS’ FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY “**CLAIMS**”) BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM CONTRACTOR’S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR, ANYONE DIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.
- 8.2** 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.

## 9. 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 venture, 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.

**10. Insurance.**

**10.1** 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:

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

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

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

10.1.2 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.

10.1.3 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.

10.1.6 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.

10.1.7 Directors' and Officers' Liability Insurance with limits of not less than \$1,000,000 per claim. Directors and Officers Liability Insurance coverage written on a claims-made basis requires Contractor to purchase an Extended Reporting Period Endorsement, effective for twenty-four (24) months after the expiration or cancellation of this policy.

10.2 Contractor will deliver to University:

10.2.1 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.

10.2.1.1 **All insurance policies** (with the exception of workers' compensation, employer's liability and professional liability) will be endorsed and name the Board of Regents of The University of Texas System, The University of Texas System and 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.

10.2.1.2 Contractor hereby waives all rights of subrogation against the Indemnities. **All insurance policies** will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System, The University of Texas System and each 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 11**.

10.2.1.3 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.

10.2.1.4 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: UNIVERSITY OF TEXAS SYSTEM  
CLAUDIA TAYLOR JOHNSON  
210 W 6TH STREET SUITE B140E  
AUSTIN. TX 78701

Facsimile Number: 512-499-4524

Email Address: eagnew@utsystem.edu

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

## 11. Miscellaneous.

- 11.1 Texas Family Code Child Support Certification.** Pursuant to Section 231.006, *Texas 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.
- 11.2 Tax Certification.** If Contractor is a taxable entity as defined by Chapter 171, Texas Tax Code ("Chapter 171"), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 11.3 Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until the debt or delinquency is paid in full.
- 11.4 Loss of Funding.** University performance of its duties and obligations 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 will 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.

- 11.5 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.
- 11.6 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**").
- 11.7 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.
- 11.8 Governing Law.** Travis County, Texas, will 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 to this Agreement and all of the terms and conditions of this Agreement will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.
- 11.9 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.
- 11.10 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 federal, state and local, laws, regulations, and ordinances, including the Gramm-Leach-Bliley Act (Public Law No: 106-102) and the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("**FERPA**"). Additional mandatory confidentiality and security compliance requirements with respect to University Records subject to the Health Insurance Portability and Accountability Act and Code of Federal Regulations Title 45, Part 160 and subparts A and E of Part 164 (collectively "**HIPAA**") are addressed in **Section 12.26.**] Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and

Technology and the Center for Internet Security. If University Records are subject to FERPA, (1) University designates Contractor as a University official with a legitimate educational interest in University Records, and (2) Contractor acknowledges that its improper disclosure or redisclosure of personally identifiable information from University Records will result in Contractor's exclusion from eligibility to contract with University for at least five (5) years. 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 law, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to reasonable administrative, physical and technical standards (such as standards established by (i) the National Institute of Standards and Technology and (ii) the Center for Internet Security, as well as the Payment Card Industry Data Security 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 federal, state and local, laws, regulations, and ordinances, including FERPA and the Gramm-Leach Bliley Act, and the terms of this Agreement; and (4) comply with the University's rules, policies, and procedures regarding access to and use of University's computer systems, including UTS 165 at <http://www.utsystem.edu/bor/procedures/policy/policies/uts165.html>. 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. In the event that Contractor is required to disclose any University Records that is subject to this Section 11.11, Contractor will notify University prior to such disclosure in order that University may take such action as may be available to prohibit disclosure of the University Record.

**11.11.1 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.

**11.11.2 Return of University Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of University 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.

**11.11.3 Disclosure.** If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this Section.

**11.11.4 Press Releases.** Except when defined as part of the Work, Contractor will not make any press releases, public statements, or advertisement referring to 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.

**11.11.5 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.**

**11.11.6 Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University 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.

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

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

**11.13 Records.** Records of Contractor's costs, reimbursable expenses pertaining to the Project 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 Project, unless University otherwise instructs Contractor in writing.

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

If to University: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

*with copy to:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

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

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, *Texas Government Code*, then Contractor will send that notice to University as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Attention: \_\_\_\_\_

*with copy to:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Attention: \_\_\_\_\_

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

**11.15 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.

**11.16 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), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with subcontractors.

**11.17 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.

**11.18 Survival of Provisions.** No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination.

**11.19 Breach of Contract Claims.**

**11.19.1** To the extent that Chapter 2260, *Texas Government Code*, as it may be amended from time to time ("**Chapter 2260**"), is applicable to this Agreement and 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:

**11.19.1.1** 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 another officer of University as may be designated from time to time by University by written notice to Contractor in accordance with the notice provisions in this Agreement, will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims.

**11.19.1.2** If the parties are unable to resolve their disputes under **Section 11.19.1.1**, the contested case process provided in subchapter C of Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement by University.

**11.19.1.3** Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, *Texas Civil Practices and Remedies Code*. The parties hereto specifically agree that (i) neither the execution of this Agreement 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.

**11.19.2** The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted or subsequently amended.

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

**11.20 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 8**. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

**11.21 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.

**11.22 Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy available at: <http://www.utsystem.edu/policy/policies/int160.html>, University's Standards of Conduct Guide available at : <http://www.utsystem.edu/systemcompliance/SOCcombined.pdf>, and applicable state ethics laws and rules available at [www.utsystem.edu/ogc/ethics](http://www.utsystem.edu/ogc/ethics). Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University 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.

**11.23 Responsibility for Individuals Performing Work; Criminal Background Checks.** Each individual who is assigned to perform the Work 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 Work under this Agreement. Prior to commencing the Work, Contractor will (1) provide University with a list ("**List**") of all individuals who may be assigned to perform the Work 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 Work is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on campus or healthcare center, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform the Work on University's premises.

Prior to commencing performance of the Work 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.

**11.24 [Option: (If University is a HIPAA covered entity, use in all contracts under which Contractor will access University Records subject to HIPAA.): 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**”) set forth in **EXHIBIT E**, HIPAA Business Associate Agreement, attached and incorporated for all purposes. To the extent that the BAA conflicts with any term contained in this Agreement, the terms of the BAA will control.

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

**UNIVERSITY:**

**THE UNIVERSITY OF TEXAS SYSTEM**

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

Name: Dr. Scott Kelley

Title: Executive Vice Chancellor for  
Business Affairs

**CONTRACTOR:**

\_\_\_\_\_

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

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

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

Attest: \_\_\_\_\_

Corporate Secretary

**Attach:**

**EXHIBIT A – Scope of Work**

**EXHIBIT B – Schedule**

**EXHIBIT C – Payment for Services**

**EXHIBIT A**

**SCOPE OF WORK**

Contractor, upon the request of the Institution, will provide the following services:

**[to be completed upon award of contract]**

**EXHIBIT B**

**SCHEDULE**

**[to be completed upon award of contract]**

**EXHIBIT C**

**PAYMENT FOR SERVICES**

**SERVICE FEES:** Contractor shall be paid for services delivered in accordance with Exhibit A

**CONTRACT CAP:** The cumulative amount of Service Fees and Expenses remitted by University to Contractor will not exceed \$\_\_\_\_\_ (“**Fee Cap**”) without the prior written approval of University. In addition, total fees for each Phase of the Work will not exceed the following specified amounts without the prior written approval of University:

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

If University submits, in advance, a written request for additional services not contemplated or reasonably inferred by this Agreement, Contractor will be paid for actual hours incurred by Contractor’s personnel directly and solely in support of the additional services at the Rates set forth above.

**EXPENSES AND DISBURSEMENTS:** Contractor will be reimbursed without mark-up for reasonable expenses (including meals, lodging, mileage and coach class airfare) validly incurred directly and solely in support of the Project and approved by University in advance Provided, however, Contractor agrees and acknowledges that Contractor will be subject to the then-current Travel Reimbursement Rates promulgated by the Comptroller of Public Accounts for the State of Texas at <https://fm.xcpa.state.tx.us/fm/travel/travelrates.php> with regard to meals, lodging, mileage, airfare and all other expenses related to travel. Further, Contractor agrees and acknowledges that Contractor will not be reimbursed by University for expenses that are prohibited or that exceed the allowable amounts set forth in the then-current Travel Reimbursement Rates. As a condition precedent to receiving reimbursement for expenses and disbursements, Contractor will submit to University receipts, invoices, and other documentation as required by University. Notwithstanding the foregoing, reimbursement for expenses and disbursements will not exceed a maximum of \$10,000 per project (“Project Expense Cap”) without the prior written approval of University.

## Questions and Answers – RFP #OTC07142016

1. Based on our research, UT Horizon Fund (“UTHF”) holds interest in 17 companies. Please confirm if all 17 portfolio companies in the fund have to be valued as part of this engagement? Also, please confirm they all have to be valued on a quarterly basis.

**All 17 portfolio companies in the fund will be valued as part of this engagement on a quarterly basis.**

2. From our initial research it appears UTHF has invested approximately \$14mil in 15-17 active portfolio companies. Is this information accurate?

**UTHF has total invested capital of approximately \$14.9 million and currently has 15 active portfolio companies.**

3. What types of ownership (debt, preferred equity, common equity, hybrid, etc.) does UTHF hold in its portfolio companies?

**UTHF holds investments in common equity, preferred equity, convertible debt, and warrants.**

4. What is the approximate age (0-12 months, 1-2 years, +2 years) of the investments?

**Using dollar weighted years as a metric, the approximate age of the investments is in the range of 1-2 years.**

5. Will the selected advisory firm have access to the portfolio companies’ management teams to ask questions and obtain financial data?

**For this engagement, the selected advisory firm will not have direct access to the portfolio companies’ management teams unless permission is granted from UTHF management.**

6. As part of the RFP scope of work task #2, what specific financial models will need to be constructed?

**It is expected that the selected advisory firm will construct models that (1) compute each portfolio company’s fair value and (2) project UTHF cash flows from (a) anticipated cash outlays from investment in future company fundraisings and (b) anticipated cash proceeds from portfolio company exit events. An additional model may also be required for benchmarking purposes.**

7. Will financial forecasts be provided to the advisory firm, or will UTHF require assistance in building forecast revenue and expense models for each portfolio company?

**UTHF will provide financial materials to the selected advisory firm to assist the selected firm to carry out the scope of work for this engagement.**

8. Will the advisory firm’s work product be subject to third party review (outside auditors, IRS, etc.). If so, who are the third parties?

**UT System will not provide a response to this question at this time.**

9. How many meetings do you anticipate will occur live/in-person in Austin?

**UTHF management expects one initial live/in-person meeting to occur in Austin.**

## Questions and Answers – RFP #OTC07142016

10. Does UTHF prepare periodic valuations of the portfolio companies and the respective securities owned by UTHF and will the advisor get access to these valuations?

**The selected advisory firm will prepare this work as part of the contract.**

11. We note that the advisor is required to maintain financial models and capitalization tables of the portfolio companies. Can you please confirm if the advisor will receive UTHF's initial financial models or will the advisor be required to build the financial models?

**Please see the response to question 7.**

12. Can you provide any information on the capital structure of the portfolio companies? E.g. besides common equity, do the capital structures have preferred (including how many series of preferred securities), convertibles, debt and warrants). Also, can you provide information on the securities owned by UTHF in each company - preferred, common, convertibles, options, etc.?

**Please see the response to question 3.**

13. Does UTHF have projections for the portfolio companies which will enable utilizing the income approach to establish valuations? If not, will the valuation based solely on the market approach including public company, precedent transactions and recent rounds of funding be acceptable to UTHF?

**Currently, the income approach is not utilized to establish valuations; however, this policy is subject to change. The market approach is employed for the majority of UTHF's investment portfolio.**

14. If the total fee plus expenses exceeds \$100,000 will this result in an automatic disqualification of the proposal?

**UTHF expects the total value of the contract to not exceed \$100,000. If the total fee plus expenses exceeds \$100,000, the proposal will not be automatically disqualified. Please note that the cost of goods and services comprises 30% of the proposal's overall score as listed under the Scored Criteria section in the RFP.**

15. How often will the advisor be required to present its findings in person to UTHF's investment professionals at its office in Austin, Texas?

**Please see the response to question 9.**

16. While the term of the RFP is anticipated to be from September 1, 2016 through August 31, 2017, what is the process for selecting the advisor for on-going valuation support beyond the initial contract period?

**UT System will not provide a response to this question at this time.**

17. As part of the scope of the required services, the RFP references the awardee's requirement to "review and quantify the impact of changes on business and financial condition" as well as "lead quarterly update calls with UTFH team participation and present defensible assessments of company

## Questions and Answers – RFP #OTC07142016

value, future capital requirements, expected exit values/timing, and fund proceeds”. Other than the work to be prepared on a quarterly basis, will there be requests for additional work at dates other than quarter ends on an as-needed basis? Please provide guidance on the frequency of work to be performed on this engagement.

**This engagement is only for quarter-end services.**

18. Also with respect to the previous question, please clarify whether dynamic schedules commonly known as “waterfall schedules” will be made available to us as part of the determination of such proceeds.

**Please see the response to question 7.**

19. Please describe the awardee’s requirement to “construct, update, and maintain...capitalization tables”, as in our experience we are typically provided accurate capitalization tables by the fund and/or portfolio company that we are serving.

**Cap tables should be incorporated into financial models and kept current. The advisory firm will have access to the transaction documents and cap tables related to any new investments.**

20. Should we expect contact person(s) to be designated at the respective portfolio company levels for purposes of addressing questions/requests that cannot be fulfilled by the UTHF team with the understanding that all communications will presumably flow through the UTHF team?

**Please see the response to question 5.**

21. It is our assumption that information for the portfolio companies may be available at various levels of detail, some probably more robust than the others. In situations wherein information is either unavailable or minimally available, will one of the following be found to be applicable?
- a. Such holding is removed from the scope of work
  - b. The valuation prepared/opinion provided is qualified with the appropriate limitations

**Please see the response to question 1.**

22. It is our understanding that a HUB Subcontracting Plan will not be required as part of the required response to this RFP. Please confirm.

**Your understanding is correct.**

23. Does UTHF intend to use the requested valuation support and associated work products for fund performance assessments and Board/ Management decision support only – or does it also intend to use the valuations for UTHF or UT System’s financial reporting needs (e.g. ASC 820 )?

**Please see the response to question 8.**

24. There are several options for the ‘depth’ and ‘precision’ of valuations to be performed as part of the requested tasks. Below are some options. What is UTHF’s desired option?

## Questions and Answers – RFP #OTC07142016

- a. Calculations of value vs. an opinion of value? Calculations correspond to limited scope analyses using assumptions agreed upon with management. An opinion of value is an independent full scope valuation, typically commissioned for financial reporting purposes or for regulatory compliance needs.
- b. Range of value vs. point estimate of value?
- c. Value of each portfolio company as a whole, or value of UTHF's ownership stake in each portfolio company (additional valuation analyses apply).

**UT System will not provide a response to this question at this time.**

25. Does UTHF anticipate needing to share any of the work products produced by the consultant with any 3<sup>rd</sup> parties?

**Please see the response to question 8.**

26. The RFP indicates that the period covered by the contract would be Sept 1, 2016 through August 31, 2017, and lists assistance with "quarterly performance assessments of the portfolio" as one of the tasks for the engagement. Would you please clarify, what is the frequency of portfolio company valuations and financial model updates that UTHF is seeking - quarterly, semi-annual, other?

**Please see the response to question 1.**

27. Does UTHF make direct investments in portfolio companies (vs. investing through other funds)? What is the typical ownership stake / ownership percentage taken?

**Please see the response to question 3.**

28. Would it be fair to characterize the current stage of development of UTHF portfolio companies as Startup / Stage 1 / Early Stage?

**UT System will not provide a response to this question at this time.**

29. On average / typically, how many investments does UTHF make per quarter and per year?

**UT System will not provide a response to this question at this time.**

30. Section 11.24 (HIPAA Compliance) of APPENDIX ONE referenced in the subject line states that should the University be considered a HIPAA covered entity, "the Contractor will execute the HIPAA Business Associate Agreement ("BAA") set forth in Exhibit E". While confirmation is provided, in the same section, with regard to the University being a HIPAA Covered Entity, the RFP document does not include an Exhibit E. Can you please clarify if Exhibit E needs to be completed as part of the RFP response and, if yes, where is it available?

**Please disregard this optional clause in APPENDIX ONE. This clause does not apply to the work being solicited through this RFP.**

## Questions and Answers – RFP #OTC07142016

31. What is UTHF's investment thesis/strategy going forward? Investment size ranges? Stage of development of companies? Life Sciences, Healthcare and Tech investments only? Will UTHF lead/price rounds? Will UTHF do follow-on investments? Expectations on targeted new investments per year? Will UTHF invest in companies outside the UT system/Texas?

**UT System will not provide a response to this question at this time.**

32. What is UTHF's expected remaining investment period for the approximately \$35M? Is this expected to be invested over the next 2 years (faster/slower)?

**UT System will not provide a response to this question at this time.**

33. Does UTHF expect to increase its fund size above \$50M in the near term by raising more capital?

**UT System will not provide a response to this question at this time.**

34. What is UTHF's expectation around hold period for investments/life of fund? For example, does UTHF expect to hold investments for approximately 5-7 years from initial investment or can the fund hold investments much longer?

**UT System will not provide a response to this question at this time.**

35. If UTHF expects to do follow-on investments, does it expect to maintain a pro rata share or contribute smaller amounts going forward?

**UT System will not provide a response to this question at this time.**

36. Are the valuations part of formal opinions, and if so, for what purposes will they be used (we are assuming yes and for internal reporting and mark-to-market of investments)?

**UT System will not provide a response to this question at this time.**

37. Does UTHF have a preference in the form and format of the valuations being delivered? PDF package of report narrative plus analysis? PowerPoint presentation with summary narrative and charts? Full Excel model with support for assumptions but no separate report/presentation?

**Final form and format for deliverables will be determined at the onset of the engagement; current expectations are that they will be strictly Excel-based.**

38. Please elaborate on the quarterly performance assessments and benchmark concept. Is the thinking behind this for the portfolio as a whole or for each individual investment once an initial/starting valuation is performed? How does this play into your thinking given life cycles and technical risks for life sciences companies (especially clinical stage companies) vs. tech companies? Is the expectation that these benchmarks be internal measures (like reconciling original forecasts/expectations to actual performance) or external (like comparing fund performance to an index like the S&P500 or broader VC and PE indices established by firms like Cambridge Associates)?

**The benchmark is for fund-level performance evaluation. UTHF management anticipates the advisory firm will propose a valid benchmark.**