

# **REQUEST FOR PROPOSAL**

**for**

**Selection of Vendors**

**to provide Property and Casualty Insurance**

**Brokerage and Risk Management Services**

**for The University of Texas System**

**RFP No. ORM04262012**

**Proposal Submittal Deadline: 3:00 PM, Wednesday, May 16, 2012**

Issued: April 26, 2012

REQUEST FOR PROPOSAL

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**SECTION 1**

**INTRODUCTION**

**1.1 Description of University**

With nine academic universities and six health institutions, The University of Texas System (“University”) is one of the nation’s largest systems of public higher education. University employs over 87,000 people, and total student enrollment exceeds 211,000. The mission of University is to provide high-quality educational opportunities for the enhancement of the human resources of Texas, the nation, and the world through intellectual and personal growth.

The Board of Regents consists of nine regents who are appointed by the Governor of the State of Texas and confirmed by the Texas State Senate to staggered six-year terms. The University Administration offices are located in Austin, Texas.

The University Administration Office of Risk Management is responsible for the development of risk management programs for University, which includes the purchase of insurance and other risk management services.

**1.2 Background and Special Circumstances**

University procures insurance when risk transfer appears to be the most effective means of managing a particular risk. The types of insurance policies that University currently purchases or which University anticipates that it may purchase in the future include, but are not limited to, the following:

Accident Insurance
Aircraft Liability
Aircraft - Non-Owned Aircraft Liability
Auto - Hired & Non-Owned
Auto Liability
Auto Physical Damage
Boiler & Machinery
Bonds & Surety
Builders' Risk
Commercial Crime
Commercial Garage
Defense Base Act Insurance
Excess Directors & Officers / Employment Practices Liability
Excess Workers Compensation (CLASH Coverage)
Fine Arts
Flood
General Liability
Industrial Bailee Floater
Inland Marine (Equipment)
International Package Policy (WC, GL, Auto)

Marine Insurance
Media Directors & Officers
Media Errors & Omissions
Medical Professional Liability
Mexico Auto
Mobile Diagnostic Equipment (Inland Marine)
Monopolistic State Workers Compensation
Multi-State Workers' Compensation and Employers Liability (Outside of Texas)
National Flood Insurance Program
Ocean Cargo
Package Insurance (GL and Property)
Protection & Indemnity / Hull
Professional Liability
Property
Special Event General Liability
Tenant User Liability Insurance Program (TULIP)
Texas Windstorm Insurance Association
Umbrella / Excess
University Student Medical Professional Blanket Policy
Volunteer Accident
Volunteer Liability

### 1.3 Objective of this Request for Proposal

University is soliciting submittals in response to this Request for Proposal for Selection of Vendors to Provide Property and Casualty Insurance Brokerage and Risk Management Services, RFP No.ORM04262012 (this "RFP"). University is seeking to enter into non-exclusive agreements with one or more qualified and experienced insurance agents, brokers and/or risk management service providers ("Proposer") for the performance of high quality insurance and risk management services (the "Work"), as more specifically described in Exhibit A, Scope of Work, of the Agreement set forth in **APPENDIX TWO** (the "Agreement") of this RFP. The successful proposer(s) are collectively referred to in this RFP as the "Contractors."

### 1.4 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.

Selection of a Proposer as one of the Contractors will pre-qualify such a Proposer to, upon request by University, solicit insurance policies to be considered by University. At its sole discretion, University intends to consider insurance policies solicited by one or more of the Contractors; however, University reserves the right, for any reason or no

reason, and in University's sole discretion, to (a) request agents, brokers and risk management service providers that are not among the Contractors to solicit insurance policies to be considered by University, and (b) procure insurance policies through such agents, brokers and risk management services providers. Selection of a Contractor and that Contractor's execution of the Agreement with the University does not guarantee that the Contractor will be requested to solicit insurance policies for consideration by University or that University will procure insurance policies from or through that Contractor.

**THE UNIVERSITY WILL ACQUIRE INSURANCE POLICIES AND COVERAGES, WHETHER FROM THE CONTRACTORS OR FROM ANY OTHER PARTY, BY THE METHOD THAT THE UNIVERSITY DETERMINES WILL PROVIDE THE BEST VALUE TO THE UNIVERSITY, PURSUANT TO SECTION 51.9335, *TEXAS EDUCATION CODE*. EACH PROPOSER ACKNOWLEDGES THAT THE UNIVERSITY DOES NOT REPRESENT OR WARRANT THAT IT WILL USE ANY SPECIFIC METHOD (INCLUDING A COMPETITIVE PROCESS) TO ACQUIRE INSURANCE POLICIES OR COVERAGES.**

## SECTION 2

### NOTICE TO PROPOSER

#### 2.1 Submittal Deadline

University will accept proposals submitted in response to this RFP until 3:00 p.m., Central Prevailing Time on Wednesday, May 16, 2012 (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"):

Eric Agnew  
Risk & Insurance Analyst  
The University of Texas System  
220 West 7<sup>th</sup> Street  
Austin, TX 78701  
Email: eagnew@utsystem.edu

University specifically instructs all interested parties to restrict all contact and questions regarding this RFP to written communications forwarded to University Contact. University Contact must receive all questions or concerns no later than 3:00 p.m., May 10, 2012. 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 in accordance with the requirements and specifications set forth in this RFP will be the Proposer that submits a proposal in response to this RFP on or before the Submittal Deadline that is the most advantageous to University.

Proposer is encouraged to submit terms and conditions offering the maximum benefit to University in terms of (1) services to University, (2) total overall cost to University, and (3) project management expertise. Proposer should describe all educational, state and local government discounts, as well as any other applicable discounts that may be available to University in a contract for the Services, as better defined in section 5.2.1 of this Request for Proposal.

An evaluation team from University will evaluate proposals. The evaluation of proposals and the selection of Contractor(s) will be based on the information provided by Proposer in its proposal. University may give consideration to additional information if University deems such information relevant.

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

##### 2.3.1 Threshold Criteria Not Scored

- 2.3.1.1 Ability of University to comply with laws regarding Historically Underutilized Businesses; and

2.3.1.2 Ability of University to comply with laws regarding purchases from persons with disabilities.

2.3.2 Scored Criteria

- 2.3.2.1 the cost of goods and services;
- 2.3.2.2 the reputation of the Proposer and of the Proposer's goods or services;
- 2.3.2.3 the quality of the Proposer's goods or services;
- 2.3.2.4 the extent to which the goods or services meet the University's needs;
- 2.3.2.5 the Proposer's past relationship with the University;
- 2.3.2.6 the total long-term cost to the University of acquiring the Proposer's goods or services; and
- 2.3.2.7 The Proposer's exceptions to the terms and conditions set forth in **Section 4** of this RFP.

**2.4 Key Events Schedule**

Issuance of RFP	April 26, 2012
Pre-Proposal Conference (ref. <b>Section 2.6</b> of this RFP)	10:30 a.m. Central Prevailing Time on Monday, May 7, 2012
Deadline for Questions/Concerns (ref. <b>Section 2.2</b> of this RFP)	3:00 p.m. Central Prevailing Time on Thursday, May 10, 2012
Submittal Deadline (ref. <b>Section 2.1</b> of this RFP)	3:00 p.m. Central Prevailing Time on Wednesday, May 16, 2012
Oral Interviews (if requested)	Tuesday, June 12, 2012

**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 the Proposer is subject to review by University to ensure compliance with the HUB program. The HUB participation goal for this RFP is 24.6%.

- 2.5.2 University has reviewed this RFP in accordance with Title 34, *Texas Administrative Code*, Section 20.13 (a), and has determined that subcontracting opportunities are probable under this RFP.
- 2.5.3 A HUB Subcontracting Plan (“HSP”) is 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 Section 2161.252, Government Code.*

Contractor will not be permitted to change its HSP unless: (1) Contractor completes a newly modified version of the HSP in accordance with the terms of **APPENDIX THREE** that sets forth all changes requested by Contractor, (2) Contractor provides University with such a modified version of the HSP, (3) University approves the modified HSP in writing, and (4) all agreements or contractual arrangements resulting from this RFP are amended in writing by University and Contractor to conform to the modified HSP.

- 2.5.4 Proposer must submit three (3) originals of the HSP to University at the same time it submits its proposal to University (ref. **Section 3.2** of this RFP.) The three (3) originals of the HSP must be submitted under separate cover and in a separate envelope (the “HSP Envelope”). Proposer must ensure that the top outside surface of its HSP Envelope clearly shows and makes visible:
- 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 a separate HSP Envelope meeting the above requirements will be rejected by University and returned to the Proposer unopened as that proposal will be considered non-responsive due to material failure to comply with advertised specifications. Furthermore, University will open a Proposer’s HSP Envelope prior to opening the proposal submitted by the Proposer, in order to ensure that the Proposer has submitted the number of completed and signed originals of the Proposer’s HUB Subcontracting Plan (“HSP”) that are required by this RFP. A Proposer’s failure to submit the number of completed and signed originals of the HSP that are required by this RFP will result in University’s rejection of the proposal submitted by that Proposer 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 three 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.

Please contact Stephanie Park with any HUB related questions:

Stephanie Park  
Office of HUB Development  
702 Colorado Street  
Suite 6.6  
Austin, TX 78701  
Email: spark@utsystem.edu

## **2.6 Pre-Proposal Conference**

University will hold a pre-proposal conference at 10:30 a.m., Central Prevailing Time on Monday, May 7, 2012, in Room 208 of Ashbel Smith Hall Building (ref. APPENDIX FOUR System Administration Map). The pre-proposal conference will allow all Proposers an opportunity to ask University's representatives relevant questions and clarify provisions of this RFP.

## SECTION 3

**SUBMISSION OF PROPOSAL****3.1 Number of Copies**

Proposer must submit a total of seven (7) complete and identical copies of its *entire* proposal. An *original* signature by an authorized officer of Proposer must appear on the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) of at least one (1) copy of the submitted proposal. The copy of the Proposer's proposal bearing an original signature should contain the mark "original" on the front cover of the proposal.

**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:

Jennifer Murphy  
 Director of Accounting and Purchasing Services  
 The University of Texas System  
 702 Colorado Street  
 Suite 3.210  
 Austin, TX 78701

**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. Notice to Proposer (ref. **Section 2** of this RFP);
- 3.4.1.2. Agreement (ref. **APPENDIX TWO**);
- 3.4.1.3. Proposal Requirements (ref. **APPENDIX ONE**);
- 3.4.1.4. Specifications and Additional Questions (ref. **Section 5** 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 Responses to Proposer's General Questionnaire (ref. **Section 3** of **APPENDIX ONE**);
- 3.5.3 Signed and completed Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**);
- 3.5.4 Responses to questions and requests for information in the Specifications and Additional Questions Section (ref. **Section 5** of this RFP);
- 3.5.5 Signed and completed originals of the HUB Subcontracting Plan or other applicable documents (ref. **Section 2.5** of this RFP and **APPENDIX THREE**).

**SECTION 4****GENERAL TERMS AND CONDITIONS**

The terms and conditions contained in the attached Agreement (ref. **APPENDIX TWO**) or, in the sole discretion of University, terms and conditions substantially similar to those contained in the Agreement, will constitute and govern any agreement that results from this RFP. If Proposer takes exception to any terms or conditions set forth in the Agreement, Proposer will submit a list of the exceptions as part of its proposal in accordance with **Section 5.1.1** 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 Additional Questions Specific to this RFP

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

5.1.1 If Proposer takes exception to any terms or conditions set forth in the Agreement (ref. **APPENDIX TWO**), Proposer must submit a list of the exceptions.

#### 5.2 Scope of Work

Contractor will provide the following services to University:

5.2.1 The "Services" are specifically described in the Scope of Work (Exhibit A of the Agreement (ref. **APPENDIX TWO**) of this RFP.

**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 or email 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 number and FAX number to University, so that if University issues Addenda to this RFP or provides written answers to questions, that information can be provided to such 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 (Government Code, Chapter 552.001, et seq.)*. 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, *Government Code*.

#### 1.4 Type of Agreement

Contractor(s), 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(s) by using the competitive sealed proposal process described in this Section. University will open the HUB Subcontracting Plan (“HSP”) Envelope submitted by a Proposer prior to opening the Proposer’s proposal in order to ensure that the Proposer has submitted the number of completed and signed originals of the Proposer’s HSP that are required by this RFP (ref. **Section 2.5.4** of the RFP.) All proposals submitted by the Submittal Deadline accompanied by the number of completed and signed originals of the HSP that are required by this RFP will be opened publicly to identify the name of each Proposer submitting a proposal. Any proposals that are not submitted by the Submittal Date or that are not accompanied by the number of completed and signed originals of the HSP that are required by this RFP will be rejected by University as non-responsive due to material failure to comply with advertised specifications. After the opening of the proposals and upon completion of the initial review and evaluation of the 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 such negotiations, University will use commercially reasonable efforts to avoid disclosing the contents of competing proposals.

At University’s sole option and discretion, University may discuss and negotiate all elements of the proposals submitted by selected 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 will 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 interests of University.

After submission of a proposal but before final selection of Contractor is made, University may permit a 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 Evaluation Methodology**

By submitting a proposal, Proposer acknowledges (1) Proposer's acceptance of [a] the Proposal Evaluation Process (ref. **Section 1.5** of **APPENDIX ONE**), [b] the Criteria for Selection (ref. **2.3** of this RFP), [c] the Specifications and Additional Questions (ref. **Section 5** of this RFP), [d] the terms and conditions of the Agreement (ref. **APPENDIX TWO**), and [e] all other requirements and specifications set forth in this RFP; and (2) Proposer's recognition 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, unless otherwise expressly agreed in writing. 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 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.

#### 1.9.4 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.

#### 1.9.5 Submission

Proposer should submit all proposal materials enclosed in a sealed envelope, box, or container. The RFP No. (ref. **Section 1.3** of this RFP) and the Submittal Deadline (ref. **Section 2.1** of this RFP) should be clearly shown in the lower left-hand corner on the top surface of the container. In addition, the name and the return address of the Proposer should be clearly visible.

Proposer must also submit the number of originals of the HUB Subcontracting Plan ("HSP") as required by this RFP (ref. **Section 2.5** of the RFP.)

Upon Proposer's request and at Proposer's expense, University will return to a Proposer its proposal received after the Submittal Deadline if the proposal is properly identified. University will not under any circumstances consider a proposal that is received after the Submittal Deadline or which is not accompanied by the number of completed and signed originals of the HSP that are required by this RFP.

University will not accept proposals submitted by telephone, proposals submitted by Facsimile ("**FAX**") transmission, or proposals submitted by electronic transmission (i.e., e-mail) in response to this RFP.

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 submittal of a written explanation and documentation evidencing a reason acceptable to University, in University's sole discretion.

By signing the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) and submitting a proposal, Proposer certifies that any terms, conditions, or documents attached to or referenced in its 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 or in the Appendices to this RFP. Proposer further certifies that the submission of a proposal is Proposer's good faith intent to enter into the Agreement with University as specified herein and that such 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.

#### 1.9.6 Page Size, Binders, and Dividers

Proposals must be typed on letter-size (8-1/2" x 11") paper, and must be submitted in a 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.

#### 1.9.7 Table of Contents

Proposals must include a Table of Contents with page number references. The Table of Contents must contain sufficient detail and be organized according to the same format as presented in this RFP, to allow easy reference to the sections of the proposal as well as to any separate attachments (which should be identified in the main Table of Contents). If a Proposer includes supplemental information or non-required attachments with its proposal, this material should be clearly identified in the Table of Contents and organized as a separate section of the proposal.

#### 1.9.8 Pagination

All pages of the proposal should be numbered sequentially in Arabic numerals (1, 2, 3, etc.). Attachments should be numbered or referenced separately.

**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** By signature hereon, Proposer represents and warrants the following:
- 2.1.1 Proposer acknowledges and agrees that (1) this RFP is a solicitation for a proposal and is not a contract or an offer to contract; (2) the submission of a proposal by Proposer in response to this RFP will not create a contract between University and Proposer; (3) University has made no representation or warranty, written or oral, that one or more contracts with University will be awarded under this RFP; and (4) Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
  - 2.1.2 Proposer is a reputable company that is lawfully and regularly engaged in providing the Services.
  - 2.1.3 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform the Services.
  - 2.1.4 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.
  - 2.1.5 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.
  - 2.1.6 If selected by University, 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.
  - 2.1.7 If selected by University, Proposer will maintain any insurance coverage as required by the Agreement during the term thereof.
  - 2.1.8 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. Proposer acknowledges that 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.
  - 2.1.9 **PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, THE UNIVERSITY OF TEXAS SYSTEM, 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.**

- 2.1.10 Pursuant to Sections 2107.008 and 2252.903, *Government Code*, any payments owing to Proposer under any contract or agreement resulting from this RFP 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.
- 2.2 By signature hereon, Proposer offers and agrees to furnish the services to University and comply with all terms, conditions, requirements and specifications set forth in this RFP.
- 2.3 By signature hereon, Proposer affirms that it 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 submitted proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting contracts, and the Proposer may be removed from all proposal lists at University.
- 2.4 By signature hereon, Proposer certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, *Tax Code*, or that Proposer is exempt from the payment of those taxes, or that 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 contract or agreement.
- 2.5 By signature hereon, Proposer hereby certifies that neither Proposer nor any firm, corporation, partnership or institution represented by Proposer(s) or anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in Section 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.
- 2.6 By signature hereon, Proposer certifies that the individual signing this document and the documents made a part of this RFP, is authorized to sign such documents on behalf of Proposer and to bind Proposer under any agreements and other contractual arrangements that may result from the submission of Proposer's proposal.
- 2.7 By signature hereon, Proposer certifies as follows:
- "Under Section 231.006, *Family Code*, relating to child support, Proposer certifies that the individual or business entity named in the Proposer's proposal is not ineligible to receive the specified contract award and acknowledges that any agreements or other contractual arrangements resulting from this RFP may be terminated if this certification is inaccurate."
- 2.8 By signature hereon, Proposer certifies that (i) 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 component of The University of Texas System, on the other hand, other than the relationships which have been previously disclosed to University in writing; (ii) Proposer has not been an employee of any component institution of The University of Texas System within the immediate twelve (12) months prior to the Submittal Deadline; and (iii) 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. Section 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 a contract or agreement with Proposer.

- 2.9** By signature hereon, Proposer certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 2.10** By signature hereon, Proposer represents and warrants that all products and services offered 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.
- 2.11** Proposer will and has disclosed, as part of its proposal, any exceptions to the certifications stated in this Execution of Offer. All such disclosures will be subject to administrative review and approval prior to the time University makes an award or enters into any contract or agreement with Proposer.
- 2.12** If Proposer will sell or lease computer equipment to the University under any agreements or other contractual arrangements that may result from the submission of Proposer's proposal then, pursuant to Section 361.965(c), *Health & Safety Code*, Proposer certifies that it 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 Title 30, Chapter 328, Subchapter I, *Texas Administrative Code*. Section 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.

**2.13 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.: ORM 04262012

**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 SECTIONS 552.021 AND 552.023, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 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 Company's Name)

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

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

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

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

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

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

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

## 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 SECTIONS 552.021 AND 552.023, *GOVERNMENT CODE*, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 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 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.

### **3.2 Financial Stability**

- 3.2.1 Provide information to assist University in assessing Proposer's financial resources to provide the services described in this RFP, including but not limited to financial ratings (such as Dunn and Bradstreet analysis), company brochures and annual reports.
- 3.2.2 Provide evidence of Proposer's insurance coverage provided by an insurance carrier that is A.M. Best rated (A-, VII) or better in the limits and types specified in Section 11 of the Agreement (ref. **APPENDIX TWO**).
- 3.2.3 State whether Proposer will provide a copy of its financial statements for the past two (2) years, if requested by University.
- 3.2.4 Is Proposer currently for sale or involved in any transaction to expand or to acquire or become acquired by another business entity? If yes, please explain the impact on Proposer both in organizational and directional terms.
- 3.2.5 Provide any details of all past or pending litigation or claims filed against Proposer that would affect Proposer's performance under the Agreement.
- 3.2.6 Is Proposer currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specify date(s), details, circumstances and prospects for resolution.
- 3.2.7 Has Proposer, Proposer's parent corporation, or any partner or principal of Proposer or Proposer's parent corporation (a) filed a voluntary petition in bankruptcy or a voluntary petition seeking reorganization or to effect a plan or other arrangement with creditors, (b) made an assignment for the benefit of creditors, (c) voluntarily suspended transaction of business, become insolvent or unable to pay its debts as they mature, or (d) applied for or consented to the appointment of any receiver or trustee for any such entity or person or of all or any substantial portion of the property of any such entity or person? If so, please provide a detailed explanation.
- 3.2.8 Confirm that all needed licenses and permits required to perform agency, brokerage or direct writer services are maintained by Proposer according to regulatory requirements and provide copies of all such licenses and permits.
- 3.2.9 Provide the name and Social Security Number for each person having at least 25% ownership interest in Proposer. This disclosure is mandatory pursuant to Section 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*, Chapter 552, *Government Code*, and other applicable law.

**3.3 Business Reputation**

3.3.1 Provide references of at least two (2) current higher education clients and two (2) former higher education clients who have terminated services with your company in the past two (2) years. The reference list should include, institution name and address, name of the client contact, his or her telephone number, and a brief description of the work performed for the client.

**3.4 Qualifications**

3.4.1 Please provide a brief overview of the qualifications of key personnel who will service the University account. Please include the number of clients serviced by each individual and the number of higher education clients. Examples of key personnel would include account executives, account managers, marketing personnel and key service representatives.

3.4.2 Please provide the qualifications for the office or branch that will service the University account, including (without limitation) the following qualifications:

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

Approximate Total Number of Clients: \_\_\_\_\_

Number of *Private* College, University, Academic, Medical Center and Healthcare Clients: \_\_\_\_\_

Number of *Public* College, University, Academic, Medical Center and Healthcare Clients: \_\_\_\_\_

Premium Volume (Property and Casualty only) \_\_\_\_\_

Approximate Average Size of Accounts (premium size): \_\_\_\_\_

Largest Single Account (premium size): \_\_\_\_\_

If Direct Writer, Best's Rating: \_\_\_\_\_

3.4.3 Risk Management Services Available:

<b>Service Through Affiliate</b>	<b>In-House Staff</b>	<b>Available</b>
Claims	<input type="checkbox"/>	<input type="checkbox"/>
Risk Mgmt. Info. System	<input type="checkbox"/>	<input type="checkbox"/>
Loss Prevention/Training	<input type="checkbox"/>	<input type="checkbox"/>
Actuarial	<input type="checkbox"/>	<input type="checkbox"/>
Forensic Accounting	<input type="checkbox"/>	<input type="checkbox"/>
Other _____	<input type="checkbox"/>	<input type="checkbox"/>

### 3.5 Coverages and Services

- 3.5.1 Using the policy list in Section 1.2 of this RFP, please indicate the top ten (10) policies and coverages that Proposer would be most qualified to solicit on behalf of University.
- 3.5.2 Please describe Proposer's strategy for identifying and pursuing insurance carriers to quote the requested coverages.
- 3.5.3 Please list Proposer's top ten insurance markets by premium volume and indicate premium volume for each market.
- 3.5.4 Please describe any additional risk management services Proposer could provide to University upon request.

### 3.6 Compensation

- 3.6.1 University will require Contractors to disclose all compensation, including but not limited to, commissions, fees, contingent commissions, enhanced or supplemental commissions, excess and surplus lines and reinsurance commissions, profit sharing, volume over-rides, work transfer payments, service income, fiduciary funds income, sales incentives, and gifts, received on the University account. Please confirm that Proposer is willing to disclose such commissions.
- 3.6.2 In some cases, University will compensate Contractor through a Fixed Fee in lieu of commissions. Please confirm that Proposer is willing to be compensated on a fee basis for specific policies and services if requested by University and that Proposer is willing to provide evidence from insurance carriers that premiums are provided net of commissions for those policies or services including but not limited to, commissions, fees, contingent commissions, enhanced or supplemental commissions, excess and surplus lines and reinsurance commissions, profit sharing, volume over-rides, work transfer payments, service income, fiduciary funds income, sales incentives, and gifts. Such additional compensation will be treated as belonging to the University and will be treated as an offset against the Fixed Fees.
- 3.6.3 Please indicate if Proposer would be willing to enter into a performance-based fee arrangement with University. If yes, please provide suggested terms that Proposer would be willing to use with University.

### 3.7 General Information

- 3.7.1 Please describe Proposer's strategy for ensuring that University receives all information regarding coverage terms and conditions prior to purchasing a policy. Please provide a sample coverage comparison. (ref. **APPENDIX TWO, Exhibit A, Scope of Work, A. 10**)

- 3.7.2 Please describe Proposer's strategy for ensuring that University receives a policy that is issued correctly and according to specifications. Please provide a sample Policy Review Checklist. (ref. **APPENDIX TWO, Exhibit A, Scope of Work, A. 19**)
- 3.7.3 When appropriate, allocation of billings for the University's individual institutions will be required. Confirm that Proposer will allocate billings for each of the University's institutions and supply University with electronic invoices on a per institution basis.
- 3.7.4 Please describe Proposer's strategy for managing open tasks, such as policy issuance, endorsement requests, renewals and pending coverage questions. Please provide a sample Open Task Report. (ref. **APPENDIX TWO, Exhibit A, Scope of Work, A. 24**)
- 3.7.5 Please describe Proposer's qualifications and abilities to perform the Risk Management services described in **APPENDIX TWO, Exhibit A, Scope of Work, C.**
- 3.7.5 Please describe Proposer's qualifications and abilities to perform the Claims Handling services described in **APPENDIX TWO, Exhibit A, Scope of Work, D.**
- 3.7.6 Provide details regarding (a) any special services, product characteristics, or other benefits (for example, software, Internet-based information services, electronic mail capabilities, and audit programs), offered to University, (b) any other advantages to University in selecting Proposer, and (c) any related costs of such goods, services or advantages.
- 3.7.7 Confirm that Proposer has read and understands the Agreement (ref. **APPENDIX TWO**) and that Proposer agrees to provide services to University in accordance with the terms and conditions of the Agreement. If Proposer takes exception to any terms or conditions set forth in the Agreement, submit a list of the exceptions, including alternate language.
- 3.7.8 What difficulties does Proposer anticipate in serving University, the institutions of University and The University Office of Risk Management, and how does Proposer plan to manage those difficulties? What assistance will Proposer require from University or University's individual institutions?
- 3.7.9 Please describe the major types of risks and exposures faced by public institutions of higher education and healthcare both in Texas and throughout the nation. Provide details of Proposer's strategy to identify, evaluate, assess and mitigate these risks and exposures.

**SECTION 4**

**ADDENDA CHECKLIST**

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

**To:** The University of Texas \_\_\_\_\_

**Ref.:** \_\_\_\_\_ Services related to the \_\_\_\_\_

**RFP No.:** ORM04262012

Ladies and Gentlemen:

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

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

Respectfully submitted,

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

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

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

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

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

## APPENDIX TWO

### NON-EXCLUSIVE AGREEMENT BETWEEN UNIVERSITY AND CONTRACTOR

This Non-Exclusive Agreement between University and Contractor ("Agreement") is made and entered into effective as of August 31, 2012 (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 \_\_\_\_\_, a \_\_\_\_\_ Federal Tax Identification Number \_\_\_\_\_ ("Contractor").

University and Contractor hereby agree as follows:

#### 1. Scope of Work.

- 1.1 Contractor will perform the scope of the work ("Work") set forth in **Exhibit A**, attached and incorporated for all purposes, to the satisfaction of University and in accordance with the schedule ("Schedule") for the Work set forth in **Exhibit B**, attached and incorporated for all purposes. Time is of the essence in connection with this Agreement. University will have no obligation to accept late performance or waive timely performance by Contractor.
- 1.2 This Agreement is a non-exclusive contract between University and Contractor. University has awarded multiple contracts to other agents, brokers, risk management service providers and other third parties for the performance of the Work upon University's request.
- 1.3 CONTRACTOR UNDERSTANDS AND AGREES THAT UNIVERSITY HAS MADE NO REPRESENTATION, ASSURANCE, WARRANTY OR GUARANTY THAT (1) UNIVERSITY WILL REQUEST CONTRACTOR TO SOLICIT INSURANCE POLICIES ON BEHALF OF UNIVERSITY, OR THAT (2) UNIVERSITY WILL PROCURE INSURANCE POLICIES THROUGH CONTRACTOR. FURTHER, CONTRACTOR UNDERSTANDS AND AGREES THAT UNIVERSITY HAS AND DOES SPECIFICALLY DISCLAIM ANY SUCH REPRESENTATIONS, WARRANTIES, ASSURANCES OR GUARANTIES.
- 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, regulations or ordinances, for the performance of the Work.
- 1.5 Upon execution of this Agreement, all services previously performed by Contractor on behalf of University and included in the description of the Work, will become a part of the Work and will be subject to the terms and conditions of this Agreement.

#### 2. The Project.

The Work as more particularly described in **Exhibit A** will be provided in connection with the University's risk management program and all other related, necessary and appropriate services (the "Project").

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

The term of this Agreement will begin on the Effective Date and expire on the later of (i) August 31, 2016, or (ii) the last expiration date of any policies University procures through Contractor, or (iii) the day after all claims or disputes related to all policies procured by University through Contractor are finally resolved and settled to University's satisfaction. University will have the option to renew this Agreement for four (4) additional one (1) year terms.

**4. Contractor's Obligations.**

- 4.1 Contractor will perform the Work 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, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor's response to University's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.
- 4.2 Contractor represents, warrants and agrees that (a) it will act solely in a fiduciary capacity for the University in accordance with the highest standards of Contractor's profession or business, and (b) all of the Work to be performed will be of the quality that prevails among similar businesses of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances.
- 4.3 Contractor will call to University's attention in writing all information in any materials supplied to Contractor (by University or any other party) that Contractor regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished. Nothing shall excuse or detract from Contractor's responsibilities or obligations hereunder in a case where such document or data is furnished unless Contractor advises University in writing that in its opinion such document or data and any requests made therein for action are unsuitable, improper, or inaccurate and University confirms in writing that it wishes Contractor to proceed in accordance with the document or data as originally given.
- 4.4 Contractor warrants and agrees that the Work will be accurate and free from any material errors. 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 nor shall Contractor be released from any liability by reason of such approval by University, it being agreed that University at all times is relying upon Contractor's skill and knowledge in performing the Work.
- 4.5 Contractor will, at its own cost, correct all material defects in the Work as soon as practical after Contractor becomes aware of the defects. If Contractor fails to correct material defects in the Work within a reasonable time, then University may correct the defective Work at Contractor's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Work that University may have at law or in equity.

- 4.6 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will cause all persons connected with Contractor directly in charge of the Work to be duly registered and/or licensed under all applicable 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.
- 4.7 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.
- 4.8 Contractor represents and warrants that neither the execution and delivery of this Agreement by Contractor nor the performance of its duties and obligations under this Agreement will (a) result in the violation of any provision [i] if a corporation, of Contractor's articles of incorporation or by-laws, [ii] if a limited liability company, of its articles of organization or regulations, or [iii] if a partnership, of any partnership agreement by which Contractor is bound; (b) result in the violation of any provision of any agreement by which Contractor is bound; or (c) to the best of Contractor's knowledge and belief, conflict with any order or decree of any court or other body or authority having jurisdiction.
- 4.9 Contractor represents and warrants that: (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.
- 4.10 Premises Rules.

**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**

**and policies, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.**

**5. Commissions and Replacement Fees.**

5.1 Contractor's sole compensation for the policies procured by University through Contractor under this Agreement shall consist of one or more of the following, as determined by University in its sole discretion:

- (a) commissions, if any, paid to Contractor by the insurance carriers that issue such policies; or
- (b) fees that University pays to Contractor for risk management services provided and/or in lieu of commissions paid to Contractor by the insurance carriers that issue such policies (a "Replacement Fee").

In no event shall Contractor be compensated for the policies procured by University under this Agreement other than as set forth in this **Section 5.1.**

5.2 Contractor shall disclose to University in writing all commissions or fees paid or to be paid to Contractor in connection with insurance policies procured or to be procured by University (including, but not limited to, commissions to be paid to Contractor by insurance carriers.) In some cases, University will compensate Contractor through a Fixed Fee in lieu of commissions. Contractor will be compensated on a fee basis for specific policies and services if requested by University and Contractor will provide evidence from insurance carriers that premiums are provided net of commissions for those policies including but not limited to, commissions, fees, contingent commissions, enhanced or supplemental commissions, excess and surplus lines and reinsurance commissions, profit sharing, volume over-rides, work transfer payments, service income, fiduciary funds income, sales incentives, and gifts. Such additional compensation will be treated as belonging to the University and will be treated as an offset against the Fixed Fees.

5.3 The insurance policies procured by University under this Agreement for which Contractor is paid a Replacement Fee as compensation in whole or in part for those policies are sometimes referred to as "Replacement Fee Policies."

5.4 In the event that University and Contractor agree that Contractor shall be paid a Replacement Fee as compensation in whole or in part for one or more Replacement Fee Policies procured by University under this Agreement, then University and Contractor shall enter into a written Addendum for those Replacement Fee Policies. Each Addendum shall meet the following requirements:

- (a) Addendum Formats.
  - (1) Each Addendum shall be based upon a predefined "Addendum Format" jointly developed and agreed to in writing by the University and Contractor.

(2) The initial Addendum Formats agreed to by University and Contractor under this Agreement are:

(i) The “Fee-Only Addendum Format”, as more specifically set forth in **Exhibit B** attached to this Agreement and incorporated for all purposes, which the University and Contractor shall use in the event that a Replacement Fee is to constitute Contractor’s sole compensation for the identified Replacement Fee Policies procured by University. Contractor will be compensated on a fee basis for specific services if requested by University and Contractor will provide evidence from service providers that premiums are provided net of commissions for those policies including but not limited to, commissions, fees, contingent commissions, enhanced or supplemental commissions, excess and surplus lines and reinsurance commissions, profit sharing, volume over-rides, work transfer payments, service income, fiduciary funds income, sales incentives, and gifts. Such additional compensation will be treated as belonging to the University and will be treated as an offset against the Fixed Fees, and

(ii) the “Safety and Loss Prevention / Claims Handling Services Addendum Format”, as more specifically set forth in **Exhibit C** attached to this Agreement and incorporated for all purposes, which the University and Contractor shall use in the event that Contractor is to be paid a Replacement Fee as compensation for Contractor’s performance of Safety and Loss Prevention Services and/or Claims Handling services for one or more Replacement Fee Policies, but Contractor’s sole compensation for all other services Contractor performs for those Replacement Fee Policies (including any services not identified through the use of this Addendum Format) shall be the commissions, if any, that are paid to Contractor by the insurance carriers issuing such Policies. Contractor will be compensated on a fee basis for specific services if requested by University and Contractor will provide evidence from service providers that premiums are provided net of commissions for those policies including but not limited to, commissions, fees, contingent commissions, enhanced or supplemental commissions, excess and surplus lines and reinsurance commissions, profit sharing, volume over-rides, work transfer payments, service income, fiduciary funds income, sales incentives, and gifts. Such additional compensation will be treated as

belonging to the University and will be treated as an offset against the Fixed Fees.

- (3) The University and Contractor may develop other Addendum Formats in addition to the “Fee-Only Addendum Format” and the “Safety and Loss Prevention / Claims Handling Services Addendum Format” in order to document alternate approaches by which Contractor may be compensated for a Replacement Fee Policy. If University and Contractor agree to add such an additional Addendum Format, then Contractor and the University’s Executive Vice Chancellor for Business Affairs, his or her duly-authorized designee, or any other person duly authorized by The University of Texas System Board of Regents (the “University Representative”) shall execute that Addendum Format by signing a copy of the Addendum Format. Once such an additional Addendum Format is so executed, that Addendum Format shall be incorporated into this Agreement for all purposes, and the Addendum Format can be used by the University and Contractor as the basis for new Addenda under this Agreement.
  - (4) Each Addendum shall contain only the terms and conditions that are set forth in the Addendum Format used as a basis for that Addendum.
  - (5) In the event that an Addendum contains terms and conditions that are not set forth in the Addendum Format that was used as a basis for that Addendum, such terms and conditions are of no force or effect and are deleted from that Addendum.
  - (6) In the event that an Addendum does not contain some or all of the terms and conditions set forth in the Addendum Format that was used as a basis for that Addendum, then the University and Contractor agree that the terms and conditions set forth in the Addendum Format are incorporated by reference into that Addendum.
- (b) Each Addendum shall document the Replacement Fee Policies for which University shall pay the Replacement Fees identified in that Addendum.
  - (c) Each Addendum shall identify the Replacement Fee to be paid by University and the method under which Contractor shall invoice the University for that Replacement Fee.
  - (d) Each Addendum shall identify the total amount to be remitted by University to Contractor under that Addendum (the “Addendum Cap”). Furthermore, each Addendum shall state that the total amount remitted by University to Contractor under that Addendum shall not

exceed the Addendum Cap without the prior written approval of University.

- (e) Each Addendum under which Contractor shall be paid a Replacement Fee as Contractor's compensation for its performance of certain Safety and Loss Prevention Services for one or more Replacement Fee Policies shall document those specific Safety and Loss Prevention Services that are to be performed by Contractor. Contractor will be compensated on a fee basis for specific policies and services if requested by University and Contractor will provide evidence from insurance carriers that premiums are provided net of commissions for those policies including but not limited to, commissions, fees, contingent commissions, enhanced or supplemental commissions, excess and surplus lines and reinsurance commissions, profit sharing, volume over-rides, work transfer payments, service income, fiduciary funds income, sales incentives, and gifts. Such additional compensation will be treated as belonging to the University and will be treated as an offset against the Fixed Fees.
- (f) Each Addendum under which Contractor shall be paid a Replacement Fee as Contractor's compensation for its performance of certain Claims Handling Services for one or more Replacement Fee Policies shall document those specific Claims Handling Services that are to be performed by Contractor. Contractor will be compensated on a fee basis for specific policies and services if requested by University and Contractor will provide evidence from insurance carriers that premiums are provided net of commissions for those policies including but not limited to, commissions, fees, contingent commissions, enhanced or supplemental commissions, excess and surplus lines and reinsurance commissions, profit sharing, volume over-rides, work transfer payments, service income, fiduciary funds income, sales incentives, and gifts. Such additional compensation will be treated as belonging to the University and will be treated as an offset against the Fixed Fees.
- (g) Contractor shall attach a proposed Addendum to the quote for each Replacement Fee Policy. University and Contractor may negotiate the Replacement Fee set forth in a proposed Addendum prior to executing that Addendum. If University and Contractor agree on a completed Addendum, then Contractor and the University's Executive Vice Chancellor for Business Affairs, his or her duly-authorized designee, or any other person duly authorized by The University of Texas System Board of Regents (the "University Representative") shall execute the Addendum by signing the Addendum.

5.5 In the event that an Addendum is executed by Contractor and the University Representative in accordance with **Section 5.4.(g)** before University has obtained all of the insurance policies or other risk management services that are identified in that Addendum, then the University's payment obligations under that Addendum shall not be enforceable, and the University shall have no obligation

to pay Contractor the Replacement Fee documented in that Addendum, until University has obtained all of the insurance policies or other risk management services identified in that Addendum.

- 5.6 The Replacement Fees set forth in an Addendum shall include any applicable federal, state or local sales or use tax that are to be paid by University on the Contractor services set forth in that Addendum.
- 5.7 After (1) the University Representative and Contractor have executed an Addendum and (2) University and the insurance carriers have executed all of the insurance policies identified in that Addendum, Contractor shall submit invoices to University as more specifically set forth in that Addendum. University will, no later than the twenty-first (21st) day after the date University receives such an invoice, approve or disapprove the invoice. If University approves the invoice, it shall pay the amount set forth in the invoice to Contractor in accordance with the *Texas Prompt Payment Act*, Chapter 2251, *Texas Government Code*; provided, that, Contractor is not in breach of or in default under this Agreement. If the University disapproves the invoice, it shall provide Contractor with specific reasons for the disapproval in writing. University shall have the right to verify the details set forth in Contractor's invoices, either before or after payment of such invoices, by (1) inspecting the books and records of Contractor relating to the Work performed by Contractor under this Agreement at mutually convenient times; (2) examining any reports with respect to the Work performed by Contractor under this Agreement; (3) interviewing Contractor's and insurance carrier's employees that have been involved with Work performed by Contractor under this Agreement; (4) visiting any place where performance of all or a portion of the Work performed by Contractor under this Agreement occurs; and (5) other reasonable action.
- 5.8 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.
- 5.9 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 the University did not receive from Contractor prior to termination.
- 5.10 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 set forth in **Exhibit A**. 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.

## 6. **Payment Terms.**

- 6.1 Notwithstanding any provision of this Agreement to the contrary, University will not be obligated to make any payment to Contractor if Contractor is in default under this Agreement.

- 6.2 The cumulative amount of all Payments and the Final Payment will not exceed the Contract Amount as more particularly set forth in **Exhibit B**, Fee-Only Format.
- 6.3 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.
- 6.4 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.
- 6.5 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. In the event University makes any payment in advance of services, the parties agree that University is entitled to full and complete repayment of any sums unearned by Contractor. University may offset or withhold any payment under this Agreement to achieve such repayment. In the event that the Agreement is terminated, any unearned advance payment will be paid to University by Contractor within 30 days of request.

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

- 7.1 All instructions, information, requirements, procedures, documents, 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.
- 7.2 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.
- 7.3 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.
- 7.4 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.

**8. Default and Termination.**

- 8.1 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 thirty (30) 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 thirty-day period.

- 8.2 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.
- 8.3 Termination under **Sections 8.1** or **8.2** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.
- 8.4 If Contractor fails to cure any Default within thirty (30) 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.
- 8.5 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.

## **9. Indemnification**

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

9.2 IN ADDITION, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY CONTRACTOR, OR THE USE BY INDEMNITEES, AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UNIVERSITY WILL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UNIVERSITY AGREES TO REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

**10. Relationship of the Parties.**

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venturer, or agent of University. 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.

**11. Insurance.**

11.1 Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance in the form, with companies admitted to do business in the State of Texas and having an A.M. Best Rating of A-:VII or better, and in amounts (unless otherwise specified), as University may require:

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

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

Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation and other rights in favor of University;

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

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 100,000
Medical Expenses (any one person)	\$ 10,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000

Policy will include independent contractor's liability, covering, but not limited to, the liability assumed under the indemnification provision of this contract, fully insuring Contractor's (or Subcontractor's) liability for bodily injury (including death) and property damage.

- 11.1.4 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Combined Single Limit Bodily Injury and Property Damage;
- 11.1.5 Errors and Omissions Insurance with limits of not less than \$5,000,000 per claim.
- 11.2 Contractor will deliver to University:
  - 11.2.1 Evidence satisfactory to University in its sole discretion, evidencing the existence of all insurance after the execution and delivery of this Agreement and prior to the performance or continued performance of any services to be performed by Contractor under this Agreement.
  - 11.2.2 Additional evidence, satisfactory to University in its sole discretion, of the continued existence of all insurance not less than thirty (30) days prior to the expiration of any insurance. Insurance policies, with the exception of Workers' Compensation and Employer's Liability, shall be endorsed and name University as an Additional Insured. All policies will be endorsed to provide a waiver of subrogation in favor of University. All policies with the exception of Workers' Compensation and Employer's Liability will be endorsed to provide primary and non-contributory coverage. No policy shall be canceled until after thirty (30) days' unconditional written notice to University. All policies shall be endorsed requiring the insurance carrier providing coverage to send notice to University 30 days prior to any cancellation, material change, or non-renewal (60 days for non-renewal) relating to any insurance policy required herein.
- 11.3 The insurance policies required in this Agreement will be kept in force for the periods specified below:
  - 11.3.1 Commercial General Liability Insurance, Business Automobile Liability Insurance; Errors and Omissions Insurance will be kept in force until receipt of Final Payment by University to Contractor; and
  - 11.3.2 Workers' Compensation Insurance and Employer's Liability Insurance will be kept in force until the Work has been fully performed and accepted by University in writing.

**12. Miscellaneous.**

- 12.1 **Assignment and Subcontracting.** Except as specifically provided in **APPENDIX THREE**, 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, *Texas Government Code*, and 34 TAC Chapter 20, §§20.101 – 20.108. The benefits and burdens of this Agreement are assignable by University.

- 12.2 **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.
- 12.3 **Eligibility Certifications.** Pursuant to Sections 2155.004 and 2155.006, *Texas Government Code*, Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if these certifications are inaccurate.
- 12.4 **Tax Certification.** If Contractor is a taxable entity as defined by Chapter 171, Texas Tax Code (“Chapter 171”), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 12.5 **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.
- 12.6 **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.
- 12.7 **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.
- 12.8 **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”).
- 12.9 **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.

- 12.10 **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.
- 12.11 **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.
- 12.12 **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"). 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. 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.
- 12.12.1 **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.

- 12.12.2 **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.
- 12.12.3 **Disclosure.** If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this Section.
- 12.12.4 **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.
- 12.12.5 **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*, Chapter 552, *Texas Government Code*.
- 12.12.6 **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.
- 12.12.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.
- 12.13 **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.
- 12.14 **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.
- 12.15 **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: Paul D. Pousson  
Associate Director of Risk Management  
The University of Texas System  
220 West 7th Street  
Austin, TX 78701

with copy to: Phillip B. Dendy  
Director of Risk Management  
The University of Texas System  
220 West 7th Street  
Austin, Texas 78701

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:

To: Paul D. Pousson  
Associate Director of Risk Management  
The University of Texas System  
220 West 7th Street  
Austin, TX 78701  
Email: LegalNotices@utsystem.edu

with copy to: Phillip B. Dendy  
Director of Risk Management  
The University of Texas System  
220 West 7th Street  
Austin, Texas 78701  
Email: [LegalNotices@utsystem.edu](mailto:LegalNotices@utsystem.edu)

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

- 12.16 **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.
- 12.17 **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.
- 12.18 **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.
- 12.19 **Survival of Provisions.** No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination, including **Sections 6.5, 9, 12.7, 12.11, 12.12, 12.13, 12.15, 12.18, 12.19, 12.21 and 12.23.**
- 12.20 **Breach of Contract Claims.**
- 12.20.1 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:
- 12.20.1.1 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.

12.20.1.2 If the parties are unable to resolve their disputes under **Section 12.20.1.1**, 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.

12.20.1.3 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.

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

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

12.21 **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.

- 12.22 **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.
- 12.23 **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.
- 12.24 **Enforcement.** Contractor agrees and acknowledges that University is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to performing the Work. Contractor's services provide a peculiar value to University. University cannot be reasonably or adequately compensated in damages for the loss of Contractor's services. Accordingly, Contractor acknowledges and agrees that a breach by Contractor of the provisions of this Agreement will cause University irreparable injury and damage. Contractor, therefore, expressly agrees that University will be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.

12.25 **Historically Underutilized Business Subcontracting Plan.** Contractor agrees to use good faith efforts to subcontract the Work in accordance with the Historically Underutilized Business Subcontracting Plan (“HSP”) (ref. **APPENDIX THREE**). 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.

12.25.1 **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 12.8** to replace the HSP with the revised subcontracting plan.

12.25.2 **Expansion of the Work.** If University expands the scope of the Work through a change order or any other amendment, University will determine if the additional Work contains probable subcontracting opportunities *not* identified in the initial solicitation for the Work. If University determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34 TAC Section 20.14 before (a) this Agreement may be amended to include the additional Work; or (b) Contractor may perform the additional Work. If Contractor subcontracts any of the additional subcontracting opportunities identified by University without prior authorization and without complying with 34 TAC Section 20.14, Contractor will be deemed to be in breach of this Agreement under **Section 8** and will be subject to any remedial actions provided by Texas law including Chapter 2161, *Texas 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.

- 12.26 **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, and (2) have an appropriate criminal background screening performed on all the individuals. 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 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 Work.

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 assigned to perform the Work.

- 12.27 **Office of Inspector General Certification.** Contractor acknowledges that University is prohibited by federal regulations from allowing any employee, representative, agent or subcontractor of Contractor to work on site at University's premises or facilities if that individual is not eligible to work on federal healthcare programs including Medicare, Medicaid, or other similar federal programs. Therefore, Contractor will not assign any employee, representative, agent or subcontractor that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General ("OIG") to work on site at University's premises or facilities. Contractor will perform an OIG sanctions check quarterly on each of its employees, representatives, agents, and subcontractors during the time the employees, representatives, agents, or subcontractors are assigned to work on site at University's premises or facilities. Contractor acknowledges that University will require immediate removal of any employee, representative, agent, or subcontractor of Contractor assigned to work at University's premises or facilities if the employee, representative, agent, or subcontractor is found to be on the OIG's List of Excluded Individuals. The OIG's List of Excluded Individuals may be accessed through the following Internet website: [http://www.oig.hhs.gov/fraud/exclusions/exclusions\\_list.asp](http://www.oig.hhs.gov/fraud/exclusions/exclusions_list.asp)

- 12.28 **Access to Documents.** To the extent applicable to this Agreement, in accordance with Section 1861(v)(1)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Contractor will allow, during and for a period of not less than four (4) years after the expiration or termination of this Agreement, access to this Agreement and its books, documents, and records; and contracts between Contractor and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.

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

**UNIVERSITY:**

**THE UNIVERSITY OF TEXAS SYSTEM**

\_\_\_\_\_

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

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

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

**CONTRACTOR:**

\_\_\_\_\_

\_\_\_\_\_

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

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

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

Attest: \_\_\_\_\_  
Corporate Secretary

**Attach:**

**EXHIBIT A – Scope of Work**

**EXHIBIT B – Fee-Only Format**

**EXHIBIT C – Safety and Loss Prevention Claims Handling Services**

**APPENDIX THREE – HUB Subcontracting Plan**

**EXHIBIT A  
SCOPE OF WORK**

**A. Implementation of Insurance Program**

1. Notify University of new insurance products which address University exposures.
2. Develop a comprehensive action plan for placement and marketing of new or renewal business, including a timeline identifying major milestones and necessary data needed to obtain quote(s) and produce complete proposal packages.
3. Identify necessary information to develop market submissions and assist University with collection and presentation of data.
4. Assemble and format University's data into a marketing submission for consideration by insurance carriers, wholesalers, Managing General Agents, Surplus Lines Brokers, alternative risk financing markets.
5. Identify the insurance carriers, wholesalers, Managing General Agents, Surplus Lines Brokers, alternative risk financing markets that your firm intends to approach for quotes on the University's program, including the amount of business your firm currently conducts with each, the underwriter(s)/contact(s) your firm will be working with, and your firm's assessment of the competitive advantage each may provide.
6. Prior to sending the marketing submission to carriers, supply a draft of the submission to University for review and approval.
7. As appropriate, solicit quotes and negotiate insurance coverage terms and conditions and/or alternative risk financing arrangements, including, terms, services, and premiums from markets with input from University.
8. Provide updates to University on status of placement action plan in a format and frequency acceptable to University.
9. Present complete proposal package to include quotes and declinations, coverage options, specimen policy form(s), and/or risk finance solutions to University in a detailed manner.
10. As part of complete proposal package, create coverage comparisons requested to facilitate University review of current and proposed coverage options. Documents should be in a form that can be shared with University executive management and should include evaluation of any proposed endorsements.
11. Provide a detailed description of responses received from insurance carriers, wholesalers, Managing General Agents, Surplus Lines Brokers, alternative risk financing markets. If carriers decline to quote policies, University requests a summary of all responses and explanations of any actions taken by Contractor to reverse the declination decision.
12. Respond to coverage questions and any other information requests in writing when requested by University. Notify University of any new or pending legislation that could impact University insurance premiums or coverage.
13. Disclose any additional compensation, beyond that set forth in Exhibit B, received by the Contractor, any of its affiliates, or any other intermediary during the term of this agreement, including, but not limited to, commissions, fees, contingent commissions, enhanced or supplemental commissions, excess and surplus lines and reinsurance commissions, profit sharing, volume over-rides, work transfer payments, service income, fiduciary funds income, sales incentives, and gifts. Such additional compensation will be treated as belonging to the University and will be treated as an offset against the Fixed Fees.

14. If requested by University, bind alternative risk financing plans or insurance coverage and maintain financing agreements, insurance policies, and coverage without lapses.
15. Verify that rates and premiums are properly calculated and charged and confirm to University in writing that invoiced premiums are correct. If policies are placed on a fee basis, obtain documentation from insurers that premiums are net of commissions.
16. University and contractor will agree on whether a policy is direct billed or agency billed. University prefers to pay premiums through Contractor rather than direct bill.
17. When premiums are billed through Contractor, forward premiums due to insurance carrier on University's behalf.
18. When appropriate, allocation for the University's individual institutions will be required. Proposer will allocate billings for each of the University's institutions and supply University with electronic invoices on a per institution basis.
19. Confirm policies issued conform to University specifications. When requested by University, forward copy of completed Policy Review Checklist used to review policy.
20. When necessary, communicate information between University and selected insurance carriers and, or wholesalers, Managing General Agents, Surplus Lines Brokers, alternative risk financing markets, including information regarding policy renewals, premium pay-ins, audit returns and buy-out provisions.
21. When necessary, schedule meetings between University and selected insurance carriers and, or wholesalers, Managing General Agents, Surplus Lines Brokers, alternative risk financing markets.
22. Request, implement, monitor, and verify coverage changes requested by University.
23. Allocate audited premiums on a UT institution by institution basis and provide individual invoices for each institution as requested by University. When requested by University, identify for University's consideration any Replacement Fees, as more specifically defined in **Section 5.**, that Contractor proposes to charge University for any insurance policies University contemplates procuring under this Agreement.
24. Maintain and provide University with an Open Task Report that details all outstanding tasks related to University placements/projects. Examples of items to be reported would be endorsement requests, policy issuance, upcoming renewals and pending coverage questions. The frequency for the Open Task Report will be determined by University based upon Contractor's placement activity level.
25. Other services required in order to achieve new business objectives.

**B. Policyholder Services Provided by the Contractor**

1. Act as an advocate on behalf of the University.
2. Coordinate data gathering functions and processes between all parties.
3. Organize and attend meetings as requested by University and document meeting discussions by taking meeting minutes. Send minutes to University within 48 hours of the meeting for review and comment.
4. Communicate with and secure all data required by insurance carrier and, or wholesaler, Managing General Agent, Surplus Lines Broker, alternative risk financing markets, or requested by University.
5. Provide insurance binders, certificates, and policies when requested.

6. Verify the accuracy of any bills, audits, and other premium adjustments prior to submittal to University.
7. Answer phone calls and emails, and field questions during regular business hours.
8. Respond to coverage questions and any other information requests in writing when requested by University. Notify University of any new or pending legislation that could impact University insurance premiums or coverage.
9. Notify University of adequate A.M. Best Rating Company financial strength and size levels to require of outside contracting parties in order to determine their insurance company's claims paying ability, suitability, service record, and financial stability. Notify University when a rating change occurs with a carrier providing coverage to the University.
10. Provide University with estimated premiums annually for budget projections when requested.
11. Other services required in order to achieve new business or renewal objectives.

**C. Risk Management Services**

1. Assist University in identifying potential exposures.
2. When requested by University prior to the purchase or renewal of a policy, conduct inspections, tests and other safety and loss prevention services.
3. When requested by University, perform other risk management services. Examples of such services would include, but are not limited to, Market Analyses, Business Continuity Planning, Crisis Management, Catastrophe Modeling, Risk Management Reviews and Risk Assessments.

**D. Claims Handling**

1. Act as an advocate on behalf of the University. Provide claims advocacy services if a loss occurs, including but not limited to working with insurance carriers, alternative financing markets, and applicable federal and state agencies.
2. When requested by University, communicate information to insurance carrier, report claims to the carrier or administrator, and monitor claims activity.
3. Provide claims reports when requested. Reports should include, but not be limited to, loss date, report date, status, loss type, incurred total, paid total, reserve total, recoveries, cause code, litigation claims.
4. Complete periodic file reviews, claim audits, and claim surveys and provide findings to the carrier and the University.
5. Provide or obtain from carrier periodic loss runs, including electronic data feeds, as requested by University. Provide on-site claims presence within twenty-four (24) hours if requested by University.
6. Confirm to University that all deductible billings (and other claims billings) are accurate and allocate deductible billings on an institution by institution basis when requested by University.

**E. General**

1. Notify University of any pending or actual material changes to Contractor's business or insurer's business with whom Contractor is insuring University (examples: changes in financial status or changes in organization structure at local or corporate office).

**EXHIBIT B  
FEE-ONLY ADDENDUM FORMAT**

**This Addendum to Non-Exclusive Agreement Between University And Contractor** (this "Addendum") is made and entered into by and between the **Board of Regents of The University of Texas System**, an agency and institution of higher education organized under the laws of the State of Texas ("University"), and \_\_\_\_\_ ("Contractor").

**I. Overview.** This Addendum identifies the Replacement Fee for certain insurance policies and/or risk management services University obtains through or from Contractor under the "Non-Exclusive Agreement Between University And Contractor" dated effective August 31, 2012 (the "Agreement"), as more specifically set forth in **Section 5.b.** of the Agreement.

**II. Identification of Policies:** The Replacement Fee identified in this Addendum shall constitute Contractor's sole compensation for the following insurance policies procured by University through Contractor under the Agreement (the "Policies"):

\_\_\_\_\_ issued by \_\_\_\_\_  
\_\_\_\_\_ issued by \_\_\_\_\_  
\_\_\_\_\_ issued by \_\_\_\_\_

Provided, however, if any of the above Policies or risk management services are not obtained by the University ("Unobtained Policies or Services"), the University shall not be required to pay to Contractor that portion of the Replacement Fee set forth in this Addendum applicable to Unobtained Policies.

**III. Identification and Payment of Replacement Fee:** The Replacement Fee for the Policies and/or risk management services shall consist of a "Fixed Fee" and/or an "Hourly Fee", which are calculated as follows:

A. Fixed Fee:

(1) Definition. University shall pay Contactor a Fixed Fee of \$\_\_\_\_\_ for Contractor's performance of the following (check and complete all that apply):

\_\_\_\_\_ Implementation of Insurance Program services, as set forth in **Section A of Schedule A** to the Agreement.

\_\_\_\_\_ Policyholder Services, as set forth in **Section B of Schedule A** to the Agreement.

\_\_\_\_\_ the following Safety and Loss Prevention Services, as set forth in **Section C of Schedule A** to the Agreement:

***{identify the specific Safety and Loss Prevention Services that University shall pay Contactor a Fixed Fee to perform};***

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

\_\_\_\_\_ Claims Handling services, as set forth in **Section D** of **Schedule A** to the Agreement.

It is the express intention of the parties to this Agreement that the Fixed Fees described in this Exhibit represent the exclusive compensation allowed for the services described. Therefore, any additional compensation, beyond that set forth in this compensation provision, received by the Contractor, any of its affiliates, or any other intermediary broker during the term of this agreement, including, but not limited to: commissions, fees, contingent commissions, enhanced or supplemental commissions, excess and surplus lines and reinsurance commissions, profit sharing, volume over-rides, work transfer payments, service income, fiduciary funds income, sales incentives, and gifts, must be promptly reported to the University. Such additional compensation will be treated as belonging to the University and will be treated as an offset against the Fixed Fees. Accordingly, all such compensation must be immediately reported to University in accordance with the Scope of Work as set forth in **Exhibit A**.

(2) Fixed Fee Invoices. Contractor shall invoice the University for the Fixed Fee as follows (check and complete one of the following):

\_\_\_\_\_ Contractor shall submit a single invoice for the entire Fixed Fee to the University on \_\_\_\_\_ **{specify the date that Contractor shall submit the single invoice to University}**;

\_\_\_\_\_ Contractor shall invoice the Fixed Fee to University in equal monthly installments of \$\_\_\_\_\_ each, starting on \_\_\_\_\_ **{identify start date}** and ending on \_\_\_\_\_ **{identify end date}**

\_\_\_\_\_ Contractor shall invoice the Fixed Fee to University in equal quarterly installments of \$\_\_\_\_\_ each, starting on \_\_\_\_\_ **{identify start date}** and ending on \_\_\_\_\_ **{identify end date}**

\_\_\_\_\_ Other (please describe in full):

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

B. Hourly Fee:

(1) Definition. University shall pay Contractor a Hourly Fee of \$\_\_\_\_\_ per hour, up to a maximum of \$\_\_\_\_\_, for Contractor's performance of the following services during the period starting on \_\_\_\_\_ **{identify start date}** and ending on \_\_\_\_\_ **{identify end date}** (the "Hourly Fee Period") (check and complete all of the following that apply):

\_\_\_\_\_ Implementation of Insurance Program services, as set forth in **Section A** of **Schedule A** to the Agreement.

\_\_\_\_\_ Policyholder Services, as set forth in **Section B** of **Schedule A** to the Agreement.

\_\_\_\_\_ the following Safety and Loss Prevention Services, as set forth in **Section C** of **Schedule A** to the Agreement:

*{identify the specific Safety and Loss Prevention Services that University shall pay Contactor an Hourly Fee to perform};*

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

\_\_\_\_\_ Claims Handling services, as set forth in **Section D** of **Schedule A** to the Agreement.

**NOTE: Please ensure that the services identified above are not also identified in Section III. A. (1) of this Addendum.**

(2) Hourly Fee Invoices: Following the end of each calendar month during the Hourly Fee Period, Contractor shall submit an invoice to University that shall set forth:

(a) the number of hours Contractor performed the services identified in **Section III. B. (1)** of this Addendum during the previous calendar month (the "Monthly Hours"), and

(b) the total fee that Contractor shall charge University for its performance of such services during the previous calendar month, which shall equal the Hourly Fee set forth in **Section III. B. (1)** of this Addendum multiplied by the Monthly Hours identified in that invoice.

**IV. Addendum Cap.** The total amount remitted by University to Contractor under this Addendum shall not exceed \$\_\_\_\_\_ ("Addendum Cap") without the prior written approval of University. *{identify the maximum amount that University shall pay to Contractor under this Addendum}*

IN WITNESS WHEREOF, University and Contractor have executed and delivered this Addendum as a sealed instrument effective as of the later of the two (2) dates specified below:

**UNIVERSITY:**  
**THE UNIVERSITY OF TEXAS SYSTEM**

**CONTRACTOR:**

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

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

**EXHIBIT C**

**SAFETY AND LOSS PREVENTION / CLAIMS HANDLING SERVICES ADDENDUM FORMAT**

This Addendum to Non-Exclusive Agreement Between University And Contractor (this "Addendum") is made and entered into by and between The University of Texas System, an agency and institution of higher education authorized under the laws of the State of Texas ("University"), and \_\_\_\_\_, a \_\_\_\_\_ ("Contractor").

I. **Overview.** This Addendum identifies the Replacement Fee University shall pay to Contractor for Contractor's performance of Safety and Loss Prevention Services and/or Claims Handling services for certain insurance policies that University obtains from Contractor under the "Non-Exclusive Agreement Between University And Contractor" dated effective August 31, 2012 (the "Agreement"), as more specifically set forth in **Section 5. b.** of the Agreement.

II. **Identification of Policies:** The Replacement Fee identified in this Addendum shall apply to the following insurance policies procured by University through Contractor under the Agreement (the "Policies"):

\_\_\_\_\_ issued by \_\_\_\_\_  
\_\_\_\_\_ issued by \_\_\_\_\_  
\_\_\_\_\_ issued by \_\_\_\_\_

Provided, however, if any of the above Policies are not obtained by the University ("Unobtained Policies"), the University shall not be required to pay Contractor the Replacement Fee set forth in this Addendum to the extent that the Replacement Fee is applicable to such Unobtained Policies.

III. **Identification of Services.** The Replacement Fee identified in this Addendum shall constitute Contractor's sole compensation for its performance of (select each that applies)

Claims Handling Services for the Policies, as set forth in **Section D** of **Schedule A** to the Agreement.

Safety and Loss Prevention Services for the Policies, as set forth in **Section C** of **Schedule A** to the Agreement. The specific Safety and Loss Prevention Services that Contractor shall perform for the Policies shall consist of the following:

*{Please identify the Safety and Loss Prevention Services to be performed by Contractor.}*

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

Contractor's sole compensation for all other services it performs in connection with the Policies (the "Commission Services") shall consist of the commissions, if any, that Contractor receives from the insurance carriers issuing the Policies. Such Commission Services shall include

- (a) the Implementation of Insurance Program services and the Policyholder Services, as more specifically set forth in **Schedule A** to the Agreement, and
- (b) if not selected in this **Section III**, any Claims Handling services and/or Safety and Loss Prevention Services, as more specifically set forth in **Schedule A** to the Agreement.

**IV. Identification and Payment of Replacement Fee:** The Replacement Fee for the Policies shall consist of a "Fixed Fee" and/or an "Hourly Fee", which are calculated as follows:

A. Fixed Fee:

(1) Definition. University shall pay Contractor a Fixed Fee of \$\_\_\_\_\_ for Contractor's performance of the services selected in **Section III** of this Addendum.

(2) Fixed Fee Invoices. Contractor shall invoice the University for the Fixed Fee as follows (check and complete one of the following):

\_\_\_ Contractor shall submit a single invoice for the entire Fixed Fee to the University on \_\_\_\_\_ *{specify the date that Contractor shall submit the single invoice to University}*;

\_\_\_ Contractor shall invoice the Fixed Fee to University in equal monthly installments of \$\_\_\_\_\_ each, starting on \_\_\_\_\_ *{identify start date}* and ending on \_\_\_\_\_ *{identify end date}*

\_\_\_ Contractor shall invoice the Fixed Fee to University in equal quarterly installments of \$\_\_\_\_\_ each, starting on \_\_\_\_\_ *{identify start date}* and ending on \_\_\_\_\_ *{identify end date}*

\_\_\_ Other (please describe in full):

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

B. Hourly Fee:

(1) Definition. University shall pay Contractor a Hourly Fee of \$\_\_\_\_\_ per hour, up to a maximum of \$\_\_\_\_\_, for Contractor's performance of the following services during the period starting on \_\_\_\_\_ ***{identify start date}*** and ending on \_\_\_\_\_ ***{identify end date}*** (the "Hourly Fee Period") (check and complete all of the following that apply):

\_\_\_ Implementation of Insurance Program services, as set forth in **Section A of Schedule A** to the Agreement.

\_\_\_\_\_ Policyholder Services, as set forth in **Section B** of **Schedule A** to the Agreement.

\_\_\_\_\_ the following Safety and Loss Prevention Services, as set forth in **Section C** of **Schedule A** to the Agreement:

***{identify the specific Safety and Loss Prevention Services that University shall pay Contactor an Hourly Fee to perform};***

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

\_\_\_\_\_ Claims Handling services, as set forth in **Section D** of **Schedule A** to the Agreement.

**NOTE: Please ensure that the services identified above are not also identified in Section III. A. (1) of this Addendum.**

(2) Hourly Fee Invoices: Following the end of each calendar month during the Hourly Fee Period, Contractor shall submit an invoice to University that shall set forth:

(a) the number of hours Contractor performed the services identified in **Section III. B. (1)** of this Addendum during the previous calendar month (the "Monthly Hours"), and

(b) the total fee that Contractor shall charge University for its performance of such services during the previous calendar month, which shall equal the Hourly Fee set forth in **Section III. B. (1)** of this Addendum multiplied by the Monthly Hours identified in that invoice.

V. **Addendum Cap.** The total amount remitted by University to Contractor under this Addendum shall not exceed \$\_\_\_\_\_ ("Addendum Cap") without the prior written approval of University. *{identify the maximum amount that University shall pay to Contractor under this Addendum}*

IN WITNESS WHEREOF, University and Contractor have executed and delivered this Addendum as a sealed instrument effective as of the later of the two (2) dates specified below:

**UNIVERSITY:**

**CONTRACTOR:**

**THE UNIVERSITY OF TEXAS SYSTEM**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

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

**APPENDIX THREE**

**HUB SUBCONTRACTING PLAN**

THE UNIVERSITY OF TEXAS SYSTEM ADMINISTRATION

January 2012

**POLICY ON UTILIZATION  
HISTORICALLY UNDERUTILIZED  
BUSINESSES**

**Vendor/Commodities**



**The University of Texas System  
Office of HUB Development  
Policy on Utilization of Historically Underutilized Businesses (HUBs)**

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**THE UNIVERSITY OF TEXAS SYSTEM**  
**Office of HUB Development**

<b>POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES (HUBs)</b>
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**Introduction**

In accordance with the Texas Government Code, Sections 2161.181-182 and Title 34, Section 20.13 of the Texas Administrative Code (TAC), The Board of Regents of the University of Texas System, acting through the Office of HUB Development shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction services, including professional and consulting services; and commodities contracts. The HUB Rules promulgated by the Texas Comptroller of Public Accounts (the “Texas Comptroller”), set forth in 34 TAC Sections 20.10-20.28, encourage the use of HUBs by implementing these policies through race-, ethnic- and gender-neutral means.

The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the following goals as specified in the State of Texas Disparity Study:

- **11.2% for heavy construction other than building contracts;**
- **21.1% for all building construction, including general contractors and operative builders contracts;**
- **32.7% for all special trade construction contracts;**
- **23.6% for professional services contracts**
- **24.6% for all other services contracts, and**
- **21% for commodities contracts.**

The University of Texas System shall make a good faith effort to meet or exceed these goals to assist HUBs in receiving a portion of the total contract value of all contracts that U. T. System expects to award in a fiscal year. The University of Texas System may achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161, Subchapter F.

**SUMMARY OF REQUIREMENTS**  
**Historically Underutilized Business (HUBs) Subcontracting Plan**

It is the policy of The University of Texas System and each of its component institutions, to promote and encourage contracting and subcontracting opportunities for Historically Underutilized Businesses (HUBs) in all contracts. Accordingly, The University of Texas System has adopted “**EXHIBIT H, Policy on Utilization of Historically Underutilized Businesses**”. The Policy applies to all contracts with an expected value of \$100,000 or more. The Board of Regents of The University of Texas System is the contracting authority.

1. In all contracts for professional services, contracting services, and/or commodities with an expected value of \$100,000 or more, The University of Texas System (“U. T. System” or the “University”) will indicate in the purchase solicitation (e.g. RFQ, RFP, or CSP) whether or not U. T. System has determined that subcontracting opportunities are probable in connection with the contract. A HUB Subcontracting Plan is a required element of the architect, contractor or vendor Response to the purchase solicitation. The HUB Subcontracting Plan shall be developed and administered in accordance with the Policy. **Failure to submit a required HUB Subcontracting Plan will result in rejection of the Response.**
2. If subcontracting opportunities are probable, U. T. System will declare such probability in its invitations for bids, requests for proposals, or other purchase solicitation documents, and shall require submission of the appropriate HUB Subcontracting Plan with the Response.
  - a. When subcontracting opportunities are probable, and the Respondent proposes to subcontract any part of the work, the Respondent shall submit a **HUB Subcontracting Plan as prescribed by the Texas Comptroller** identifying subcontractors **[[34 TAC §20.14 (d) (1)(A)(B)(C)(D) (i)(ii)(iii)(2)(3)(A)(B)(C)(D)(E)(F)(4)(A)(B)].**
  - b. When subcontracting opportunities are probable, but the Respondent can perform such opportunities with its employees and resources, the Respondent’s HUB Subcontracting Plan shall include **the Self Performance HUB Subcontracting Plan, Section 3 – Self Performance Justification as the HUB Subcontracting Plan (HSP). [34 TAC §20.14 (d)(5)(A)(B)(C)(D)].**
3. If subcontracting opportunities are not probable, U. T. System will declare such probability in its invitations for bids, requests for proposals, or other purchase solicitation documents and shall require submission of the appropriate HUB Subcontracting Plan with the Response.
  - a. When subcontracting opportunities are not probable, and the Respondent proposes to perform all of the work with its employees and resources, the Respondent shall submit a HUB Subcontracting Plan that includes **the Self Performance HUB Subcontracting Plan, Section 3 – Self Performance Justification as the HUB Subcontracting Plan (HSP).**
  - b. When subcontracting opportunities are not probable, but the Respondent proposes to subcontract any part of the work, the Respondent shall submit a **HUB Subcontracting Plan as prescribed by the Texas Comptroller** identifying subcontractors.
4. Respondents shall follow, but are not limited to, procedures listed in the Policy when developing a HUB Subcontracting Plan.
5. **In making a determination whether a good faith effort has been made in the development of the required HUB Subcontracting Plan, U. T. System shall follow the procedures listed in the Policy. If accepted by the University, the HUB Subcontracting Plan shall become a provision of the Respondent's contract with the University of Texas System. Revisions necessary to clarify and enhance information submitted in the original HUB subcontracting plan may be made in an effort to determine good faith effort. Any revisions after the submission of the HUB Subcontracting Plan shall be approved by the HUB Coordinator.**

6. The University of Texas System shall reject any Response that does not include a fully completed HUB Subcontracting Plan, as required. **An incomplete HUB Subcontracting Plan is considered a material failure to comply with the solicitation for proposals.**
7. Changes to the HUB Subcontracting Plan. Once a Respondent's HUB Subcontracting Plan is accepted by U. T. System and becomes a provision of the contract between Respondent and U. T. System, the Respondent can only change that HUB Subcontracting Plan if (a) the Respondent complies with 34 TAC Section 20.14; (b) the Respondent provides its proposed changes to U. T. System for review; (c) U. T. System (including U. T. System's HUB Coordinator) approves Respondent's proposed changes to its HUB Subcontracting Plan; and (d) U. T. System and the Respondent amend their contract (via a writing signed by authorized officials of both parties) in order to replace the contract's existing HUB Subcontracting Plan with a revised HUB Subcontracting Plan containing the changes approved by U. T. System.
8. Expansion of Work. If, after entering into a contract with a Respondent as a result of a purchase solicitation subject to the Policy, U. T. System wishes to expand the scope of work that the Respondent will perform under that contract through a change order or any other contract amendment (the "Additional Work"), U. T. System will determine if the Additional Work contains probable subcontracting opportunities not identified in the initial purchase solicitation for that contract. If U. T. System determines that probable subcontracting opportunities exist for the Additional Work, then the Respondent must submit to U. T. System an amended HUB Subcontracting Plan covering those opportunities that complies with the provisions of 34 TAC Section 20.14. Such an amended HUB Subcontracting Plan must be approved by U. T. System (including U. T. System's HUB Coordinator) before (a) the contract may be amended by U. T. System and the Respondent to include the Additional Work and the amended HUB Subcontracting Plan and (b) the Respondent performs the Additional Work. If a Respondent subcontracts any of the additional subcontracting opportunities identified by U. T. System for any Additional Work (i) without complying with 34 TAC Section 20.14 or (ii) before U. T. System and that Respondent amend their contract to include a revised HUB Subcontracting Plan that authorizes such subcontracting, then the Respondent will be deemed to be in breach of its contract with U. T. System. As a result of such breach, U. T. System will be entitled to terminate its contract with the Respondent, and the Respondent will be subject to any remedial actions provided by Texas law, including those set forth in Chapter 2161, Texas Government Code, and 34 TAC Section 20.14. University may report a Respondent's nonperformance under a contract between that Respondent and U. T. System to the Texas Comptroller in accordance with 34 TAC Sections 20.101 through 20.108.
9. A Response may state that the Respondent intends to perform all the subcontracting opportunities with its own employees and resources in accordance with the Policy. However, if such a Respondent enters into a contract with U. T. System as a result of such a Response but later desires to subcontract any part of the work set forth in that contract, before the Respondent subcontracts such work it must first change its HUB Subcontracting Plan in accordance with the provisions of Section 7 above .
10. The University shall require a vendor to whom a contract has been awarded to report the identity and the amount paid to its subcontractors on a monthly basis using **a HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report (PAR)** as a condition for payment.
11. If the University determines that the successful Respondent failed to implement an approved HUB Subcontracting Plan in good faith, the University, in addition to any other remedies, may report nonperformance to the Texas Comptroller in accordance with 34 TAC, Section 20.14, (g)(1) related remedies of nonperformance to professional services firms, contractor, and vender implementation of the HUB Subcontracting Plan.
12. In the event of any conflict between this "Summary of Requirements" and the remainder of the HUB Policy, the remainder of the HUB Policy will control.

13. These requirements, including the attachments referred to above, may be downloaded over the Internet from <http://www.utsystem.edu/hub/hubforms.html>. For additional information contact Office of HUB Development, The University of Texas System Administration, 512/499-4530.

**Vendor/Commodities HSP  
Summary of Attachments required from Respondents**

	<b>Letter of Transmittal Page 7</b>	<b>HUB Subcontracting Plan (HSP) Pages 9-15</b>	<b>Progress Assessment Report (PAR) Page 17</b>
<b>1. UT SYSTEM DETERMINES THAT SUBCONTRACTING OPPORTUNITIES ARE PROBABLE.</b>			
<b>1. A. Respondent Proposes Subcontractors:</b> Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are probable.</u>	<b>X</b>	<b>X</b>	
<b>1. B. Respondent Proposes Self-Performance:</b> Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are probable,</u> but the Respondent can perform such opportunities with its employees and resources.	<b>X</b>	<b>X</b>	
<b>2. UT SYSTEM DETERMINES THAT SUBCONTRACTING OPPORTUNITIES ARE NOT PROBABLE.</b>			
<b>2. A. Respondent Proposes Self-Performance:</b> Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are not probable,</u> but the Respondent can perform such opportunities with its employees and resources.	<b>X</b>	<b>X</b>	
<b>2. B. Respondent Proposes Subcontractors:</b> Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are not probable</u> but the Respondent proposes to subcontract any part of the work.	<b>X</b>	<b>X</b>	
<b>3. Changes in the HUB Subcontracting Plan After Award:</b> Attachments required from the Respondent to whom a contract has been awarded if it desires to make changes to the approved HUB Subcontracting Plan.		<b>X</b>	

<b>4. Reporting:</b> The Progress Assessment Report (PAR) is required with all payment requests. The submittal of this attachment is a condition of payment.			<b>X</b>
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Letter of Transmittal  
Vendor Services

(RESPONDENT'S BUSINESS LETTERHEAD)

Date

Mr. Hopeton Hay  
 Manager, HUB Development Program  
 The University of Texas System  
 702 Colorado, Suite 6.600  
 Austin, Texas 78701

Re: Historically Underutilized Business Plan for \_\_\_\_\_ (related services)  
 RFP No. \_\_\_\_\_

Dear Mr. Hay,

In accordance with the requirements outlined in the specification section "HUB Participation Program," 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 20.13 is *[SELECT ONE OF THE FOLLOWING TO COMPLETE THIS SENTENCE:*

- \_\_\_\_\_ 11.2% for heavy construction other than building contracts
- \_\_\_\_\_ 21.1% for all building construction, including general contractors and operative builders contracts
- \_\_\_\_\_ 32.7% for all special trade construction contracts
- \_\_\_\_\_ 23.6% for professional services contracts
- \_\_\_\_\_ 24.6% for all other services contracts
- \_\_\_\_\_ 21% for commodities contracts.

This HUB Subcontracting Plan includes \_\_\_\_\_ Subcontracting Opportunities (no. of subcontractors) This represents a cumulative percentage of \_\_\_\_\_%, representing \_\_\_\_\_% for minority-owned HUBs and \_\_\_\_\_% for women-owned HUBs. When a HUB is owned by minority women, I have classified that HUB as minority-owned rather than women-owned firm.

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 certification document, or, if the HUB is certified by another Texas Comptroller approved certifying agency, a copy of their approved certification document.

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

Sincerely,

(Project Executive)

cc: Contract Administrator

Letter of HUB Commitment for  
Miscellaneous Service Agreements  
Indefinite duration/indefinite quantity contracts

(BUSINESS LETTERHEAD)

Date

Mr. Hopeton Hay  
Manager HUB Development Program  
The University of Texas System  
702 Colorado, Ste. 6.600  
Austin, TX 78701

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

Dear Mr. Hay:

In accordance with the requirements outlined in the specification section "HUB Participation Program," I am pleased to forward this HUB Subcontracting Plan as an integral part of our proposal in connection with your invitation for request for proposals, referencing Project Number \_\_\_\_\_.

I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs).

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 of the HSP Quick Checklist located on page 10 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) and the Good Faith Effort will be documented per instructions in Attachment B (page 16-17) and Option Four of the HSP Quick Check List. 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,

Contractor's Name

cc: Project Manager



## HSP Quick Check List for Other Services, Special Trades & Commodities

- Option Four is the **only** acceptable method for responses that contain subcontracting opportunities (with HUB or Non HUB vendors). **No other Good Faith Effort method will be accepted.**
- Responses for Miscellaneous Service Agreements for indefinite duration/indefinite quantity - Two Part Process:
  1. Submit a Letter of Commitment (page 8) and complete Option One.
  2. Submit revised HSP documenting Good Faith Effort in Option Four prior to execution of each contract process.

### **Option One - Misc. Service Agreements (ID/IQ contracts)**

If you are not subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources, complete the following sections:

- a) Section 1 – Respondent and Requisition Information
- b) Section 2A – No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
- c) Section 3 – Self Performing Justification – Check no and provide explanation in box.
- d) Section 4 – Affirmation

### **Option Two – not applicable**

If all of your subcontracting opportunities will be performed using only HUB vendors, complete the following sections:

- a) Section 1 - Respondent and Requisition Information
- b) Section 2A – Yes, I will be subcontracting portions of the contract
- c) Section 2B – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to HUB vendors
- d) Section 2C – Yes
- e) Section 4 – Affirmation
- f) Good Faith Effort (Attachment A) – Complete this attachment for each subcontracting opportunity

### **Option Three - not applicable**

If you are subcontracting with HUB vendors and Non-HUB vendors, and the total percentage of subcontracting with HUB vendors meets or exceeds the HUB Goal the contracting agency identified in “Agency Special Instructions/Additional Requirements” complete the following:

- a) Section 1 - Respondent and Requisition Information
- b) Section 2A – Yes, I will be subcontracting portions of the contract
- c) Section 2B – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to HUB vendors and Non HUB vendors
- d) Section 2(C) – No
- e) Section 2(D) – Yes
- f) Section 4 – Affirmation
- g) Good Faith Effort (Attachment A) – Complete this attachment for each subcontracting opportunity

### **Option Four -**

If you are subcontracting with HUB vendors and Non-HUB vendors (or only Non HUB vendors), complete the following:

- a) Section 1 - Respondent and Requisition Information
- b) Section 2A – Yes, I will be subcontracting portions of the contract
- c) 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
- d) Section 2C – No
- e) Section 2D – No
- f) Section 4 – Affirmation
- g) Good Faith Effort (Attachment B) – Complete this attachment for each subcontracting opportunity



# 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) §20.13 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,
- 32.7 percent for all special trade construction contracts,
- 23.6 percent for professional services contracts,
- 24.6 percent for all other services contracts, and
- 21 percent for commodities contracts.

### - - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(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 contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

- Other Services HUB Goal – 24.6%**
- Commodities HUB Goal – 21%**
- Special Trades HUB Goal – 32.7%**

- Responses for other services, commodities and special trades construction that contain subcontracting opportunities shall submit a HUB Subcontracting Plan (HSP) that meets the Good Faith Effort prescribed in Method B (Attachment B). See instructions for Option Four (4) on the HSP Quick Check List. **No other Good Faith Effort method will be accepted.**
- Responses for Miscellaneous Service Agreements for indefinite duration/indefinite quantity – Two (2) part process:
  1. Submit a Letter of HUB Commitment (page 8) and a Good Faith Effort described in Option One.
  2. Submit a revised HSP prior to execution of each contract process.**No other Good Faith Effort method will be accepted.**
- 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.
- Respondents who intend to Self-Perform all of their work shall submit an HSP for Self Performance HUB Subcontracting Plan (HSP).
- Prime Contractor Progress Assessment Report (PAR) 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, e-mail and written correspondence 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)

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

**SECTION 2 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 goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "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. (If No, continue to SECTION 3.)

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 have had contracts in place for <u>five (5) years or less.</u>	Percentage of the contract expected to be subcontracted to HUBs with which you have had contracts in place for <u>more than five (5) years.</u>	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 <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>)

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 have had contracts in place with for five (5) years or less 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.)



**SECTION 3 SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)**

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- Yes (If Yes, in the space provided below list the specific page(s)/section(s) of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- No (If No, in the space provided below explain how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

Provide explanation:

**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 <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- 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

- 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 B (Attachment B)

(Rev. 10/11)

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 <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanAttachment-B.doc>

## 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 this attachment.

Item #: \_\_\_\_\_ 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, to continue to SECTION B-4.)
- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3.)

## 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 minority or women 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 <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and minority or women trade organizations or development centers.

- 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 your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://www.window.state.tx.us/procurement/cmbll/cmbllhub.html>. 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 Vendor ID (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	VID #	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
		/ /	- Yes - No
		/ /	- Yes - No
		/ /	- Yes - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to minority or women trade organizations or development centers 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 minority or women 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 <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>

- d. Enter the name of the minority or women 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.

Minority/Women Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
	/ /	- Yes - No
	/ /	- Yes - 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

- a. 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 VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

Company Name	Texas Certified HUB	VID # <small>(Required if Texas Certified HUB)</small>	Approximate Dollar Amount	Expected Percentage of Contract
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%

- b. 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, §20.14 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, the respondent must provide notice of each of its subcontracting opportunities to minority/women trade organizations or development centers at least seven (7) working days prior to submitting its bid response to the contracting agency.

We respectfully request that vendors interested in bidding on the subcontracting opportunity identified in Section C 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.

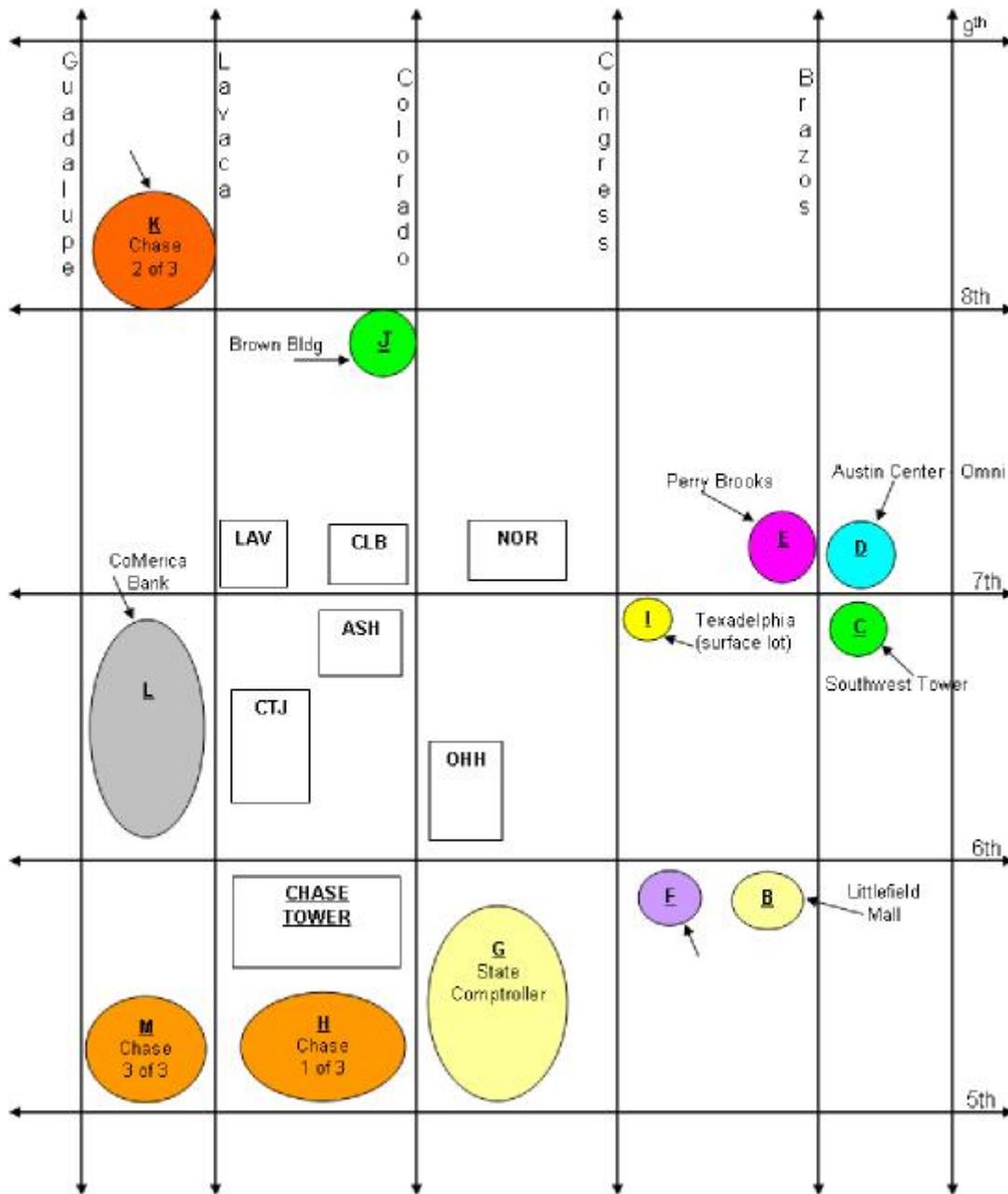
<b>Section A</b>	<b>PRIME CONTRACTOR'S INFORMATION</b>	
Company Name:		State of Texas VID #: _____
Point-of-Contact:		Phone #: _____
E-mail Address:		Fax #: _____

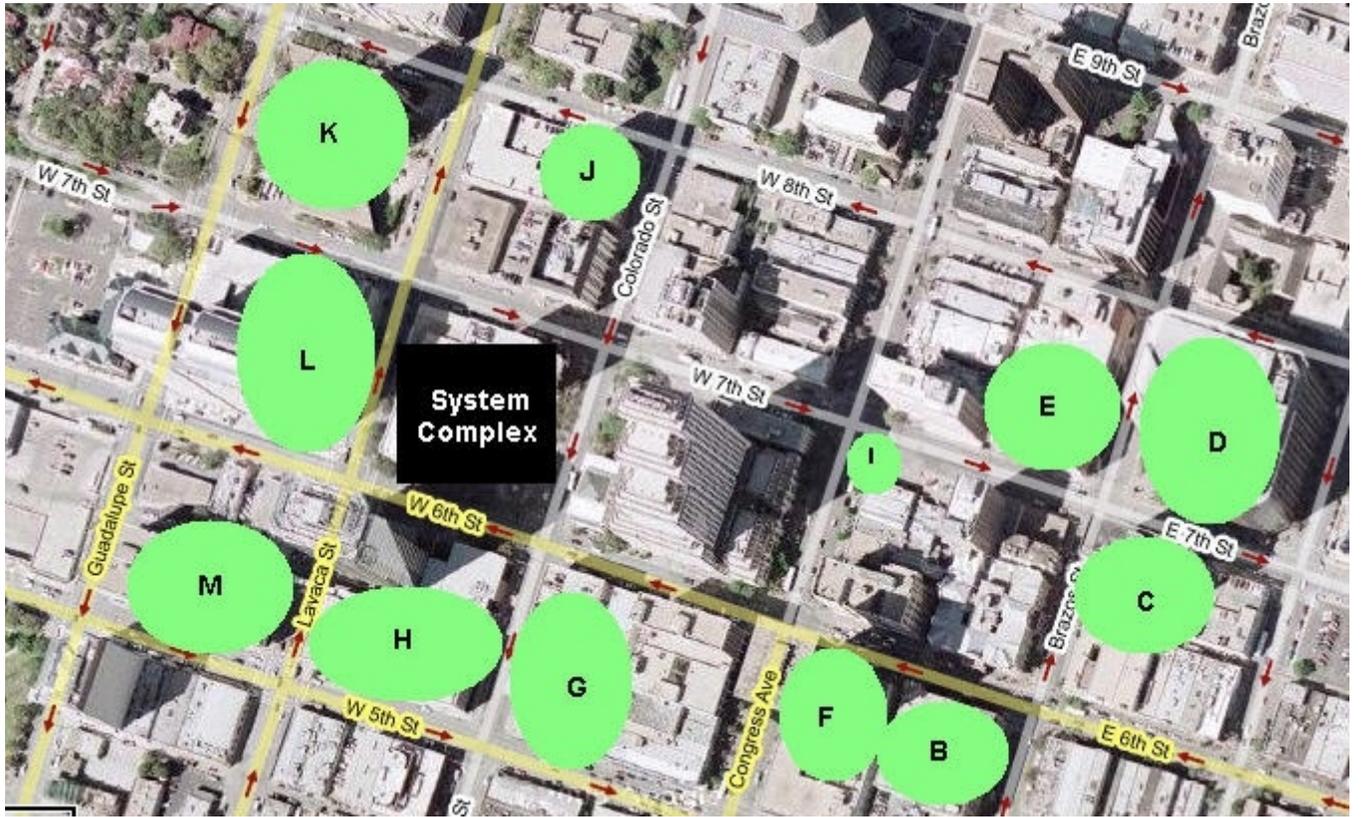
<b>Section B</b>	<b>CONTRACTING STATE AGENCY AND REQUISITION INFORMATION</b>	
Agency Name:		
Point-of-Contact:		Phone #: _____
Requisition #:		Bid Open Date: _____

<b>Section C</b>	<b>SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION</b>	
1. Potential Subcontractor's Bid Response Due Date:	<p><b>Our firm must receive your bid response to this subcontracting opportunity no later than 5:00 P.M., Central Daylight Standard Time on:</b> _____</p> <p style="text-align: right; margin-right: 50px;">(Date)</p> <p>(Note: In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to <u>at least three (3)</u> Texas certified HUBs, and allow the HUBs <u>at least seven (7) working days</u> to respond to the notice prior to submitting our bid response to the contracting agency. In addition, we must provide the same notice to minority/women trade organizations or development centers <u>at least seven (7) working days</u> prior to submitting our bid response to the contracting agency.)</p>	
3. Required Qualifications: - Not Applicable		
4. Bonding/Insurance Requirements: - Not Applicable		
5. Location to review plans/specifications: - Not Applicable		



## APPENDIX FOUR UNIVERSITY MAP & PARKING INFORMATION





Request for Proposal No. ORM04262012  
Selection of Vendors to form a Broker Panel for the Board of Regents  
of The University of Texas System  
Submittal Deadline: May 16, 2012  
Questions and Response

All questions submitted by potential Proposers in compliance with the RFP are listed below in bold. Questions were submitted in writing prior to the deadline or were asked verbally during the Pre-Proposal Conference on May 7, 2012. The questions are presented as they were posed from potential Proposers. Responses were prepared by University and are provided directly below the question in regular text.

**After reviewing RFP ORMO4262012 I want to clarify that the UT System Camp Program is part of this RFP. Additionally, since the camp and special event programs are only a very small part of the RFP, is there a need to attend the meeting in Austin on Monday, May 7? Please let me know if additional information will be covered at the meeting that will focus on this niche market?**

The RFP is to help University determine a broker panel that University can utilize in the future for insurance placements, claims handling and other risk management services. University has not made the pre-proposal conference meeting mandatory. University did not cover any information related to our camp or special events program at the meeting.

**In reviewing the RFP, because the definition of Risk Management Services is fairly narrow, I wasn't sure if there was leeway to propose the risk consulting services that could assist UT in optimizing its risk management programs?**

University does not believe that a response to this question is needed to allow for an adequate response to the RFP. Proposers should prepare their responses based upon the information provided in the RFP.

**Will any of UT System's insurance policies or programs come up for renewal in the next 24 months?**

University's insurance programs are normally written for one year policy periods. Many of the University's programs will come up for renewal within the next 24 months.

**For Historically Underutilized Business (HUB) questions or clarifications, please contact:**

Stephanie Park, HUB Coordinator  
Office of HUB Development  
702 Colorado Street, Suite 6.6  
Austin, TX 78701  
[spark@utsystem.edu](mailto:spark@utsystem.edu)  
<http://www.utsystem.edu/hub/>