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UT System RFP - Learning Content Development and Production **UPDATED 03/10/15**

Open Date: 03/20/15 03:00 PM

Agency Requisition Number: ITL03202015

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

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

-**Package 1** size: 384819 (in bytes) Type: Specification Format: Word for Windows 97

-**Package 2** size: 228078 (in bytes) Type: Additional Specification(s) Format: Acrobat PDF Files

Update 03/10/15 - add Q&A document (package 2) Proposers may to either category or all services described in this RFP. The UT System reserves the option to award the entire contract to one Contractor or to a combination of Contractors each providing one or more of the solicited services.

Agency: UNIVERSITY OF TEXAS SYSTEM (720)

Open Date: 03/20/15 03:00 PM

Agency Requisition Number: ITL03202015

Previous Price Paid: N/A

Solicitation type: 14 Days or more for entire solicitation package

NIGP Commodity Code(s):

Class-Item: 920 - 34

Contact Information:

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REQUEST FOR PROPOSAL

by

The University of Texas System Administration

for

**Selection of a Vendor to Provide
Learning Content Development & Production Services**

related to

University Programs

RFP No. ITL03202015

Submittal Deadline: March 20, 2015, 3:00 p.m., Central Prevailing Time

Issued: February 25, 2015

REQUEST FOR PROPOSAL

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SECTION 1

INTRODUCTION

1.1 Description of University

The University of Texas System (also referred to herein as the “**University**” or “**UT System**”) is the largest system of public higher education in Texas.

In 1881, the Texas State Legislature established the “Main University,” now known as The University of Texas at Austin, and a medical school, now known as The University of Texas Medical Branch at Galveston. From these origins, The UT System has grown to include 15 educational institutions and employ more than 87,243 faculty and staff employees. The UT System’s budget for FY 2012 was almost \$13.1 billion. Rich in heritage and tradition, the UT System currently provides instruction to more than 214,000 students and is a national leader in various research endeavors.

UT System encompasses a diverse community of institutions including major research universities, comprehensive academic universities, upper level institutions, comprehensive health science institutions and specialized hospitals – all of which are highly complex organizations. The “**UT Institutions**” and their locations are as follows:

- The 9 general academic institutions included in UT System (the “**UT Academic Institutions**”) are located in the following Texas cities: Arlington, Austin, Brownsville, Dallas, Edinburg (UT Pan American), El Paso, Odessa (UT Permian Basin), San Antonio and Tyler.
- The 6 health science institutions included in UT System (the “**UT Health Science Institutions**”) are located in the following Texas cities: Dallas, Galveston, Houston (UT Health Science Center - Houston and UT M. D. Anderson Cancer Center), San Antonio and Tyler.
- Finally, UT System’s administrative offices (“**UT System Administration**”) are located in Austin, Texas.

1.2 Background and Special Circumstances

The mission of the Institute for Transformational Learning (ITL) is to improve student outcomes and identify and cultivate new revenue streams through the strategic support of online and innovative programming across the University of Texas System. ITL provides support for innovative pedagogical and delivery models, through the creation and coordination of shared services to support campus initiatives, and through encouraging the proliferation of next generation programming models and optimized operations and processes.

In support of ITL’s mission, the UT System Administration is seeking to enter into non-exclusive System-wide Master Agreements (**Agreement**) with established, qualified and experienced firms for the services described in this Request for Proposal No. ITL03202015 (“**RFP**”). The University is soliciting proposals from qualified persons and entities (“**Proposers**”) for the following scope of work as outlined in Section 1.3. As

indicated in Section 2.3 of this RFP, the successful Proposers will be referred to as the “**Contractors**”.

Contract Term: Each non-exclusive Agreement will be for a five (5) year base term.

The possibility of multiple and/or split awards exists under this solicitation. No minimums are guaranteed or implied. Project teams from the University will work with selected Contractors to develop services as needed. A work order (or Project Addendum, Exhibit A) will be created specific to each project based on the pricing and services outlined in the Agreement.

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

1.3 Objective of this Request for Proposal

Proposer may to respond to either category or all services described below. The UT System reserves the option to award the entire contract to one Contractor or to a combination of Contractors each providing one or more of the following services:

- a. Instructional design and content development:
Contractor shall work in close collaboration with project staff and faculty content experts to guide the design and development of instruction, the curation and creation of content, including performance-based and competency-based activities and accompanying assessment and possibly translation and localization services. To do so, the Contractor shall apply the most effective evidenced-based practices for face-to-face, blended, and online teaching and learning across a variety of subjects and instructional formats (term based, competency base).
- b. Digital audio/video production and post-production:
Contractor shall create high-quality digital audio and HD video for instruction and course promotion/marketing. Content shall include, but is not limited to, short lecture captures, green screen compositing, screencasts, podcasts, demonstrations, and simulations. Final products shall be optimized for online and mobile delivery.
- c. Motion graphics, animations, and transmedia digital narratives:
Contractor shall create dynamic high-quality motion graphics and animations for instructional and promotional visualizations. Final products shall be optimized for online and mobile delivery.
- d. Graphic design and/or illustrations:
Contractor shall create high-quality graphics and illustrations for instructional and promotional visualizations. Deliverables include, but are not limited to, diagrams, charts, info-graphics, logos, icons, posters, style guides & brochures. Final products shall be optimized for print, web-based, and mobile delivery.
- e. Web and mobile design and development:
Contractor shall:

- Create high-quality and effective websites and applications that employ responsive design elements that deliver optimal display across a range of devices
 - Conduct formal usability studies and quality assurance testing
 - Integrate content management capabilities and processes to support regular content updates as appropriate
 - Adhere with UT policy regarding website accessibility and security.
- f. Digital rights clearance services:
Contractor shall work in close collaboration with University project staff and faculty content experts to obtain editorial/permissions/rights to digital content for online course development.
- g. Miscellaneous course development and course asset development services:
Contractor shall work in close collaboration with University project staff and faculty content experts to provide services/products that are supportive to online education, such as:
- print on demand
 - book app production
 - e-book authoring
 - content entry and online course maintenance
 - consultation services
 - idea generation
 - technical consulting/analysis
 - quality assurance testing
 - requirements gathering and proposal/grant writing
- h. General responsibilities:
As applicable, the Contractor will provide the following services in fulfillment of the service types listed above:
1. Attend client meetings and/or work sessions held in Austin, TX
 2. Preparation of creative briefs, storyboards, concepts, designs, drafts, rough cuts, etc., for review and approval by client prior to development
 3. Formatting and inputting of content
 4. Providing detailed product specifications and access for trial, review, and testing
 5. Project management and consulting
 6. Timely delivery of drafts, revisions, and finished products
- Quality assurance testing

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. In particular, Proposer should note that University is part of The University of Texas System ("UT System"), which is comprised of nine academic and six health universities described at <http://www.utsystem.edu/institutions>. UT System institutions routinely evaluate whether a contract resulting from a procurement conducted by one of the institutions might be suitable for use by another, and if so, this could give rise to

additional purchase volumes. As a result, in submitting its proposal in response to this RFP, Proposer should consider proposing pricing and other commercial terms that take into account such higher volumes and other expanded opportunities that could result from the eventual inclusion of other institutions in the purchase contemplated by this RFP.

SECTION 2

NOTICE TO PROPOSER

2.1 Submittal Deadline

University will accept proposals submitted in response to this RFP until 3:00 p.m., Central Prevailing Time on March 20, 2015 (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**”):

Connor Dumbeck
The University of Texas System Administration
Institute for Transformational Learning
210 West Sixth Street, Suite 3.100
Austin, Texas 78701
cdumbeck@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 March 6, 2015. 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. The successful Proposer is referred to as the “**Contractor**.”

Proposer is encouraged to propose 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. Proposers 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.

An evaluation team from University will evaluate proposals. The evaluation of proposals and the selection of Contractor 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 degree of fit with strategic academic program objectives.

2.4 Key Events Schedule

Issuance of RFP	February 25, 2015
Deadline for Questions/Concerns (ref. Section 2.2 of this RFP)	March 6, 2015
Submittal Deadline (ref. Section 2.1 of this RFP)	3:00 p.m. Central Prevailing Time on March 20, 2015

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.
- 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. The HUB goal for this RFP is 24.6%.

*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.*

Questions regarding the HSP may be directed to:

*Contact: Stephanie Park
HUB Coordinator
Phone: 512-499-4378
Email: spark@utsystem.edu*

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.

SECTION 3

SUBMISSION OF PROPOSAL

3.1 Number of Copies

Proposer must submit a total of three (3) complete and identical copies of its *entire* proposal, as well as provide a digital version of the 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:

Jenny Murphy
 Director of Accounting & Purchasing Services
 The University of Texas System Administration
 210 West Sixth St.
 Suite B. 140E
 Austin, Texas 78701-2891

3.3 Proposal Validity Period

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

3.4 Terms and Conditions

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

- 3.4.1.1. Specifications and Additional Questions (ref. **Section 5** of this RFP);
- 3.4.1.2. Agreement (ref. **APPENDIX TWO**);
- 3.4.1.3. Proposal Requirements (ref. **APPENDIX ONE**);
- 3.4.1.4. Notice to Proposers (ref. **Section 2** of this RFP).

3.5 Submittal Checklist

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

- 3.5.1 Signed and Completed Execution of Offer (ref. **Section 2** of **APPENDIX ONE**)
- 3.5.2 Signed and Completed Pricing and Delivery Schedule (ref. **Section 6** of this RFP)
- 3.5.3 Responses to Proposer's General Questionnaire (ref. **Section 3** of **APPENDIX ONE**)
- 3.5.4 Signed and Completed Addenda Checklist (ref. Section 4 of **APPENDIX ONE**)
- 3.5.5 Responses to questions and requests for information in the Specifications and Additional Questions Section (ref. **Section 5** of this RFP)
- 3.5.6 Signed and completed originals of the HUB Subcontracting Plan or other applicable documents (ref. **Section 2.5** of this RFP and **APPENDIX THREE**).

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 5.3.1** of this RFP. Proposer's exceptions will be reviewed by University and may result in disqualification of Proposer's proposal as non-responsive to this RFP. If Proposer's exceptions do not result in disqualification of Proposer's proposal, then University may consider Proposer's exceptions when University evaluates the Proposer's proposal.

SECTION 5

SPECIFICATIONS AND ADDITIONAL QUESTIONS

5.1 General

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

Proposers are encouraged to review the mission of the Institute for Transformational Learning at our website. We are particularly interested in respondents to who can help us to achieve the goals of student engagement, retention, and achievement via high quality content as well as the goal of affordability to be achieved through scale.

5.2 Questions Specific to this RFP

Proposer must submit the following information as part of Proposer’s proposal. Proposer must also note which objectives listed in **Section 1.3** are being responded to. Completely answer all questions below:

5.3.1 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

5.3.2 Proposer’s experience and reputation

- A. Give an overview of the Proposer’s business history, strategy and model. Describe the Proposer’s core competencies.
- B. Provide references from three to five current or past clients for whom services similar to those described herein have been completed. For each client listed, provide the following information:
 - Client name and address
 - Contact name, e-mail address and phone number
 - Description of products and services provided
 - Any applicable background information regarding the products and services provided
 - Describe Proposer’s current role with the client
 - Length of business relationship
- C. Identify the key personnel that would be involved in providing the services described herein. List the roles and responsibilities of each member of the team. Provide resumes for those individuals.

Proposer’s capacity to respond to University requests

- D. Describe the Proposer’s ability to achieve scale in development and production as well as the Proposer’s history and ability to complete multiple large scale projects on time and within budget.

- E. Describe the Proposer's history and capacity to respond to rush requests.
- F. Describe the proposer's ability to conduct business successfully across the University of Texas System. What percentage of the project team is based in Texas?
- G. Describe the Proposer's project management processes.
- H. Describe the Proposer's change management plan. How are change requests identified and approved?

Quality of the proposed goods or services

- K. Provide information and portfolio of work which demonstrates Proposer's ability to design, develop, and implement/deliver the products and services described herein. Proposers must provide at least three examples of relevant implementations or work produced for clients.
Consider:
 - Quality & completeness of the proposal
 - Robustness of the portfolio/product
 - Level of creativity/innovation of items/function demonstrated in the portfolio/product
 - Quality of planning and design of items/function demonstrated in the portfolio/productRelevance of the portfolio/product
- L. With what delivery platforms and technical environments has the Proposer worked in the past?
- M. Specify the approaches/practices/tools/processes that the Proposer will use to successfully develop and deploy innovative instructional technology services and materials.
- N. Describe any unique benefits to University from doing business with Proposer.

SECTION 6

PRICING AND DELIVERY SCHEDULE

Proposal of: _____
(Proposer Company Name)

To: The University of Texas System Administration

Ref.: Learning Content Development & Production Services related to the University programs

RFP No.: ITL03202015

Ladies and Gentlemen:

Having carefully examined all the specifications and requirements of this RFP and any attachments thereto, the undersigned proposes to furnish the services required pursuant to the above-referenced Request for Proposal upon the terms quoted below.

6.1 Pricing for Services Offered

6.2 Delivery Schedule of Events and Time Periods

6.3 University's Payment Terms

University's standard payment terms for services are "Net 30 days." Proposer agrees that University will be entitled to withhold _____ percent (_____%) of the total payment due under the Agreement until after University's acceptance of the final work product. Indicate below the prompt payment discount that Proposer will provide to University:

Prompt Payment Discount: _____%_____days/net 30 days.

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

APPENDIX ONE
PROPOSAL REQUIREMENTS

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SECTION 1

GENERAL INFORMATION**1.1 Purpose**

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

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

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

1.2 Inquiries and Interpretations

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

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

Any interested party that receives this RFP by means other than directly from University is responsible for notifying University that it has received an RFP package, and should provide its name, address, telephone 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, if any, will be required to enter into a contract with University in a form substantially similar to the Agreement between University and Contractor (the "**Agreement**") attached to this RFP as **APPENDIX TWO** and incorporated for all purposes.

1.5 Proposal Evaluation Process

University will select Contractor by using the competitive sealed proposal process described in this Section. University will open the 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 HUB Subcontracting Plan (also called the 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. Proposer submits its proposal at its own risk and expense.
- 1.8.4 Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFP in any way; or (iii) contain irregularities of any kind, are subject to disqualification by University, at University's sole discretion.
- 1.8.5 Proposals should be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet the requirements and specifications of this RFP. Emphasis should be on completeness, clarity of content, and responsiveness to the requirements and specifications of this RFP.
- 1.8.6 University makes no warranty or guarantee that an award will be made as a result of this RFP. University reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP or the Agreement when deemed to be in University's best interest. University reserves the right to seek clarification from any Proposer concerning any item contained in its proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to University, at University's sole discretion. Representations made by Proposer within its proposal will be binding on Proposer.

- 1.8.7 Any proposal that fails to comply with the requirements contained in this RFP may be rejected by University, in University's sole discretion.

1.9 Preparation and Submittal Instructions

1.9.1 Specifications and Additional Questions

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

1.9.2 Execution of Offer

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

1.9.3 Pricing and Delivery Schedule

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

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

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

1.9.4 Proposer's General Questionnaire

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

1.9.5 Addenda Checklist

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

1.9.6 Submission

Proposer should submit all proposal materials 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 (also called the 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.

1.9.7 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.

1.9.8 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.

1.9.9 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, 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.
- 29 By signature hereon, Proposer certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 210 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.
- 211 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.
- 213 **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.: _____

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 Institution's Name)

(Signature of Duly Authorized Representative)

(Printed Name/Title)

(Date Signed)

(Proposer's Street Address)

(City, State, Zip Code)

(Telephone Number)

(FAX Number)

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

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

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

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

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

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

- 3.1.8 Does any relationship exist (whether by family kinship, business association, capital funding agreement, or any other such relationship) between Proposer and any employee of University? If yes, Proposer will explain.
- 3.1.9 Proposer will provide the name and Social Security Number for each person having at least 25% ownership interest in Proposer. This disclosure is mandatory pursuant to 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.

3.2 Approach to Project Services

- 3.2.1 Proposer will provide a statement of the Proposer's service approach and will describe any unique benefits to University from doing business with Proposer. Proposer will briefly describe its approach for each of the required services identified in **Section 5.4** Scope of Work of this RFP.
- 3.2.2 Proposer will provide an estimate of the earliest starting date for services following execution of the Agreement.
- 3.2.3 Proposer will submit a work plan with key dates and milestones. The work plan should include:
- 3.2.3.1 Identification of tasks to be performed;
 - 3.2.3.2 Time frames to perform the identified tasks;
 - 3.2.3.3 Project management methodology;
 - 3.2.3.4 Implementation strategy; and
 - 3.2.3.5 The expected time frame in which the services would be implemented.
- 3.2.4 Proposer will describe the types of reports or other written documents Proposer will provide (if any) and the frequency of reporting, if more frequent than required in the RFP. Proposer will include samples of reports and documents if appropriate.

3.3 General Requirements

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

3.4 Service Support

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

3.5 Quality Assurance

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

3.6 Miscellaneous

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

SECTION 4
ADDENDA CHECKLIST

Proposal of: _____
(Proposer Company Name)

To: The University of Texas _____

Ref.: _____ Services related to the _____

RFP No.: _____

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

AGREEMENT

NON-EXCLUSIVE MASTER SERVICES AGREEMENT BETWEEN UNIVERSITY AND CONTRACTOR

This Non-Exclusive Master Services Agreement between University and Contractor ("Agreement") is made and entered into effective as of XXX, 2014 (the "Effective Date"), by and between The University of Texas System, an agency and institution of higher education established under the laws of the State of Texas ("University"), and _____. ("Contractor"), Federal Tax Identification Number_____.

University and Contractor hereby agree as follows:

1. **Term**

The term of this Agreement shall commence on the Effective Date and terminate on the ____ anniversary of the Effective Date unless extended by mutual agreement of the parties as provided herein.

2. **Contractor Services and Project Addenda**

2.1 The categories of the services ("Services") that may be performed under this Agreement are set forth in **Exhibit A**, attached and incorporated for all purposes.

This Agreement is a non-exclusive contract between the University and Contractor. Pursuant to this Agreement, any one of the University's academic institutions, health institutions or System Administration ("Requesting Institution") may request the services of Contractor for a specific project with an established scope of services negotiated with the Contractor ("Project"). As used herein, the term "University" includes any Requesting Institution, unless the context clearly requires a different meaning. Prior to Contractor's commencement of any Project, the Contractor and the Requesting Institution must complete and enter into a Project Addendum (sample format attached hereto as **Exhibit B**), which shall contain a description of the Project, the terms of compensation to be paid Contractor, and a schedule for performance of all Services to be provided for the Project. All of the terms and conditions of this Agreement are incorporated into each Project Addendum for all purposes. In the event of any conflict between a Project Addendum and this Agreement, this Agreement will control provided however the Requesting Institution and Contractor may agree to language in a Project Addendum to specify or clarify the services to be provided or to provide University with more beneficial pricing than that set forth in this Agreement.

Contractor and a UT Institution can enter into a Project Addendum at any time during the Term. A Project Addendum will specify the term during which Contractor will perform Services. To the extent that this Agreement expires or terminates prior to the end of a Project Addendum, such Project Addendum will survive any such termination or expiration of the Agreement and the terms and conditions of this Agreement will continue to be incorporated for all purposes into that Project Addendum. Contractor understands and agrees that it will not receive any payment or other compensation under this Agreement unless it

enters into a Project Addendum and performs services in accordance with the terms and conditions of that Project Addendum and this Agreement.

- 2.2** CONTRACTOR UNDERSTANDS AND AGREES THAT THE UNIVERSITY HAS MADE NO REPRESENTATION, ASSURANCE, WARRANTY OR GUARANTY THAT THE UNIVERSITY WILL REQUEST CONTRACTOR TO PERFORM ANY SERVICE AND THAT THE UNIVERSITY HAS AND DOES SPECIFICALLY DISCLAIM ANY SUCH REPRESENTATIONS, WARRANTIES, ASSURANCES OR GUARANTIES. THE UNIVERSITY AND THE UT INSTITUTIONS RESERVE THE RIGHT TO OBTAIN SERVICES FROM ANY OTHER PERSON OR ENTITY AT THEIR SOLE DISCRETION.
- 2.3** The University and Contractor agree and acknowledge that the University is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to performing the Services. Contractor accepts the relationship of trust and confidence established between it and the University by this Agreement. Contractor covenants with the University to use its best efforts, skill, judgment, and abilities to perform the Services and to further the interests of the University in accordance with the University's requirements and procedures, in accordance with the highest standards of Contractor's profession or business and in compliance with all applicable national, federal, state and municipal laws, regulations, codes, ordinances and orders and with those of any other body or authority having jurisdiction. Contractor warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the Services.
- 2.4** Contractor warrants, represents, covenants, and agrees to maintain a staff of properly trained, credentialed, and experienced personnel to ensure satisfactory performance under this Agreement.

3. Contractor's Obligations

- 3.1** Contractor will perform the Services in compliance with all applicable federal, state and local laws, regulations, and ordinances. Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for the firm, corporation or institution (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor's response to University's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.
- 3.2** Contractor represents, warrants and agrees that (a) it will use its best efforts to perform the Services in a good and workmanlike manner and in accordance with the highest standards of Contractor's profession or business, and (b) all of the Services to be performed will be of the quality that prevails among similar businesses of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances.
- 3.3** Contractor will call to University's attention in writing all information in any materials supplied to Contractor (by University or any other party) that Contractor regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.

- 3.4 Contractor warrants and agrees that the Services will be accurate and free from any material defects. Contractor's duties and obligations under this Agreement will at no time be in any way diminished by reason of any approval by University nor will Contractor be released from any liability by reason of any approval by University, it being agreed that University at all times is relying upon Contractor's skill and knowledge in performing the Services.
- 3.5 Contractor will, at its own cost, correct all material defects in the Services as soon as practical after Contractor becomes aware of the defects.
- 3.6 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will cause all persons connected with Contractor directly in charge of the Services to be duly registered and/or licensed under all applicable federal, state and local laws, regulations, and ordinances. Contractor will assign to the Project a designated representative who will be responsible for the administration and coordination of the Services.
- 3.7 Contractor represents that if (i) it is a corporation, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor; or (ii) if it is a partnership, limited partnership, limited liability partnership, or limited liability company, then it has all necessary power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 3.8 Contractor represents and warrants that all of Contractor's Personnel contributing to the Work Material (refer to Section 6) under this Agreement will be required to (i) acknowledge in writing the ownership of Contractor (for the benefit of University) of the Work Material and each element thereof produced by the Personnel while performing services pursuant to this Agreement and (ii) make all assignments necessary to effectuate such ownership. "**Personnel**" means any and all persons associated with Contractor who provide any Services or work product pursuant to this Agreement, including officers, managers, supervisors, full-time employees, part-time employees, and independent contractors. Contractor represents and warrants that: (i) the Services will be performed solely by Contractor, its full-time or part-time employees during the course of their employment, or independent contractors who have assigned in writing all right, title and interest in their work to Contractor for the benefit of 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.

- 3.9 If this Agreement requires Contractor's presence on University's premises or in University's facilities, Contractor agrees to cause its employees, representatives, agents, or subcontractors to become aware of, fully informed about, and in full compliance with all applicable University rules and policies, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.

4. Payment Obligations

- 4.1 So long as Contractor has provided University with its current and accurate Federal Tax Identification Number in writing University will pay Contractor for the performance of the Services as established in each Project Addendum. Contractor understands and agrees that payments under this Agreement will be based upon negotiated final terms as provided for in each specific Project Addendum. Contractor agrees and acknowledges that the fees hereunder may be subject to the withholding requirements of Section 3402(t) of the Internal Revenue Code. This Agreement is not valid for amounts over \$1,000,000 without the approval of the University of The University of Texas System Board of Regents.
- 4.2 The Contract Amount for each Project Addendum includes all applicable federal, state or local sales or use taxes payable as a result of the execution or performance of Services.
- 4.3 University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the Services in accordance with Section 151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* ("**TAC**") Section 3.322.

5. Payment Terms

- 5.1 Requesting Institution will pay any fees due to Contractor under a Project Addendum entered into in accordance with this Agreement in accordance with the Texas Prompt Payment Act ("Act"), Chapter 2251, Government Code. Pursuant to the Act, Contractor will submit to Requesting Institution an invoice covering the services performed for University to that date, in compliance with Exhibit C, Baseline Pricing and the terms of the Project Addendum. Each invoice will be accompanied by documentation that the Requesting Institution may reasonably request to support the invoice amount. University will, within twenty-one (21) days from the date it receives an invoice and supporting documentation, approve or disapprove the amount reflected in the invoice. If Requesting Institution approves the amount or any portion of the amount, Requesting Institution will promptly pay (each a "**Progress Payment**") to Contractor the amount approved so long as Contractor is not in default under this Agreement. Requesting Institution shall promptly pay Contractor all such amounts upon curing any such default. If University disapproves any invoice amount, Requesting Institution will give Contractor specific reasons for its disapproval in writing.
- 5.2 Within ten (10) days after final completion of the Services performed pursuant to a Project Addendum and acceptance of the Services by Requesting Institution or as soon thereafter as possible, Contractor will submit a final invoice ("**Final Invoice**") setting forth all amounts due and remaining unpaid to Contractor. Upon approval of

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

- 5.3 Notwithstanding any provision of this Agreement to the contrary, Requesting Institution will not be obligated to make any payment (whether a Progress Payment or Final Payment) to Contractor if Contractor is in default under this Agreement. Requesting Institution shall promptly pay Contractor all such amounts upon curing any such default.
- 5.4 The cumulative amount of all Progress Payments and the Final Payment (defined below) will not exceed the Contract Amount as more particularly set forth in each Project Addendum.
- 5.5 No payment made by Requesting Institution will (a) be construed to be final acceptance or approval of that part of the Services to which the payment relates, or (b) relieve Contractor of any of its duties or obligations under this Agreement.
- 5.6 Intentionally omitted.
- 5.7 Requesting Institution will have the right to verify the details set forth in Contractor's invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Contractor at mutually convenient times; (b) examining any reports with respect to the Project; and (c) other reasonable action.
- 5.8 Notwithstanding any other provision of this Agreement, Requesting Institution is entitled to a "**Prompt Payment Discount**" of ___% off of each payment that Requesting Institution submits within ___days after Requesting Institution's receipt of Contractor's invoice for that payment.
- 5.9 Section 51.012, *Texas Education Code*, authorizes Requesting Institution to make any payment through electronic funds transfer methods. Contractor agrees to receive payments from Requesting Institution through electronic funds transfer methods, including the automated clearing house system (also known as ACH). Prior to the first payment under this Agreement, University will confirm Contractor's banking information. Any changes to Contractor's banking information must be communicated to Requesting Institution in writing at least thirty (30) days in advance of the effective date of the change.

6. Ownership.

- 6.1 All tools, software, programs drawings, specifications, plans, computations, sketches, data, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by Contractor or any subcontractors in connection with the Work (collectively, "Work Material"), whether or not accepted or rejected by University, are the sole property of University and for its exclusive use and re use at any time without further compensation and without any restrictions.
- 6.2 Contractor grants and assigns to University all rights and claims of whatever nature and whether now or hereafter arising in and to the Work Material and will cooperate fully with University in any steps University may take to obtain or enforce patent, copyright, trademark or like protections with respect to the Work Material.

- 6.3** Contractor will deliver all Work Material to University upon expiration or termination of this Agreement. University will have the right to use the Work Material for the completion of the Work or otherwise. University may, at all times, retain the originals of the Work Material. The Work Material will not be used by any person other than University on other projects unless expressly authorized by University in writing.
- 6.4** The Work Material will not be used or published by Contractor or any other party unless expressly authorized by University in writing. Contractor will treat all Work Material as confidential.
- 6.5** All title and interest in the Work Material will vest in University and will be deemed to be a work made for hire and made in the course of the Work rendered under this Agreement. To the extent that title to any Work Material may not, by operation of law, vest in University or Work Material may not be considered works made for hire, Contractor hereby irrevocably assigns, conveys and transfers to University and its successors, licensees and assigns, all rights, title and interest worldwide in and to the Work Material and all proprietary rights therein, including all copyrights, trademarks, service marks, patents, trade secrets, moral rights, all contract and licensing rights and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known. In the event Contractor has any rights in the Work Material which cannot be assigned, Contractor agrees to waive enforcement worldwide of the rights against University, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to University with the right to sublicense. These rights are assignable by University.
- 6.6** All tools software and/or programs owned by Contractor, or which have been licensed to Contractor by a third party that either: 1) existed prior to the effective date of this agreement and the Work; 2) are not related to the Work or to Contractor's services in connection with the Work; or 3) were created by the Contractor (or its licensor) totally separate from the Work or Contractor's services in connection with the Work are collectively "Contractor IP." Contractor IP is the sole property of Contractor (or its licensor) and Contractor (or its licensor) will at all times retain sole and exclusive title to and ownership to Contractor IP. Contractor hereby grants to University a non-exclusive, worldwide, perpetual, irrevocable, sub-licensable, royalty-free license to use the Contractor IP in connection with the Work or with Contractor's services in connection with the Work.
- 6.7** To the extent that particular Work Product comprises an improvement, enhancement or modification to preexisting Contractor IP, whether or not patentable, copyrightable as a derivative work, or otherwise protectable as intellectual property (hereafter "Work Product Improvements to Contractor IP"), University grants to Contractor a non-exclusive, worldwide, perpetual, irrevocable, sub-licensable, royalty-free license to the Work Product Improvements to Contractor IP.

7. Default and Termination

- 7.1** In the event of a material failure by a party to perform in accordance with the terms of this Agreement ("**default**"), the non-defaulting party may terminate this Agreement and a non-defaulting party may terminate a Project Addendum upon fifteen (15) days' written notice of termination setting forth the nature of the material failure; provided that, the material failure is through no fault of the terminating party.

The termination will not be effective if the material failure is fully cured prior to the end of the fifteen-day period.

- 7.2** University may, without cause, terminate this Agreement at any time upon giving _____ days' advance written notice to Contractor. A Requesting Institution may terminate a Project Addendum, without cause, at any time upon giving _____ days' written notice to Contractor, unless an earlier termination is established in a project Addendum. Upon termination pursuant to this Section, or pursuant to the terms of a Project Addendum, Contractor will be entitled to payment of an amount that will compensate Contractor for the Services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement; provided, that, Contractor has delivered all Work Material to University. Notwithstanding any provision in this Agreement to the contrary, University will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor.
- 7.3** Termination under **Sections 7.1** or **7.2** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.
- 7.4** Intentionally omitted.
- 7.5** In the event that this Agreement is terminated, then within thirty (30) days after termination, Contractor will reimburse University for all fees paid by University to Contractor that were (a) not earned by Contractor prior to termination, or (b) for goods or services that University did not receive from Contractor prior to termination.

8. Indemnification

- 8.1** TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND, 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 THIRD PARTY 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, 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.

PRIVACY AND INFORMATION SECURITY INDEMNITY. CONTRACTOR WILL INDEMNIFY AND DEFEND UNIVERSITY FROM AND AGAINST ANY THIRD PARTY CLAIMS, FINES, FEES, ASSESSMENTS, PENALTIES, LOSSES, LIABILITIES AND EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES AND EXPENSES)

THAT RELATE TO OR RESULT FROM ANY FAILURE TO COMPLY WITH CONTRACTOR'S OBLIGATIONS REGARDING UNIVERSITY AND FERPA RECORDS.

- 8.2 IN ADDITION, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND, 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.
- 8.3 UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR WHICH CONTRACTOR IS OBLIGATED TO INDEMNIFY UNIVERSITY UNDER THIS SECTION 8, UNIVERSITY WILL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UNIVERSITY AGREES TO REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

9. Relationship of the Parties

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

10. Insurance

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

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

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

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

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

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 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

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

10.1.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Combined Single Limit Bodily Injury and Property Damage;

10.1.4 Errors and Omissions Insurance, including Cyber Liability, with limits of not less than \$3,000,000 per project (endorsed on the E&O policy) for each University Project Addendum that provides, at a minimum, coverage for:

- Liability for security or privacy breaches, including loss or unauthorized access to University Data;
- Costs associated with a privacy breach, including consumer notification, customer support, and costs of providing credit monitoring services;
- Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
- Costs of restoring, updating or replacing data;
- Liability losses connected to network security, privacy, and media liability;
- "Insured versus insured" exclusion prohibited.

Such insurance will cover all Work performed by or on behalf of Contractor and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Contractor agrees to purchase an Extended Reporting Period Endorsement, effective twenty-four (24) months after the expiration or cancellation of the policy. No Errors and Omissions/Cyber Liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least twenty-four (24) months after the expiration or termination of this Agreement for any reason.

10.2 Contractor will deliver to University:

10.2.1 Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all required insurance policies after the execution and delivery of this Agreement and prior to the performance of any Services by Contractor under this Agreement. Additional evidence of insurance will be provided verifying the

continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

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

10.2.1.2 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System, The University of Texas System and each Requesting Institution. **All insurance policies** will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System, The University of Texas System and the Requesting Institution. No policy will be canceled until after thirty (30) days' unconditional written notice to University. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to University thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this **Section 10**.

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

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

Name:	Daniel Garza
Address:	UT System Administration 601 Colorado St., P4100 Austin, TX 78701
Facsimile Number:	512-499-4215
Email Address:	dgarza@utsystem.edu

10.3 The insurance policies required in this Agreement will be kept in force for the periods specified below:

10.3.1 Commercial General Liability Insurance, Business Automobile Liability Insurance, Workers' Compensation Insurance and Employer's Liability

Insurance will be kept in force until the Services on each Project Addendum has been fully performed and accepted by University in writing.

11. Miscellaneous

- 11.1 Assignment and Subcontracting.** Except as specifically provided in **Exhibit D**, Historically Underutilized Business Subcontracting Plan, attached and incorporated for all purposes, Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, without the prior written consent of University 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. 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 and all Project Addenda without notice or opportunity to cure.
- 11.2 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.
- 11.3 Tax Certification.** If Contractor is a taxable entity as defined by Chapter 171, Texas Tax Code ("**Chapter 171**"), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 11.4 Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until the debt or delinquency is paid in full.
- 11.5 Loss of Funding.** University performance of its duties and obligations under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "**Legislature**") and/or allocation of funds by the Board of Regents of The University of Texas System (the "**Board**"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.
- 11.6 Entire Agreement; Modifications.** This Agreement supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions will be

binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by both University and Contractor.

- 11.7 Force Majeure.** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (“**force majeure occurrence**”)
- 11.8 Captions.** The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
- 11.9 Governing Law.** Travis County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties to this Agreement and all of the terms and conditions of this Agreement will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.
- 11.10 Waivers.** No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.
- 11.11 Confidentiality and Safeguarding of University Records; Press Releases; Public Information.** Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of Requesting Institution, or (3) have access to, records or record systems (collectively, “**University Records**”). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws. **[Option (Include if University Records are subject to FERPA.):** Additional mandatory confidentiality and security compliance requirements with respect to University Records subject to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (“**FERPA**”) are addressed in **Section 12.41.] [Option (Include if Requesting Institution is a HIPAA Covered Entity and University Records are subject to HIPAA.):** Additional mandatory confidentiality and security compliance requirements with respect to University Records subject to the Health Insurance Portability and Accountability Act and Code of Federal Regulations Title 45, Part 160 and subparts A and E of Part 164 (collectively “**HIPAA**”) are addressed in **Section 12.26.]** Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by Requesting Institution in writing; (2) safeguard University Records according to reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security **[Option (Include if Section 12.39 related to Payment Card Industry Data Security Standards is not include in this Agreement.):**), 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 Laws and the terms of this Agreement; and (4) comply with Requesting Institution Rules regarding access to

and use of Requesting Institution's computer systems, including UTS 165 at <http://www.utsystem.edu/bor/procedures/policy/policies/uts165.html>. At the request of Requesting Institution, Contractor agrees to provide Requesting Institution with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records. **[Alternate (Use if Requesting Institution has confirmed that Requesting Institution will not provide Contractor any University Records that contain personally identifiable information regarding any individual that is not available to any requestor under the Texas Public Information Act.): 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**"). However, it is expressly agreed that Requesting Institution will not provide to Contractor, and Contractor will never seek to access, any University Records that contain personally identifiable information regarding any individual that is not available to any requestor under the *Texas Public Information Act*, Chapter 552, Texas Government Code, including "directory information" of any student who has opted to prohibit the release of their "directory information" as that term is defined under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("**FERPA**") and its implementing regulations. **[Option (Include if Requesting Institution is a HIPAA Covered Entity and University Records are subject to HIPAA.):** Additional mandatory confidentiality and security compliance requirements with respect to University Records subject to the Health Insurance Portability and Accountability Act and Code of Federal Regulations Title 45, Part 160 and subparts A and E of Part 164 (collectively "**HIPAA**") are addressed in **Section 12.26.** Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security **[Option (Include if Section 12.39 related to Payment Card Industry Data Security Standards is not include in this Agreement.):** 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 Laws and the terms of this Agreement; and (4) comply with Requesting Institution Rules regarding access to and use of Requesting Institution's computer systems, including UTS 165 at <http://www.utsystem.edu/bor/procedures/policy/policies/uts165.html>. At the request of University, Contractor agrees to provide Requesting Institution with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.]

11.11.1 Notice of Impermissible Use. If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to Requesting Institution within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide Requesting Institution with all information requested by Requesting Institution regarding the impermissible use or disclosure.

- 11.11.2 Return of University Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of Requesting Institution 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 Requesting Institution with written notice of Contractor's intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to Requesting Institution in writing the destruction of University Records.
- 11.11.3 Disclosure.** If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this **Section 11.11**.
- 11.11.4 Press Releases.** Except when defined as part of the Work, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of University in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of Requesting Institution.
- 11.11.5 Public Information.** University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* ("TPIA"), Chapter 552, *Texas Government Code*. In accordance with Section 552.002 of TPIA and Section 2252.907, *Texas Government Code*, and **at no additional charge to University**, Contractor will make any information created or exchanged with Requesting Institution pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by Requesting Institution that is accessible by the public.
- 11.11.6 Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if Requesting Institution reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, Requesting Institution may immediately terminate this Agreement without notice or opportunity to cure.
- 11.11.7 Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.
- 11.12 Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.
- 11.13 Records.** Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments will be available to Requesting Institution or its authorized representative during business hours and will be retained for four (4) years after final Payment or abandonment of the Project, unless Requesting Institution otherwise instructs Contractor in writing.

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

If to University: UT System Administration
 601 Colorado Street, P4100
 Austin, TX 78701
 Fax: 512-499-4215
 Email: dgarza@utsystem.edu
 Attention: Daniel Garza
 Institute for Transformational Learning

If to Contractor:

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

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

Dr. Scott C. Kelley
 Executive Vice Chancellor for Business Affairs
 The University of Texas System
 201 W. 7th, Suite 810
 Austin, Texas 78701
 Fax: (512) 499-4289
 Email: LegalNotices@utsystem.edu

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

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

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

11.17 Limitation of Liability. EXCEPT FOR UNIVERSITY'S OBLIGATION (IF ANY) TO PAY CONTRACTOR CERTAIN FEES AND EXPENSES UNIVERSITY WILL HAVE NO LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING ANY DUTY OR OBLIGATION OF UNIVERSITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR, NO PRESENT OR FUTURE AFFILIATED ENTERPRISE, SUBCONTRACTOR, AGENT, OFFICER, DIRECTOR, EMPLOYEE, REPRESENTATIVE, ATTORNEY OR REGENT OF UNIVERSITY, OR THE UNIVERSITY OF TEXAS SYSTEM, OR ANYONE CLAIMING UNDER UNIVERSITY HAS OR WILL HAVE ANY PERSONAL LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.

11.18 Survival of Provisions. No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination, including **Sections 5.8, 8, 11.5, 11.9, 11.10, 11.11, 11.13, 11.16, 11.17, 11.19** and **11.21**.

11.19 Breach of Contract Claims.

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

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

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

Contractor's claims for breach of this Agreement by University.

11.19.1.3 Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, *Texas Civil Practices and Remedies Code*. The parties hereto specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit and (ii) University has not waived its right to seek redress in the courts.

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

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

11.20 Undocumented Workers. The *Immigration and Nationality Act (8 United States Code 1324a)* ("**Immigration Act**") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form ("**I-9 Form**") as the document to be used for employment eligibility verification (*8 Code of Federal Regulations 274a*). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, University may terminate this Agreement in accordance with **Section 8**. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

11.21 Limitations. THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING THOSE TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD

PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

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

11.23 Historically Underutilized Business Subcontracting Plan. Contractor agrees to use good faith efforts to subcontract the Services in accordance with the Historically Underutilized Business Subcontracting Plan ("HSP") (ref. **Exhibit E**). 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.

11.23.1 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 11.6** to replace the HSP with the revised subcontracting plan.

11.23.2 Expansion of the Services. If University expands the scope of the Services through a change order or any other amendment, University will determine if the additional Services contains probable subcontracting opportunities *not* identified in the initial solicitation for the Services. If University determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34

TAC Section 20.14 before (a) this Agreement may be amended to include the additional Services; or (b) Contractor may perform the additional Services. If Contractor subcontracts any of the additional subcontracting opportunities identified by University without prior authorization and without complying with 34 TAC Section 20.14, Contractor will be deemed to be in breach of this Agreement under **Section 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.

11.24 Certifications of Nonsegregated Facilities and Equal Employment Opportunities Compliance. Contractor certifies that, except for restrooms and wash rooms and one (1) or more lactation rooms each of which is segregated on the basis of sex: (1) it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained; (2) it will not maintain or provide for its employees any segregated facilities at any of its establishments; and (3) it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. A breach of this certification is a violation of the Equal Opportunity clause. The term "**segregated facilities**" means any waiting rooms, work areas, rest rooms and wash rooms, entertainment areas, and transportation or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise. Contractor further agrees that, except where it has contracts prior to the award with subcontractors exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, Contractor will retain the certifications for each one of its subcontractors in Contractor's files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES - A Certification on Nonsegregated Facilities must be submitted prior to the award of any subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Contractor understands that the penalty for making false statements regarding the subject matters of this Section is prescribed in 18 U.S.C. 1001.

11.25 Debarment. Contractor confirms that neither Contractor nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States ("U.S.") federal government procurement or nonprocurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs (<http://www.epls.gov/>) issued by the U.S. General Services Administration. "**Principals**" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g.

general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Contractor will provide immediate written notification to University if, at any time prior to award, Contractor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when University executes this Agreement. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to the other remedies available to University, University may terminate this Agreement for default by Contractor.

- 11.26 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.
- 11.27 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.
- 11.28 Security Characteristics and Functionality of Proposer's Information Resources.** Contractor's response to RFP No. ITL 12062013, Appendix Four, "Security Characteristics and Functionality of Contractor's Information Resources" ("Appendix Four Responses") dated December 6, 2013 are incorporated herein for all purposes and establishes specifications, representations, warranties and agreements related to the products and services Contractor is providing to University under this Agreement. These specifications, representations, warranties and agreements are binding on Contractor. Contractor agrees to perform the Work in compliance with its Appendix Four Responses, and will provide University prior written notice of a change to Contractor's data center or cloud computing subcontractor(s).
- 11.29 EIR Environment Specifications.** Contractor's response to RFP No. ITL 12062013 Appendix Three ("Appendix Three Responses"), attached and

incorporated for all purposes, establishes specifications, representations, warranties and agreements related to the environment specifications of EIR that Contractor is providing to University under this Agreement. The specifications, representations, warranties and agreements set forth in Appendix Three Responses are binding on Contractor. Contractor agrees to perform the Work in compliance with Appendix Three Responses.

11.30 Project Notification and Reports: Contractor will, upon execution of any Project Addendum (in the form of Exhibit B) under this Agreement, send a fully executed copy to the University at the following address, and directed to the following individual:

UT System Administration
601 Colorado Street, P4100
Austin, TX 78701
Fax: 512-499-4215
Email: dgarza@utsystem.edu
Attention: Daniel Garza
Institute for Transformational Learning

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

UNIVERSITY:

CONTRACTOR:

THE UNIVERSITY OF TEXAS SYSTEM

:

By: _____

By: _____

Name: Scott C. Kelley, Ed.D.

Name: _____

Title: Executive Vice Chancellor for
Business Affairs

Title: _____

Attest: _____
Corporate Secretary

Attachments:

- EXHIBIT A – Scope of Services**
- EXHIBIT B – Project Addendum**
- EXHIBIT C – Baseline Pricing**
- EXHIBIT D – HUB Subcontracting Plan**
- EXHIBIT E – FERPA Confidentiality & Security Addendum**

EXHIBIT A

SCOPE OF SERVICES

Contractor, upon the request of University or a Requesting Institution, will provide the following categories of services:

EXHIBIT B**FORM OF PROJECT ADDENDUM**

This Addendum (the "Addendum") is in effect between _____, an agency and institution of higher education established under the laws of the State of Texas (the "Requesting Institution") and _____ ("Contractor"). This Addendum (the "Addendum") is attached to and incorporated into the previously executed Non-Exclusive Master Services Agreement (the "Agreement"), dated effective April __, 2014, in effect between The University of Texas System, an agency and institution of higher education organized under the laws of the State of Texas ("University"), and Contractor. This Addendum has an Addendum Effective Date (herein so called) of _____, 20__.

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

Project:

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

[Designate services to be performed based on the list of services.]

Schedule:

Contractor will commence performance of the Project beginning on _____, 20__, and complete the Project no later than _____, 20__. Contractor shall deliver the Project in accordance with the following schedule of delivery dates:

[Specify each service and the corresponding delivery date.]

Expenses and Disbursements: Contractor may be reimbursed without mark-up for reasonable expenses (including meals, lodging, mileage and coach class airfare) validly incurred directly and solely in support of the Project and approved by Requesting Institution advance. Provided, however, Contractor agrees and acknowledges that Contractor will be subject to the then-current Travel Reimbursement Rates promulgated by the Comptroller of Public Accounts for the State of Texas at <https://fmx.cpa.state.tx.us/fm/travel/travelrates.php> with regard to meals, lodging, mileage, airfare and all other expenses related to travel. Further, Contractor agrees and acknowledges that Contractor will not be reimbursed by Requesting Institution for expenses that are prohibited or that exceed the allowable amounts set forth in the then-current Travel Reimbursement Rates. As a condition precedent to receiving reimbursement for expenses and disbursements, Contractor will submit to Requesting Institution receipts, invoices, and other documentation as required by Requesting Institution.

Project Notification:

Contractor will, upon execution of any project addendum under this Agreement, send a fully executed copy of each project addendum to the attention of the University at the following address:

The University of Texas System

Phone: _____

Email: _____

Fees and Reimbursable Expenses and Disbursements

The Fee Cap for this Project is \$_____.

The Expense Cap for this Project is \$_____.

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

[NAME OF REQUESTING INSTITUTION]

[NAME OF CONTRACTOR]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT C

BASELINE PRICING

2014 CY Baseline Pricing Per Institution

EXHIBIT D

HUB SUBCONTRACTING PLAN

EXHIBIT E**(To be Attached to Each Project Addendum)****FERPA CONFIDENTIALITY & SECURITY ADDENDUM**

This Confidentiality and Security Addendum (“Addendum”) is made and entered into effective as of [] (the “Effective Date”) by and between The University of Texas [], an agency and institution of higher education established under the laws of the State of Texas (“Requesting Institution”) and _____ (“Contractor”), (collectively “the Parties”). The purpose of this Addendum is to provide the terms under which Contractor is required to maintain the confidentiality and security of any and all University records subject to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (“FERPA”) which Contractor will create, receive and/or maintain on behalf of Requesting Institution pursuant to the Non-Exclusive Master Services Agreement dated __, 2014 (“the Underlying Agreement”).

1. **FERPA.** The Parties understand and agree that:

(a) As part of the Services that Contractor will provide pursuant to the Underlying Agreement, Contractor will be expected to receive, maintain and or create records or record systems from or on behalf of Requesting Institution that are subject to that are or contain personally identifiable information from Education Records subject to “FERPA” (collectively “FERPA Records”) namely: information about students and faculty collected from existing Requesting Institution information technology systems, e.g. SIS, LMS, CRM, etc. Such FERPA Records include any data in any form whatsoever, including electronic, written and machine readable form.

(b) Notwithstanding any other provision of the Underlying Agreement, this Addendum or any other agreement, all FERPA Records created, received and/or maintained by Contractor pursuant to this Agreement will remain the property of the Requesting Institution.

2. **FERPA Compliance.** As to all FERPA Records that Contractor may create, receive or maintain on behalf of Requesting Institution pursuant to the Underlying Agreement, Contractor is designated as a University Official with respect to such FERPA Records only to the extent to which Contractor is required to create, receive or maintain FERPA Records to carry out the Underlying Agreement and understands and agrees to all of the following without reservation:

(a) Prohibition on Unauthorized Use or Disclosure of FERPA Records: Contractor shall hold Requesting Institution’s FERPA Records in strict confidence. Contractor shall not use or disclose FERPA Records received from or on behalf of Requesting Institution, including any FERPA Records provided by a University student directly to Contractor, except as permitted or required by the Underlying Agreement, this Addendum, or a Project Addendum.

(b) Maintenance of the Security of FERPA Records: Contractor shall use the administrative, technical and physical security measures, including secure encryption approved by University in compliance with UT System Information and Resource Use & Security Policy, UTS 165, <http://www.utsystem.edu/bor/procedures/policy/policies/uts165.html> to preserve the confidentiality and security of all FERPA Records received from, or on behalf of Requesting Institution, its students or any third party pursuant to the Underlying Agreement.

(c) Reporting of Unauthorized Disclosures or Misuse of FERPA Records and Information:

Contractor, within one day of discovery, shall report to Requesting Institution any use or disclosure of FERPA Records not authorized by this Addendum. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the FERPA Records used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by Requesting Institution. For purposes of this subsection (c), an unauthorized disclosure or use includes any access or use of an Education Record by a Contractor employee or agent that the employee or agent does not require to perform a Service or access by any employee or agent that does not involve the provision of such Services.

(d) Right to Audit: Upon reasonable notice, Requesting Institution maintains the right to audit, upon University's reasonable belief that Contractor is not in material compliance with the terms of this Addendum or Contractor's compliance with FERPA as to Requesting Institution's FERPA Records maintained by Contractor. Nothing herein shall be construed to include a right to computer hacking for security or vulnerability tests or for any other purpose. Any such audit conducted under this Section shall: (i) be limited to the Contractor's facilities, systems and operations relating to the FERPA Records; (ii) occur during normal business hours; and (iii) shall not interfere with Contractor's normal business operations. Further, prior to conducting any such audit, all individuals performing such audit shall sign a confidentiality agreement acceptable to both parties.

(e) Five Year Exclusion for Improper Disclosure of Education Records. Under the federal regulations implementing FERPA, improper disclosure or redisclosure of personally identifiable information from Requesting Institution's Education Records by Contractor or its employees or agents may result in Contractor's complete exclusion from eligibility to contract.

3. **Return of FERPA Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all FERPA Records created or received from or on behalf of Requesting Institution will be (1) returned to Requesting Institution, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any FERPA Records, Contractor will provide Requesting Institution with written notice of Contractor's intent to destroy FERPA Records. Within five (5) days after destruction, Contractor will confirm to Requesting Institution in writing the destruction of FERPA Records.

4. **Disclosure.** Contractor will restrict disclosure of the FERPA Records solely to those employees, subcontractors, or agents of Contractor that have a need to access the FERPA Records in order for Contractor to perform its obligations under this Addendum. If Contractor discloses any FERPA Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with restrictions and obligations that align with the restrictions and obligations imposed on Contractor by this Agreement, including requiring each subcontractor or agent to agree to such restrictions and obligations in writing.

5. **Termination.** This Addendum shall remain in effect until Requesting Institution ceases to obtain Services from Contractor or University that involve FERPA terminates this Addendum by giving Contractor _____ days' notice of its intent to terminate. Sections 2, 3, 4, and 6 shall survive termination of this Agreement.

6. **Breach.** In the event of a breach or threatened breach or intended breach of this Addendum by Contractor, the Requesting Institution, in addition to any other rights and remedies available to it at law or in equity, shall be entitled to seek preliminary and final injunctions, enjoining and restraining such breach or threatened breach or intended breach.

7. **Governing Law.** The validity, construction, and performance of this Addendum are governed by the laws of the State of Texas, and suit may be brought in Travis County, Texas to enforce the terms of this Agreement.

8. **Non-Assignment.** The rights and obligations of the Parties under this Addendum may not be sold, assigned or otherwise transferred.

AGREED TO AND SIGNED BY THE PARTIES.

The University of Texas at [] .

By: _____

By: _____

Date: _____

Date: _____

APPENDIX THREE
HUB SUBCONTRACTING PLAN

THE UNIVERSITY OF TEXAS SYSTEM ADMINISTRATION
September 2012

APPENDIX TWO

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**

**POLICY ON UTILIZATION OF
HISTORICALLY UNDERUTILIZED BUSINESSES (HUBs)**

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.

NOTE:

In accordance with 34 TAC §20.13 (d) (1)(D)(iii), the goals above are the State of Texas HUB goals. For purposes of this procurement, the University of Texas System goals listed in the Special Instructions on page 10 will apply.

<p>SUMMARY OF REQUIREMENTS Historically Underutilized Business (HUBs) Subcontracting Plan</p>
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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 Performing 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**

	Letter of Transmittal Page 7	Letter of HUB Commitment page 8	HUB Subcontracting Plan (HSP) Pages 10-17	Progress Assessment Report (PAR) Page 18
1. UT SYSTEM DETERMINES THAT SUBCONTRACTING OPPORTUNITIES ARE PROBABLE.				
1. A. Respondent Proposes Subcontractors: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are probable.</u>	X		X	
1. B. Respondent Proposes Self-Performance: 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.	X		X	
2. UT SYSTEM DETERMINES THAT SUBCONTRACTING OPPORTUNITIES ARE NOT PROBABLE.				
2. A. Respondent Proposes Self-Performance: 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.	X		X	
2. B. Respondent Proposes Subcontractors: 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.	X		X	
3. Indefinite Duration/Indefinite Quantity Contracts: Submit with initial qualifications. Attachments required from the Respondent prior to contract execution for each contract associated with a solicitation for miscellaneous services.		X	X	
4. Changes in the HUB Subcontracting Plan After Award: Attachments required from the Respondent to whom a contract has been awarded if it desires to make changes to the approved HUB Subcontracting Plan.			X	

<p>5. Reporting: The Progress Assessment Report (PAR) is required with all payment requests. The submittal of this attachment is a condition of payment.</p>				<p>X</p>
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Letter of Transmittal
Vendor Services

(RESPONDENT'S BUSINESS LETTERHEAD)

Date

Mr. Hopeton Hay
 Director, HUB & Federal Small Business 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 and the goal as stated in Agency Special Instructions section of the HUB Subcontracting Plan, page 9.

Select one of the following:

_____ 23.4% 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

_____ 34% for commodities contracts

Subcontractors	# of Subcontractors	Total Subcontract \$ Value	Total Estimated %	% Minority Owned	% Woman Owned
HUB					
Non-HUB					
TOTAL					

I understand the above HUB percentages must represent Texas Comptroller HUB certification standards. For each of the listed HUB firms, I have attached a Texas Comptroller 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
Director HUB & Federal Small Business 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 9 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 15-16) 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

Rev. 02/12

UT SYSTEM HUB SUBCONTRACTING PLAN (HSP)
QUICK CHECKLIST

Option One –

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

- Section 1 – Respondent and Requisition Information
- Section 2 a. – No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources
- Section 3 – Self Performing Justification

Section 4 - Affirmation
Option Two -

If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:

- Section 1 – Respondent and Requisition Information
- Section 2 a. – Yes, I will be subcontracting portions of the contract
- Section 2 b. – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors
- Section 2 c. – Yes
- Section 4 – Affirmation
- GFE Method A (Attachment A) – Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- Attach copies of HUB certification documents

Option Three -

If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract* in place for five (5) years or less meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:

- Section 1 – Respondent and Requisition Information
- 2 a. – Yes, I will be subcontracting portions of the contract
- Section 2 b. – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
- Section 2 c. – No
- Section 2 d. – Yes
- Section 4 – Affirmation
- GFE Method A (Attachment A) – Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- Attach copies of HUB certification documents

Option Four -

If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract* in place for five (5) years or less does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:

- Section 1 – Respondent and Requisition Information
- Section 2 a. – Yes, I will be subcontracting portions of the contract
- Section 2 b. – List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
- Section 2 c. – No
- Section 2 d. – No
- Section 4 – Affirmation
- GFE Method B (Attachment B) – Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- Section 4 – Affirmation
- Attach copies of HUB certification documents

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



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 §20.13(d)(1)(D)(iii), the goals below are the applicable goals for the University of Texas System Administration only.

Other Service HUB Goal – 24.6%

Commodities HUB Goal – 34%

Special Trades HUB Goal – 32.7%

- Responses for Special Trades construction shall submit a HUB Subcontracting Plan (HSP) that meets the Good Faith Effort prescribed in Method B (Attachment B). See instructions for Option Four on the HSP Quick Check List. **No other Good Faith Effort method will be accepted.**
- Responses for Miscellaneous Services 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 as described in Option Four of Quick Check List.
- 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, email and certified letter are acceptable.

SECTION 1 RESPONDENT AND REQUISITION INFORMATION

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

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

c. Requisition #: _____ Bid Open Date: _____
(mm/dd/yyyy)

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 and SECTION 4.)
- b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for more than five (5) years.	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 a continuous contract* 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.)

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

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

SECTION 2 SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

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

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs .
		%	%	%
		%	%	%
		%	%	%
		%	%	%
		%	%	%
		%	%	%
		%	%	%
		%	%	%
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		%	%	%
		%	%	%
		%	%	%
		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

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

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

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

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.)

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

HSP Good Faith Effort - Method A (Attachment A)

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

IMPORTANT: If you responded "Yes" to SECTION 2, Items c or d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanAttachment-A.doc>

SECTION A-1 SUBCONTRACTING OPPORTUNITY

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

Item #: _____ Description: _____

SECTION A-2 SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their 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 <input type="checkbox"/> - Yes <input type="checkbox"/> - No	VID # (Required if Texas certified HUB)	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
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	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

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

HSP Good Faith Effort - Method B (Attachment B)

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

IMPORTANT: If you responded "No" to SECTION 2, Items c and d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <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 and SECTION B-4.)

SECTION B-3 NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you MUST comply with items a, b, c and d, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and 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. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to 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/cmb/cmbhub.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?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more minority or women trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to 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. List two (2) 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?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

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

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

SECTION B-4 SUBCONTRACTOR SELECTION

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

Item #: _____ Description: _____

b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their 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
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

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

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



HUB Subcontracting Opportunity Notification Form

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

34 Texas Administrative Code, §20.14 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 two (2) or more minority or 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 scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

Section A PRIME CONTRACTOR'S INFORMATION

Company Name: _____ State of Texas VID #: _____

Point-of-Contact: _____ Phone #: _____

E-mail Address: _____ Fax #: _____

Section B CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____

Point-of-Contact: _____ Phone #: _____

Requisition #: _____ Bid Open Date: _____ (mm/dd/yyyy)

Section C SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

<p>1. Potential Subcontractor's Bid Response Due Date:</p>	<p>If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than <input type="text" value="Select"/> Central Time on: _____ Date</p> <p><i>In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, we must provide the same notice to two (2) or more minority or women trade organizations or development centers at least seven (7) working days prior to submitting our bid response to the contracting agency. (A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)</i></p>
<p>2. Subcontracting Opportunity Scope of Work:</p>	
<p>3. Required Qualifications:</p> <p><input type="checkbox"/> - Not Applicable</p>	
<p>4. Bonding/Insurance Requirements:</p> <p><input type="checkbox"/> - Not Applicable</p>	
<p>5. Location to review plans/specifications:</p> <p><input type="checkbox"/> - Not Applicable</p>	

*Note: HUB certification status can be verified on-line at: <http://www.2cpa.state.tx.us/cmbl/hubonly.html>

APPENDIX FOUR
CAMPUS MAP

APPENDIX FIVE

ACCESS BY INDIVIDUALS WITH DISABILITIES

Access by Individuals with Disabilities. Contractor represents and warrants (“EIR Accessibility Warranty”) that the electronic and information resources and all associated information, documentation, and support that it provides to University under this Agreement (collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1, Chapter 213, *Texas Administrative Code*, and Title 1, Chapter 206, Rule §206.70, *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M, *Government Code*.) To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants that it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Contractor fails or is unable to do so, then University may terminate this Agreement and Contractor will refund to University all amounts University has paid under this Agreement within thirty (30) days after the termination date.

APPENDIX SIX**ELECTRONIC AND INFORMATION RESOURCES ENVIRONMENT SPECIFICATIONS**

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

Basic Specifications

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

upgrade.

Security

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

Integration

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

Accessibility Information

1. Please complete the Voluntary Product Accessibility Template (“**VPAT**”) found at <http://www.itic.org:8080/dotAsset/5644ecd2-5024-417f-bc23-a52650f47ef8.doc> and submit the VPAT with Proposer’s proposal.

APPENDIX SEVEN**SECURITY CHARACTERISTICS AND FUNCTIONALITY OF
CONTRACTOR'S INFORMATION RESOURCES**

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

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

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

General Protection of University Records

1. Describe the security features incorporated into Information Resources (ref. **Section 5.3.4** of the RFP) to be provided or used by Proposer pursuant to this RFP.
2. List all products, including imbedded products that are a part of Information Resources and the corresponding owner of each product.
3. Describe any assumptions made by Proposer in its proposal regarding information security outside those already listed in the proposal.

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

4. Describe the monitoring procedures and tools used for monitoring the integrity and availability of all products interacting with Information Resources, including procedures and tools used to, detect security incidents and to ensure timely remediation.
5. Describe the physical access controls used to limit access to Proposer's data center and network components.
6. What procedures and best practices does Proposer follow to harden all systems that would interact with Information Resources, including any systems that would hold or process University Records, or from which University Records may be accessed?

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

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

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

Access Control

1. How will users gain access (i.e., log in) to Information Resources?
2. Do Information Resources provide the capability to use local credentials (i.e., federated authentication) for user authentication and login? If yes, describe how Information Resources provide that capability.
3. Do Information Resources allow for multiple security levels of access based on affiliation (e.g., staff, faculty, and student) and roles (e.g., system administrators, analysts, and information consumers), and organizational unit (e.g., college, school, or department)? If yes, describe how Information Resources provide for multiple security levels of access.
4. Do Information Resources provide the capability to limit user activity based on user affiliation, role, and/or organizational unit (i.e., who can create records, delete records, create and save reports, run reports only, etc.)? If yes, describe how Information Resources provide that capability. If no, describe what alternative functionality is provided to ensure that users have need-to-know based access to Information Resources.

5. Do Information Resources manage administrator access permissions at the virtual system level? If yes, describe how this is done.
6. Describe Proposer's password policy including password strength, password generation procedures, password storage specifications, and frequency of password changes. If passwords are not used for authentication or if multi-factor authentication is used to Information Resources, describe what alternative or additional controls are used to manage user access.

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

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

Use of Data

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

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

backup systems is not fully sanitized, describe processes in place that would prevent subsequent restoration of backed-up University data.

Data Transmission

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

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

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

Notification of Security Incidents

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

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

Compliance with Applicable Legal & Regulatory Requirements

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

1. Describe the procedures and methodology Proposer has in place to retain, preserve, backup, delete, and search data in a manner that meets the requirements of state and federal electronic discovery rules, including how and in what format University Records are kept and what tools are available to University to access University Records.

2. Describe the safeguards Proposer has in place to ensure that systems (including any systems that would hold or process University Records, or from which University Records may be accessed) that interact with Information Resources reside within the United States of America. If no such controls, describe Proposer's processes for ensuring that data is protected in compliance with all applicable US federal and state requirements, including export control.
3. List and describe any regulatory or legal actions taken against Proposer for security or privacy violations or security breaches or incidents, including the final outcome.

Please Note: A number of very similar questions came in from different responding organizations. Where appropriate, we have synthesized these into a single question in order to provide a clear and succinct response document.

Process and Procedures

1. Will all proposers be given access to the full list of questions and answers? That is, if a question not included in our list here is asked by a different vendor, will we be allowed to see both question and response?

A. Yes.

2. Are all questions and responses public information?

A. Given that we are a state agency subject to the Texas Public Information act, please consider all components of this RFP to be public information.

3. The RFP states that the proposer should respond to questions in various sections (e.g., Section 3, Section 5 of Appendix 1), and reference the item number and repeat the question in the response. Are you asking that proposals basically include a copy/paste of relevant pages (e.g., Section 3, 3.1.1 through 3.6.3), with the requested information filled in next to each question?

A: Yes.

4. What are the specific challenges UT has faced recently that lead to the release of this RFP?

A. The Institute for Transformational Learning (ITL) was formed in 2012 with a mission to make higher education more accessible, affordable, and to dramatically increase the number of Texans with a college degree or other advanced degrees. We have taken on a number of programs that are cross-institutional, disruptive, and transformational in nature and are in search of vendor partners who are positioned to help us meet these innovation goals. The system-wide nature of MSAs which will be awarded as a result of this RFP, helps us to extend our mission by facilitating access to such vendor partners across the entire UT System.

Purpose of RFP

1. Q. Is this a first level qualifier RFP intended to create a pool of approved vendors in different categories, who will enter into a systemwide umbrella master agreement, with an opportunity to receive Work Orders for specific projects as they arise?

A. Yes.

2. Are UT's desired outcomes from work completed by Contractor specific to individual schools (or their departments) within the UT system, or is the intent/desire for system-wide impact?

A. This RFP is written for a Master Services Agreement (MSA), which creates a non-exclusive relationship between the vendor and the UT System and extends to all of its component institutions (9 universities and 6 health institutions). Once a Master Services Agreement is signed between a vendor and the UT System, the component institutions have a streamlined opportunity to request services of the vendor for a specific project with an established scope of services using the terms and conditions established by the MSA. Institutions will not be required to scope against this MSA, but there are significant time savings for both the vendor and the institution if they do so.

3. Q. Once a Master Agreement is in place, what will be the process for selecting vendors for future projects?

A. As this is a non-exclusive MSA, individual institutions and project owners will make selections as projects arise.

4. If different contractors are selected for the 7 different components of the Learning Content Development, what level of coordination between and among those vendors do you expect? (For example, could the Instructional Design vendor recommend and coordinate with UT faculty on audio/video recording, which will then be performed by the vendor selected for Digital Audio and Video Production?)

A. The answer to this question will vary by project scoped under the MSA.

Type Number and Scope of Programs

1. Q. Is this RFP motivated by specific upcoming projects/initiatives? If so, is it possible to get any more information on these so we can best tailor our response? Are there specific projects being discussed for which this RFP would apply, or is this just a general solicitation to develop a list of approved Contractors and volume pricing?

A. This is a general solicitation in anticipation of a broad spectrum of projects. Specific requirements and milestones will be released on a project by project basis. For the reason outlined above, we are looking for the broadest possible ranges of products and services which are of potential value to our component institutions, rather than one particular solution.

2. Should we be thinking of the project potential in terms of the current University of Texas Institute for Transformational Learning initiatives <http://www.utsystem.edu/offices/institute-transformational-learning/initiatives>

A. The list at our website is a good indication of early projects. Programs are being added regularly and the pipeline is expected to continue to grow. Additionally, projects may emerge at any of our component institutions.

3. What is the scale of a typical project in terms of number of courses, activities, and assessments? Are there guidelines for courses and programs that include instruction time, online seat time, etc.

A. There is, in fact, no typical project. The scale of projects may range from a professional non-credit certification consisting of a few modules to entire multi-faceted degree programs.

4. What subjects are expected to be covered?

A. While a number of our initial projects are in the health care and biomedical arenas, any subject area that is addressed (or could be addressed) by any of our component institutions is potentially within scope.

5. What is the audience for the programs you are designing?

A. Any audience served by higher education, ranging from degree completers to continuing education and the range in between is potentially within scope.

6. Will these courses lead to degrees, certification, other kinds of credentials?

A. Many of these programs will.

7. Is the vendor expected to have direct contact with UT faculty, Subject Matter Experts, or other stakeholders? Will authorship come from UT Faculty? Must authorship come from UT Faculty?

A. This will vary by program. For the ITL Sponsored Programs, program design and elements of course design will be done by faculty design teams with facilitation by the ITL. Vendors will be utilized to realize the courses themselves with close attention to the approved design. Content curation and creation will be done using the sources and experts most likely to provide a combination of very high quality, production value and potential for student engagement while still attending closely to our affordability mission.

8. Regarding this question: “Describe the proposer’s ability to conduct business successfully across the University of Texas System. What percentage of the project team is based in Texas? Is this a requirement?”

A. We are interested in your organization’s ability to work at scale and distance and provide services to all of our component institutions. Ultimately, though, content curation and creation will be done using the sources and experts most likely to provide a combination of very high quality, production value and potential for student engagement while still attending closely to our affordability mission. Location does not present a barrier to participation.

Questions about Budgets, Pricing, and Schedules

1. Has a budget been set for any of the programs or services?

A. This is a general solicitation in anticipation of a broad spectrum of projects. Specific requirements and milestones will be released on a project by project basis.

2. We received several questions about different tiers of pricing and different use cases and contexts. We were asked how to structure pricing and whether respondents should provide a range of prices from individual activity through full course development.

A. The pricing section of the RFP is open-ended to accommodate pricing tiers or menus of options which can be used to govern the creation of project addenda for specific projects. We are open to receiving information on whatever pricing models are current or typically used by your organization.

3. In 3.2, approach to project services, we are requested to provide a work plan with key dates and milestones. Can you clarify what is desired here? We would assume this would vary based on individual projects/requests within the larger RFP.

A. It is correct that this will vary by project scoped under the MSA, and answers that indicate this are acceptable. If you would like to use this section as an opportunity to outline your approach to project planning, scheduling, and meeting tight deadlines, that information would be welcome.

4. Do you have a set number of rounds of reviews/approvals on the content we develop? Will you want us to conduct market reviews of content we develop?

A. This will also vary by program. For ITL Managed Programs, it is safe to assume that the ITL team on the project as well as the Faculty Design Team will be reviewing content and courses throughout the curation, development, and production process.

Questions about Course and Asset Development Services

1. Can we assume that we do not have to bid on all miscellaneous services listed in 1.3g?

A. Yes.

2. Should identify only those services on this list that are an appropriate match for our skills? Where do we mention list of services that we can propose and which cannot be proposed?

A. As noted in Section 5.2, "Proposer must also note which objectives listed in Section 1.3 are being responded to." You may list those services which you are proposing at the beginning of your answers in this section.

3. Does UT have a particular ID methodology?

A. This will vary by program. For the ITL Sponsored Programs, program design and elements of course design will be done by faculty design teams with facilitation by the ITL. We employ a rigorous and innovative backwards design methodology to support our faculty design team partners in creating the framework and assessment principles appropriate for their program, their students, and their use cases. Vendors will be utilized to realize the courses themselves with close attention to the approved design.

4. Will the programs utilize in-house Subject Matter Experts, Instructional Designers, or Psychometricians?

A. These determinations will be made on a program-by-program basis. Vendors who can supply these services should respond accordingly.

5. What are the expectations about working onsite? What will be the work location for all the services listed in the RFP

A. Expectations will be set on a project-by-project basis, but onsite presence will not be uniformly required. If a vendor has particular capabilities in a given area or in providing onsite services or there are pricing or schedule repercussions, please feel free to address this in your response.

6. What are the expectations for print on demand, Book app production, ebook authoring, and format conversion?

A. Expectations will vary by project. Please take this opportunity to indicate whatever standard and unique strengths and capabilities you can offer in these or other service areas which fit into the categories requested by the RFP.

7. What are the expectations for content entry and online course maintenance?

A. Vendors may be engaged to load course content into the selected platform. Vendors may be engaged to update courses, correct errors or perform other tasks necessary to keep content current, relevant, and engaging.

8. Is the vendor expected to load all content into UT's LMS, or turn over source file content to UT for uploading?

A. Both use cases are possible.

Questions about Content Types

1. We received many questions about the nature and sources of content to be included in projects governed by this RFP. Questions were asked about OER, UT-owned and authored content, vendor-created content, publisher-owned and customized content.

A. Our approach to content is multi-faceted. Through our design process, we determine the competencies and objectives which students in each program need to demonstrate and meet. We then determine the best activity-driven pathway and content which will support their progress toward these goals. Whenever possible, we meet those needs and goals via curation, selecting first OER and Public Domain sources, moving to creative-commons and then other licensed materials as necessary to provide high quality while serving our affordability mission. We make strategic choices about which content to create so as to provide a highly engaging, success-focused, consumer-grade student experience.

2. What are the requirements for video? Will the vendor be optimizing existing videos, doing green screen compositing of existing videos, recording lectures with real professors or shooting original videos with actors in studio or on location?

A. These determinations will be made on a program-by-program basis. Original video with actors will be in scope on some projects. Current ITL Managed Projects do not have many plans for recorded lectures, but component institutions and future programs may make use of that genre.

3. What are the requirements for screencast/podcast?

A. These determinations will be made on a program-by-program basis.

4. What is a "transmedia digital narratives"?

A. The definition is evolving. Here is one:

<http://christineweitbrecht.com/transmediadefined/>.

5. What will be the formats for this content? Will these be online eLearning modules, classroom-based content, online activities, or labs?

A. All of these formats are well within scope.

6. Is adaptive/personalized learning planned to be a significant component of the development effort?

A. This is definitely within scope on some projects.

Questions about Platform and Delivery

1. Which Learning Management Systems (LMSs) or platforms is the University is currently using? Has University of Texas chosen a platform(s) for development and deployment, and if so, what are those? Is any platform development required?

A. A variety of LMS and platform options can be assumed. In addition, as recently announced at SXSWedu, the ITL is is developing TEx, a groundbreaking "Total Educational Experience," a set of platforms, applications, and services for use across all ITL industry-oriented, competency-based educational initiatives. Our website has some additional information with more to come.

2. Will the mobile delivery include tablets as well as smartphones? Please specify the required list of devices for compatibility?

A. Mobile delivery of components of ITL sponsored programs is an important part of our strategic plan to meet the needs of all students regardless of their location in Texas. The specific devices requiring compatibility will be set as part of the design principles of each program.

Questions about the Competency-Based Approach at the ITL

1. Does UT have a competency-based framework they follow already? Does UT have a competency-based approach established, such as the amount of authentic assessment or project-based assessment per set of competencies?

A. Our approach to competency-based education is unique and emergent. We employ a rigorous and innovative backwards design methodology to support our faculty design team partners in creating the framework and assessment principles appropriate for their program, their students, and their use cases.

2. Has the number of competencies per program been identified and has the competency hierarchy been fleshed out per competency? Is there a set of standards for the assessment frame work?

A. This will vary by program. However, our design process addresses each of these components, so they will be fully described before individual projects are scoped and before development and production begins.

3. Given the phrase “term-based” is used in RFP, is traditional credit hour course development desired, as well performance-/competency-based?

A. Our initial projects are often term-based, but they are also performance- and competency-based. However direct assessment projects are potentially within scope.

4. Section 1.1 of Appendix One states: “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.” However, this doesn’t seem to be the case at this point given that the proposal is for a master services agreement rather than a project addendum for a specific job. Is there another document that provides more details?

A. We interpret this clause to mean that the Proposer is qualified to and experienced in providing the kinds of services which the Proposer elects to propose in their response.

Questions about HSP/HUB Plan subcontracting forms

1. An HSP plan is a requirement, but our company and product have no subcontracting needs? We plan to handle the project in house and not outsource it. Will this lack of any subcontracting needs in an HSP present a barrier to participating as a Contractor?

A. There is a place in the HSP to indicate that you have no subcontracting needs. This will not present a barrier to participation. However, be sure to complete the form, as lack of a form will disqualify your submission.

2. We understand that for the HSP, only sections specified under the “UT System HUB Subcontracting Plan (HSP) Quick Checklist” need to be filled-in. No other documents will be required as part of the HSP. Please confirm.

A. Correct.

3. Is it mandatory to fill in section 2 b. – opportunity description, percentage of work that will be sub-contracted, etc.? Also, the HSP Good Faith Effort – Method A and Method B. We ask this because the information for these sections will be dependent on each project (type of work and total value) and hence will vary from project to project

A. Yes, please indicate all work your organization typically subcontracts on a normal basis.

4. Section 2.5.1 notes that we should attempt to use HUBs “certified by the Procurement and Support Services Division of the TX Comptroller of Public Accounts.” Is it correct to assume, then, that goal is to use subcontractors specifically located in the state of Texas? That is, rather than, say, Missouri or Maine.

A. Correct, subcontractors should be a State of Texas Certified HUB.

5. Does HSP Plan need to include minor outsourcing such as Translation/voiceover/SRT?

A. Yes, any work to be subcontracted needs to be included.

7. How do we answer questions about which tasks we would subcontract and the percentage of the work that we would subcontract to HUBs, since scope is to be defined on a project-by-project basis?

A. If you would need to subcontract any of the general categories to which you are responding from Section 1.3 or if you would do so in certain circumstances, you should address that here.

8. Does a company Women's Business Enterprise National Council (WBENC) certification fulfill the HSP requirement for 23.6 % percent for professional services contracts, being historically underserved businesses?

A. No, company must be a State of Texas Certified HUB

Questions about Addenda Checklists and Submittal Checklists

1. In Appendix One, what addenda are referenced in the Addenda checklist.

A. This is an acknowledgement of which addenda were received. When there are no addenda, so you can complete the checklist indicating that no addenda were received.

2. Are any of the Addenda noted in the agreement required at the time of submitted including:

- Attachments:
- EXHIBIT A – Scope of Services
- EXHIBIT B – Project Addendum
- EXHIBIT C – Baseline Pricing
- EXHIBIT D – HUB Subcontracting Plan
- EXHIBIT E – FERPA Confidentiality & Security Addendum

A. None of the MSA Exhibits are required at the time of submission. These are available as part of the MSA template and will be used at the contracting stage.

3. As per the “Submittal Checklist”, we understand the following documents/sections are not required to be submitted as part of our proposal. These documents will be submitted at a later stage when a project is awarded to us. Please confirm.

- HUB Subcontracting Opportunity Notification Form
- Prime Contractor Progress Assessment Report
- Appendix 4 – Campus Map
- Appendix 5 - ACCESS BY INDIVIDUALS WITH DISABILITIES
- Appendix 6 - ELECTRONIC AND INFORMATION RESOURCES ENVIRONMENT SPECIFICATION
- Appendix 7- Security Characteristics and Functionality of Contractor’s INFORMATION RESOURCES

A. The following are not required at time of submission:

- **HUB Subcontracting Opportunity Notification Form**
- **Prime Contractor Progress Assessment Report**
- **Appendix 4 – Campus Map**

The following are required at time of submission:

- **Appendix 5 - ACCESS BY INDIVIDUALS WITH DISABILITIES**

- **Appendix 6 - ELECTRONIC AND INFORMATION RESOURCES ENVIRONMENT SPECIFICATION**
- **Appendix 7- Security Characteristics and Functionality of Contractor's INFORMATION RESOURCES**

4. Appendix 2, section 10 (insurance) notes that the contractor must supply various proofs of insurance to the university. Is that required for the bid, or only if awarded?

A. If awarded.

5. Appendix 4:

Campus Map- is empty. Please let us know what this is and what is required?

A. Please disregard the Campus Map.

6. Are answers to the questions in Appendix 6 and 7 mandatory? What answer should we provide in case these questions may not be applicable?

A. Yes, please respond. If cases are not applicable please mark N/A.

7. Does **Appendix Seven** need to be included in the proposal since it does state proposer's responses or only completed at the time of signed agreement?

A. Yes, please include in the proposal submission.

8. Can Addenda checklist be submitted electronically prior to proposal submission?

A. No.

Questions about Staffing

1. RFP 1.3 states: Contractor warrants, represents, covenants, and agrees to maintain a staff of properly trained, credentialed, and experienced personnel to ensure satisfactory performance under this Agreement. What do you consider to be staff? Does it include independent contractors who have assigned in writing all right, title and interest in their work to Contractor for the benefit of University?

1. A. This can be handled at the contracting/negotiations stage.