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Solicitation ID:1806

Solicitation Title:RFP 720-1806 Investment Products and Services Providers For the UT Retirement Programs

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Organization Name: University Of Texas System - 720

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Posting Requirements: 21+ Days for Solicitation Notice

Solicitation Posting Date: 2/26/2018

Response Due Date:3/22/2018

Response Due Time: 2:30 PM

Solicitation Description: Investment Products and Services Providers For the University of Texas Retirement Program And The University of Texas System 457(f) Plans

Class/Item Code: 94612-Actuarial Services And Retirement Planning

Record Attachments

#	Name	Description
1	ESBD_File_124830_RFP720-1806 Investment Products and Services Providers for the University of Texas Retirement Program and.docx	RFP document
2	ESBD_File_124830_RFP720-1806. APPENDIX TWO.docx	APPENDIX TWO
3	ESBD_File_124830_RFP720-1806. APPENDIX TWO. 457f Plan.docx	APPENDIX TWO = CONT
4	ESBD_File_124830_RFP720-1806 APPENDIX NINE- Third Party Information Security Assessment Survey.xlsm	APPENDIX NINE
5	ESBD_File_124830_RFP720-1806 SSA Appendix Eleven.pdf	APPENDIX ELEVEN
6	ESBD_File_124830_RFP720-1806 Fund Per Appendix Twelve.xlsx	APPENDIX TWELVE
7	ESBD_File_124830_RFP720-1806 Admin Appendix Thirteen.xlsx	APPENDIX THIRTEEN



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REQUEST FOR PROPOSAL

RFP No. 720-1806
Investment Products and Services Providers
For the University of Texas Retirement Program
And
The University of Texas System 457(f) Plans

Proposal Submittal Deadline: Wednesday, March 22nd, 2018 at 2:30 PM CST

The University of Texas System
Office of Employee Benefits

Prepared By:
Darya Vienne
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2982
dvienne@utsystem.edu
February 26th, 2018

REQUEST FOR PROPOSAL

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SECTION 1

INTRODUCTION

1.1 Description of The University of Texas System

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

The University of Texas System is one of the nation’s largest systems of higher education, with 14 institutions that educate more than 217,000 students. Each year, UT institutions award more than one-third of all undergraduate degrees in Texas and almost two-thirds of all health professional degrees. With about 20,000 faculty – including Nobel laureates – and more than 70,000 health care professionals, researchers student advisors and support staff, the UT System is one of the largest employers in the state.

The UT System ranks third in the nation in patent applications, and because of the high caliber of scientific research conducted at UT institutions, the UT System is ranked No. 1 in Texas and third in the nation in federal research expenditures. In addition, the UT System is home to three (3) of the nation’s National Cancer Institute Cancer Centers – UT MD Anderson, UT Southwestern and UT Health Science Center-San Antonio – which must meet rigorous criteria for world-class programs in cancer research.

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

Other numerous transformational initiatives implemented over the past several years have cemented UT as a national leader in higher education, including the expansion of educational opportunities in South Texas with the opening of The University of Texas Rio Grande Valley in the fall of 2015. And UT is the only system of higher education in the nation establishing not one (1), but two (2) new medical schools in 2016 at The University of Texas at Austin and UT Rio Grande Valley.

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

1.2 Background and Special Circumstances

The UT System administers four (4) retirement plans, collectively called the UT Retirement Program:

- A. The Optional Retirement Program;
- B. The University of Texas System Governmental Retirement Arrangement;
- C. The UTSaver Deferred Compensation Plan; and

D. The UTSaver Tax-Sheltered Annuity Program.

Additionally, the UT System administers the following 457(f) retirement plans, collectively called the 457(f) Plans:

- E. The University of Texas System Deferred Compensation Plan; and
- F. The University of Texas System Institution Deferred Compensation Prototype Plans.

- A. The Optional Retirement Program (ORP) is governed by [Chapter 830 of the Texas Government Code](#) and [Section 403\(b\) of the Code](#). The ORP was authorized in 1968 by the Texas Legislature as an alternative to the defined benefit retirement program administered by the Teacher Retirement System of Texas. Additionally, the Texas Higher Education Coordinating Board (THECB) has established rules regarding the administration of this plan found in [19 Texas Administrative Code Chapter 25](#) (Coordinating Board Rules). As of August 31, 2017, the ORP has 17,134 active participants and five (5) Retirement Investment Products and Services Providers that are permitted to receive contributions for new ORP enrollees, which will be referred throughout this RFP document as “**Currently Authorized Vendors**”.

Annual remittances for fiscal year 2017 (September 1, 2016 to August 31, 2017) were \$363,779,482.

- B. For certain eligible employees hired before September 1, 1996, UT System administers a governmental excess-benefit arrangement entitled The University of Texas System Governmental Retirement Arrangement (UTGRA), governed by [Section 415\(m\) of the Code](#). This excess-benefit arrangement was established to provide eligible ORP participants that portion of the participant’s benefits that would otherwise be payable under the terms of the ORP except for the limitations on benefits imposed by Section 415 of the Code. The same five (5) currently authorized vendors for ORP are available for UTGRA and annual remittances for fiscal year 2017 totaled \$6,906,636.71 for 588 participants.

- C & D. UT System offers two (2) voluntary retirement savings programs, the UTSaver Deferred Compensation Plan (UTSaver DCP) and the UTSaver Tax-Sheltered Annuity Program (UTSaver TSA). The UTSaver DCP is governed by [Section 457\(b\) of the Code](#). The UTSaver DCP has the same five (5) currently authorized vendors as offered in ORP and UTGRA. For fiscal year 2017, remittances totaled \$101,387,146 for 8,787 participants in the UTSaver DCP.

The UTSaver TSA is governed by [Section 403\(b\) of the Code](#) with traditional and Roth contribution options. The same five (5) currently authorized vendors for the ORP, UTGRA and UTSaver DCP plans are available for the UTSaver TSA. Additionally, there are four (4) “grandfathered” vendors authorized to continue to receive contributions for certain participants as authorized by UT System. For fiscal year 2017, remittances totaled \$157,881,015 for 18,970 participants in the UTSaver TSA plan.

- E. UT System administers several ineligible deferred compensation plans governed by [Section 457\(f\) of the Code](#). The Second Amended and Restated The University of Texas System Deferred Compensation Plan (the “System 457(f) Plan”) was first adopted on September 1, 1996. It was established to provide UT System contributions to employees who are members of a select group of management or highly compensated employees designated by the Board of Regents (normally UT System institution presidents and certain officers of UT System). The System 457(f) Plan has nine (9) active participants, two (2) currently authorized vendors and annual remittance for fiscal year 2017 totaling \$1,950,000.

F. The University of Texas System Institution Prototype 457(f) Plan has been adopted by eight (8) UT System institutions, with the approval of UT System. Other UT System institutions may adopt the Prototype 457(f) Plan in the future with UT System approval and become subject to this RFP. Current adopted Prototype 457(f) Plans and such plans which may be adopted in the future are collectively referred to as the "Prototype 457(f) Plans." Each Prototype 457(f) Plan was established to provide UT System institution contributions to employees of such institution who are members of a select group of management or highly compensated employees designated by the UT System institution president and approved by the UT System. The existing Prototype 457(f) Plans collectively have forty-seven (47) active participants, three (3) currently authorized vendors and annual remittances for fiscal year 2017 totaling \$2,776,767. The current adopting UT System institutions are The University of Texas at Austin, The University of Texas at San Antonio, The University of Texas Health Science Center at Houston, The University of Texas Southwestern Medical Center, The University of Texas Medical Branch at Galveston and The University of Texas M.D. Anderson Cancer Center.

The Office of Employee Benefits (OEB) is considered a "Covered Entity" under Title 2 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191, 1996. As such, OEB must comply with all provisions of HIPAA and the Health Information Technology for Economic and Clinical Health Act (HITECH), 45 CFR §§ 160 and 164 (hereinafter collectively, "HIPAA") regarding all privacy and security measures relevant to the operations of the programs within OEB when operating in a capacity subject to HIPAA. OEB facilitates and supports administration of the retirement plans under the UT Retirement Program and other benefit plans offered by the UT System. Additionally, any person or entity who performs functions or activities on behalf of, or provides certain services to a covered entity that involve access to protected health information are considered business associates under HIPAA. OEB requires appropriate Business Associate Agreements with such vendors, or other necessary confidentiality security agreements, when applicable.

1.3 Objective of Request for Proposal

The University of Texas System is soliciting proposals in response to this Request for Proposal No. 720-1806 (this **RFP**), from qualified and appropriately licensed vendors to provide investment products and services for UT System retirement plans listed in **Section 1.2** above. It is the intent of the UT System to contract for the three (3)-year period beginning on September 1, 2018, through August 31, 2021, with the opportunity, at UT System's sole option, to renew for an additional three-year period, subject to terms and conditions acceptable to UT System.

Proposers have three (3) options: 1) respond only for the plans listed in Section 1.3.1 below; 2) respond only for the plans listed in Section 1.3.2 below; 3) respond for both sets of plans. There will be two separate responses to this RFP for vendors responding to both sets of plans.

1.3.1 One (1) response should include provisions of investment products and services for the UT Retirement Program (ORP, UTGRA, UTSaver TSA and UTSaver DCP). Each Proposer should also have the capability to accept Roth 457(b) deferrals as UT System may elect to add this program in the future. A common set of vendors and appropriate type and number of products will be selected for all four (4) of these plans based on the responses to this RFP.

1.3.2 One (1) response should include provisions of investment products and services for the 457(f) Plans. These plans are not part of the UT Retirement Program. A common set of vendors and appropriate type and number of products will be selected for all of the 457(f) Plans based on the responses to this RFP.

Proposers are encouraged to issue responses to both sets of plans listed in **Sections 1.3.1** and **1.3.2**, or they may issue a response for either set of plans listed in **Section 1.3.1** or **1.3.2**. If Proposer issues responses for both sets of plans, the responses will be evaluated separately with the possible result that only one or both of the responses may be selected.

Proposer must indicate which services is Proposing to provide in **Section 5.4**.

SECTION 2

NOTICE TO PROPOSER

2.1 Submittal Deadline

University will accept proposals submitted in response to this RFP until 2:30 p.m., Central Standard Time (“CST”) on Wednesday, March 22nd, 2018 (the “**Submittal Deadline**”).

2.2 University Contact Person

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

Darya Vienne
Email: dvienne@utsystem.edu

University specifically instructs all interested parties to restrict all contact and questions regarding this RFP to written communications delivered to (i) University Contact, or (ii) if questions relate to Historically Underutilized Businesses, to HUB Coordinator (ref. **Section 2.5** of this RFP). *University Contact must receive all questions or concerns no later than 2:30 p.m. CST on Tuesday, March 6th, 2018.* University will have a reasonable amount of time to respond to questions or concerns. It is University’s intent to respond to all appropriate questions and concerns; however, University reserves the right to decline to respond to any question or concern.

2.3 Criteria for Selection

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

Proposer is encouraged to propose terms and conditions offering the maximum benefit to University in terms of (1) service offerings and pricing, (2) Administration, and (3) Communication and Education officering’s that drive employee engagement.

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

2.3.1 Threshold Criteria Not Scored

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

2.3.2 Scored Criteria

Proposals submitted in response to this RFP will be competitively and comparatively evaluated on the basis of the criteria included in this section. The criteria are not necessarily listed in order of importance. The criteria will provide the basis for an objective evaluation of each proposal and will apply to all retirement plans listed in **Section 1.3.1**, except as noted. To attract the best possible proposals, UT System may limit the number of selected vendors to as few as four (4).

- A. Administration (35%);
- B. Education and Communication (30%);
- C. Investment Products (35%).

2.4 Key Events Schedule

Issuance of RFP	Monday, February 26 th , 2018
Pre-Proposal Conference (ref. Section 2.6 of this RFP)	2:30 p.m. CST on Friday, March 2 nd , 2018
Deadline for Questions / Concerns (ref. Section 2.2 of this RFP)	2:30 p.m. CST on Tuesday, March 6 th , 2018
Submittal Deadline (ref. Section 2.1 of this RFP)	2:30 p.m. CST on Wednesday, March 22 nd , 2018

2.5 Historically Underutilized Businesses

- 2.5.1 All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (each a “**HUB**”) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP, Contractor subcontracts any of the Services, then Contractor must make a good faith effort to utilize HUBs certified by the Procurement and Support Services Division of the Texas Comptroller of Public Accounts. Proposals that fail to comply with the requirements contained in this **Section 2.5** will constitute a material failure to comply with advertised specifications and will be rejected by University as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP. Proposer acknowledges that, if selected by University, its obligation to make a good faith effort to utilize HUBs when subcontracting any of the Services will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of the Services by Proposer is subject to review by University to ensure compliance with the HUB program.
- 2.5.2 University has reviewed this RFP in accordance with [Title 34, Texas Administrative Code, Section 20.285](#), and has determined that subcontracting opportunities are probable under this RFP. The HUB participation goal for this RFP is **26%**.
- 2.5.3 A HUB Subcontracting Plan (“**HSP**”) is a required as part of, *but submitted separately from*, Proposer’s proposal. The HSP will be developed and administered in accordance with University’s Policy on Utilization of Historically Underutilized Businesses and incorporated for all purposes.

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

Questions regarding the HSP may be directed to:

Contact: Kyle Hayes
HUB Coordinator
Phone: 512-322-3745
Email: khayes@utsystem.edu

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

- 2.5.4 Proposer must submit, **via email**, one (1) HSP in PDF format to University on Wednesday, March 22nd, 2018 at 2:30 PM CST (ref. **Section 3.2** of this RFP.) to the email address below:

HSP Submittal Email: utadminHSP@utsystem.edu

Proposer must include the following information in the email submission:

Subject Line: RFP 720-1806, Investment Products and Services Providers for the University of Texas Retirement Program and The University of Texas System 457(f) Plans, Proposal due date: **Wednesday, March 22nd, 2018 at 2:30 PM CST**, HUB Subcontracting Plan.

Body: Proposer company name and the name and contact information of the person who prepared the HSP.

Proposer must visit <https://www.utsystem.edu/offices/historically-underutilized-business/hub-forms> to download the most appropriate HUB Subcontracting Plan (HSP) / **Exhibit H** form for use with this Request for Proposal. Proposer shall select, from the four (4) Options available, the Option that is most applicable to Proposer's subcontracting intentions. These forms are in **fillable** PDF format and must be downloaded and opened with *Adobe Acrobat/ Reader* to utilize the fillable function. If Proposer has any questions regarding which Option to use, Proposer shall contact the HUB Coordinator listed in 2.5.3.

Proposer must complete the HSP, then print, sign and scan *all pages* of the HSP Option selected **to the submittal email address noted above**. NOTE: signatures must be "wet" signatures. Digital signatures are not acceptable.

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

University will send an email confirmation to each Proposer upon receipt of the Proposer's HSP. Each Proposer's HSP will be evaluated for completeness and compliance prior to opening the proposal to confirm Proposer compliance with HSP rules and standards. Proposer's failure to submit one (1) completed and signed HUB Subcontracting Plan **to the email address noted above** may result in University's rejection of the proposal as non-responsive due to material failure to comply with advertised specifications; such a proposal may be returned to the Proposer unopened (ref. **Section 1.5 of Appendix One** to this RFP). **Note:** The requirement that Proposer provide one (1) completed and signed pdf of the HSP under this **Section 2.5.4** is separate from and does not affect Proposer's obligation to provide University with the number of copies of its proposal as specified in **Section 3.1** of this RFP.

If Proposer's submitted HSP refers to specific page(s) / Sections(s) of Proposer's proposal that explain how Proposer will perform entire contract with its own equipment, supplies, materials and/or employees, Proposer must submit copies of those pages with the HSP sent to the HSP Submittal email address noted above.
Failure to do so will slow the evaluation process and may result in DISQUALIFICATION.

2.6 Pre-Proposal Conference

University will hold a pre-proposal conference at:

2:30 p.m., Central Time on Friday, March 2nd, 2018

Prospective Proposers are invited to call-in:

Conference call-in number: 877-226-9790

Conference ID: 1046710

The pre-proposal conference will allow all Proposers an opportunity to ask University's representatives relevant questions and clarify provisions of this RFP.

SECTION 3

SUBMISSION OF PROPOSAL

3.1 Number of Copies

- A. Proposer must submit a total of three (3) complete and identical copies of its *entire* proposal. An *original* signature by an authorized officer of Proposer must appear on the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) of at least one (1) copy of the submitted proposal. The copy of the Proposer's proposal bearing an original signature should contain the mark "original" on the front cover of the proposal.

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

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

3.2 Submission

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

The University of Texas System Administration
210 West 7th Street
Austin, Texas 78701-2982
Attn: Darya Vienne

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

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

3.3 Proposal Validity Period

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

3.4 Terms and Conditions

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

- 3.4.1.1. Specifications and Additional Questions (ref. **Section 5** of this RFP);
- 3.4.1.2. Agreement (ref. **Section 4** and **APPENDIX TWO**);
- 3.4.1.3. Proposal Requirements (ref. **APPENDIX ONE**);
- 3.4.1.4. Notice to Proposers (ref. **Section 2** of this RFP).

3.5 Submittal Checklist

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

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

SECTION 4

GENERAL TERMS AND CONDITIONS

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

SECTION 5

SPECIFICATIONS AND ADDITIONAL QUESTIONS

5.1 General

The minimum requirements and the specifications for the Services, as well as certain requests for information to be provided by Proposer as part of its proposal, are set forth below. As indicated in **Section 2.3** of this RFP, the successful Proposer is referred to as the “**Contractor.**” All requirements and specifications for Services, as well requests for information provided by Proposer as set forth in this Section 5 below, should be responded to equally for both the UT Retirement Programs as described in Section 1.2 A-D and the University of Texas System 457(F) Plans as described in Section 1.2 E-F except where indicated.

Contract Term: University intends to enter into an agreement with the Contractor to perform the Services for an initial three (3) year base term, with the option to renew for one (1) additional three (3) year renewal periods, upon mutual written agreement of both parties.

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

Disclosure of Existing Agreement: The University Retirement Program has existing agreements for retirement services with Fidelity Investments, Lincoln Financial, TIAA, VALIC and Voya Financial, which are scheduled to expire on August 31, 2018.

5.2 Additional Questions Specific to this RFP

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

- 5.2.1 If Proposer takes exception to any terms or conditions set forth in the Agreement (ref. **APPENDIX TWO**), Proposer must redline **APPENDIX TWO** and include **APPENDIX TWO** as part of its Proposal. If Proposer agrees with terms or conditions set forth in the **APPENDIX TWO**, Proposer will submit a written statement acknowledging it.
- 5.2.2 In its proposal, Proposer must indicate whether it will consent to include in the Agreement the “Access by Individuals with Disabilities” language that is set forth in **APPENDIX FIVE, Access by Individuals with Disabilities**. If Proposer objects to the inclusion of the “Access by Individuals with Disabilities” language in the Agreement, Proposer must, as part of its proposal, specifically identify and describe in detail all of the reasons for Proposer’s objection. NOTE THAT A GENERAL OBJECTION IS NOT AN ACCEPTABLE RESPONSE TO THIS QUESTION.
- 5.2.3 In its proposal, Proposer must respond to each item listed in **APPENDIX SIX, Electronic and Information Resources (EIR) Environment Specifications**. **APPENDIX SIX** will establish specifications, representations, warranties and agreements related to the EIR that Proposer is offering to provide to University. Responses to **APPENDIX SIX** will be incorporated into the Agreement and will be binding on Contractor.
- 5.2.4 In its proposal, Proposer must respond to each item listed in **APPENDIX SEVEN, Security Characteristics and Functionality of Contractor’s Information Resources**. **APPENDIX SEVEN** will establish specifications, representations, warranties and agreements related to the EIR that Proposer is offering to provide to University. Responses to **APPENDIX SEVEN** will be incorporated into the Agreement and will be binding on Contractor.

5.3 Scope of Work

5.3.1 Investment Products

UT System's intent is to select a minimum of four (4) or more Contractors for the UT Retirement Program and the University of Texas System 457(f) plans as a result of this RFP. Proposers may choose to respond with proposals to offer both mutual fund and annuity products, but this is not required. Proposals for one product should not be conditioned upon UT System's agreement to award a contract for products offered by a responding vendor in another proposal submitted by the responding vendor. If a vendor responds with proposals for multiple product types, the UT System is in no way obligated to select all proposals, but may instead select one or more product proposals and reject others. The goal of the UT System is to implement retirement programs with the best possible investment options, while continuing to offer diverse, high-quality options appropriate for a wide range of employee retirement needs, goals and investment acumen. Proposers should focus on offering quality funds that service a diverse employee population rather than a large quantity of funds.

A. Quarterly and Annual Report

1. UT Retirement Programs

Contractor must provide a report, on a quarterly and an annual basis and in the format shown in **APPENDIX TWELVE** to UT System that contains a comprehensive review of the investment options and pricing provided by Contractor for those investment options in the UT Retirement Program. The report will assess each investment option's compliance with the criteria in **Section 5.3** (using data content and format specified by UT System) and identify any failure to meet the criteria, including a discussion of actions that will be taken to restore compliance or an explanation as to why compliance cannot be restored or should be delayed.

2. UT System 457(f) Plans

Contractor must provide a report, on a quarterly and an annual basis, to UT System that contains a comprehensive review of the investment options provided by that responding vendor in the 457(f) Plans. The report will assess each investment option's compliance with the criteria set forth in Section 5.4 (using data content and format to be specified by UT System) and identify any failure to meet the criteria, including a discussion of actions that will be taken to restore compliance or an explanation as to why compliance cannot be restored or should be delayed.

B. Menu of Options

1. UT Retirement Program

Each mutual fund or variable annuity product proposal should include a menu of investment options from appropriate broad asset classes suitable for retirement portfolio construction and diversification. Each Proposer must assemble menu(s) that reflect the following objectives:

- a) The menu(s) should reflect broad diversification opportunities to accommodate a reasonable range of employee investment style preference. An investment menu would typically include: (1) asset allocation or lifecycle options appropriate for the employee seeking diversification plus maximum investment simplification through the use of a single investment option selection and; (2) a reasonable number of

options from asset classes appropriate for the employee seeking to construct a more tailored investment portfolio without excessive complexity.

- b) Each option within a given menu must be offered based upon its overall value as an investment option within its asset class category. Such value determination is a fluid process as it is expected that investment options may be deleted or added as part of an ongoing evaluation process. The value of an offered investment option will be based upon (a) return performance (both relative and absolute) measured over appropriate time spans, (b) overall expense levels, (c) risk characteristics, (d) longevity, stability and experience of fund managers, (e) record of regulatory compliance, (f) consistency within asset style classification, and (g) any other appropriate consideration.
- c) Proposer's offered menu should limit redundant options within an asset class.
- d) Any offered option must be clearly and specifically identified such that its performance and characteristics can be measured and compared against other options within its asset class.
- e) If any offered option pays any type of fee or provides any type of service to Proposer offering such option within its menu, Proposer must fully disclose the amounts and terms of such fees or services in Proposer's proposal.
- f) Each Proposer must certify that the products offered in Proposer's proposal do not contain a life insurance feature.
- g) The information provided for any investment fund that is part of the proposed investment menu must include the applicable information identified in **APPENDIX TWELVE** presented as of September 30, 2017. For any incumbent Contractor who already has a menu of investment options currently in place, it is expected that incumbent Contractor proposes a new menu that best reflects the desired characteristics listed above, include, if appropriate, changes from the current menu. There must be one (1) menu presented for all mutual fund investment options and, if applicable, a separate menu for variable annuity investment options.

2. UT System 457(f) plans

Each mutual fund or variable annuity product proposal should include a menu of investment options from appropriate broad asset classes suitable for retirement portfolio construction and diversification.

Contractor must assemble menu(s) that reflect the following objectives:

- 1. The menu(s) must reflect broad diversification opportunities to accommodate a reasonable range of employee investment style preference. An investment menu would typically include: (1) asset allocation or lifecycle options appropriate for the employee seeking diversification plus maximum investment simplification through the use of a single investment option selection and; (2) a reasonable number of options from asset classes appropriate for the employee seeking to construct a more tailored investment portfolio without excessive complexity.
- 2. Each option within a given menu must be offered based upon its overall value as an investment option within its asset class category. Such value determination is

a fluid process as it is expected that investment options may be deleted or added as part of an ongoing evaluation process. The value of an offered investment option will be based upon (a) return performance (both relative and absolute) measured over appropriate time spans, (b) overall expense levels, (c) risk characteristics, (d) longevity, stability and experience of fund managers, (e) record of regulatory compliance, (f) consistency within asset style classification, and (g) any other appropriate consideration.

3. Proposer's offered menu should limit redundant options within an asset class.
4. Any offered option must be clearly and specifically identified such that its performance and characteristics can be measured and compared against other options within its asset class.
5. If any offered option pays any type of fee or provides any type of service to the responding vendor offering such option within its menu, Proposer must fully disclose the amounts and terms of such fees or services in Proposer's proposal.
6. Proposer must certify that the products offered in the Proposer's proposal do not contain a life insurance feature.

C. Impermissible Charges

There shall be no front-end or back-end charges, annual, one-time or recurring fixed dollar fees, surrender or withdrawal charges, termination fees, market value adjustments, etc. associated with any mutual fund or variable annuity investment product prior to annuitization, offered by Proposer for any retirement program. No withdrawal restrictions or fees may be assessed on participant transfers within variable annuity options or within a family of funds (excluding short-term redemption fees designed to discourage inappropriate trading practices, which must terminate within ninety (90) days of initial investment), including transfers to other available Contractors.

D. Permissible Charges

Certain recordkeeping, investment management, or administrative fees and mortality and expense risk charges, where appropriate, are permissible for investment options in the retirement programs. Surrender fees are permissible with fixed asset products. However, each Proposer must take into consideration the competitive nature of this RFP before proposing products with associated fees that are not reasonable or competitive for the industry or for a plan the size of the UT System retirement program.

E. Fixed Annuities

Each fixed annuity investment product must provide for the protection of principal and a stated rate of return. The credited rate may vary on a monthly or quarterly basis. Ideally, a fixed annuity investment product will provide for a minimum rate of return for a specified period of time, e.g., duration of the contract, single calendar year, etc. The creditworthiness of the underlying investments in the fixed annuity product should be structured to minimize the possibility of loss of principal by participants.

G. Credit Ratings Specifications

Proposer must have received a minimum of three (3) ratings for Proposer to be considered for selection by the UT System, and one of those ratings must be from A.M.

Best. The UT System requires that the ratings from an insurance fixed annuity Proposer must equal or exceed the following ratings:

- A from Standard and Poor's (S&P); or
- A from Fitch; or
- A2 from Moody's and
- A from A.M. Best.

The UT System may at its discretion choose to allow the fixed annuity products of Proposer whose ratings do not equal or exceed the above criteria.

H. Stable Value Products

Proposers proposing to provide mutual funds or variable annuities may offer a Stable Value product. The underlying investments of a Stable Value product must provide for the safety of participants' contributions.

I. Mutual Funds and Variable Annuity Separate Accounts

Investment options may consist of mutual funds and variable annuity separate accounts or a combination of both mutual funds and variable annuity separate accounts. Proposer may offer its proprietary variable annuity separate accounts or mutual funds and nonproprietary investment options provided that the options offered comply with all state and federal laws and regulations regarding the applicable retirement program and are appropriate for retirement programs of this type.

J. Quality Criteria

Each investment option under this **Section 5.3.1.J** is expected to meet the following criteria:

1. Have at least three (3) years of investment experience as of September 30, 2017, or present other comparable indications of appropriate experience;
2. Have a performance rank in the top first or second performance quartile of the asset class to which it is allocated as defined by Morningstar for either the five or the three (3)-year period ending on September 30, 2017; and
3. Have a total expense ratio, (i.e., the total of fund management fees, 12b-1 fees, annuity contract M&I fees and other expenses, less expense waivers) that is equal to or less than the asset category average as reported by Morningstar.
4. The Morningstar asset class information used for investment option comparisons for option expenses and performance review shall assign options to either mutual fund or variable annuity subaccount data peer groupings (i.e., mutual fund options will be compared to other mutual fund options and variable annuity subaccounts will be compared to other variable annuity subaccounts).

K. Self-Directed Brokerage Accounts

Proposers may include in their proposal a Self-Directed Brokerage Account (SDBA) for one or all of the retirement plans.

1. Participant Access Criteria

Proposer who offers a SDBA must affirm that it will secure from each UT participant who utilizes the SDBA a signed agreement that certifies that the UT participant understands that investment decisions within the SDBA are solely the UT participant's responsibility and that the participant holds the UT System and the UT System's institutions, employees, and contractors harmless for any investment made within the SDBA.

2. Permissible Investment Options

a) Mutual Funds and Variable Annuity Investment Options

Proposer affirms that it will make available to UT participants who utilize the SDBA, mutual funds or variable annuity investment options that are not available through other investment options. UT Participants are not restricted from purchasing back-loaded mutual funds, but each Contractor must provide a list of no-load, no-transaction fee mutual fund options available through the SDBA. A list of all mutual fund and variable annuity investment options available should be included with the response. The listing should clearly indicate those options that are no-load, no-transaction fee options. Investment options purchased through the SDBA are not subject to the investment product standards set forth above.

b) Individual Securities

Each Proposer affirms that it will make available to participants that utilize the SDBA in the UTSaver DCP, a variety of investment vehicles including stocks, bonds, and exchange-traded funds (ETFs). Individual securities are not permitted by law to be offered in the ORP, UTGRA or UTSaver TSA.

Proposers for the 457(f) must affirm that Individual securities will not be offered for the 457(f) Plans.

3. Expense Criteria

Proposer may charge an annual account fee and transaction fees to participants who utilize the SDBA. However, Proposers must take into consideration the competitive nature of this RFP in setting the level, if any, for these fees.

5.3.2 Education and Communication

Proposer must demonstrate a commitment, throughout its Proposal, to assist in the achievement of the following goals:

- Improve the financial literacy of employees;
- Improve awareness of and engagement in the voluntary retirement savings programs;
- Coordinate and brand with the UT Retirement Program logo all communication and education campaigns as a part of an overall plan with the UT System;
- Provide communication and education products that accommodate different learning styles in a program-centric manner;
- Provide segmented communication and education products that address the various stages of a person's employment cycle, in a program-centric manner;

- Provide customer representatives that are available to deliver basic financial education, basic retirement program education, and complex financial planning and wealth management; and
- Provide presentations, both group and one-on-one, to UT System employees that are service- and education-focused, not sales-focused.

A. Participant Service Models Desired

The following participant service models are desired to address the diverse investment advisory needs of UT System participants.

a. UT System Certification of Representatives

Financial representatives of any selected Contractor must be properly licensed in the State of Texas to sell the investment products approved by the UT System. Before any representative (salaried, independent, or commissioned) described in this **Section 5.3.2.A** is permitted to provide financial assistance to an employee of any UT System institution, the representative must complete UT System Certification, which will include the following training elements:

- Overview of the Teacher Retirement System and the UT Retirement Programs including an understanding of the ORP statutory distribution restrictions;
- Basic functionality of UT System's remittance processing and online transaction system;
- Appropriate use of UT System retirement forms;
- Overall plan design;
- UT System retirement policies and procedures, including the Board of Regents' *Rules and Regulations* and Texas Higher Education Coordinating Board Rules regarding sales solicitation; and
- Other requirements that may be added in the future.

b. Sales Solicitation

Proposer must certify that it will provide notification, education, and enrollment into the retirement plans to each representative in compliance with the [UT System's Board of Regents' Rules and Regulations](#) and [Coordinating Board Rules](#) relative to sales solicitation. Proposer must additionally affirm and agree that violations of these Regents' *Rules and Regulations* and Coordinating Board Rules may result in sanctions by the UT System up to and including the termination of the agreement. The sales solicitation agreement is attached to this RFP as **APPENDIX ELEVEN**.

c. Salaried Representatives

Proposer is required to provide a sufficient number of salaried representatives that are dedicated to providing service to UT System employees. These representatives must be identified and available to provide assistance to the UT System benefits offices as well as employees at every institution in the following ways:

- One-on-one meetings with employees to educate and advise them on the retirement program and investment options on a vendor-neutral basis;
- Seminars and financial workshops as permitted by the UT System institution benefits office; and
- Financial fairs and other special events as organized by the UT System or a UT System institution's benefits office.

Every UT System Institution must be assigned a representative that is identified as being a salaried representative, but a representative may be assigned to more than one institution. These representatives must be properly licensed to provide investment consultation and must be managed and supervised by Proposer.

This requirement is a key concept of the UT Retirement Program and an essential element of this RFP. Proposer must be willing and able to provide these salaried representatives.

The following two sections describe two additional service models that are acceptable by the UT System. Although the UT System will include these service models in the overall plan design, a responding vendor's inability or unwillingness to provide this type of service model will not necessarily disqualify them from selection.

d. Registered Investment Advisors

Contractor who permits the deduction of an investment advisory fee must have the capability to keep up-to-date contact information on independent registered investment advisors. Before deducting the investment advisory fee from participants' accounts, Contractor must verify that the investment advisor to whom the fees are paid is registered with the Securities and Exchange Commission and any other applicable federal or state agencies, and is engaged full-time in the business of providing investment advice. In addition, the investment advisory service must comply with the following:

- The contract for such services shall be in writing and will be a contract between the participant and the investment advisor and shall not exceed one (1) year in length. A contract that automatically renews each year shall be considered acceptable as long as both parties have the right to sever the relationship, with reasonable notification, at any time.
- The cost of the investment advisory fees for each fiscal year shall not exceed 2% of the annual value of the participant's account as of the last day of that fiscal year.
- The provider of such investment advisory services shall state in writing to the participant that the decision to utilize investment advisory services is a personal investment decision of the participant and that the UT System neither encourages nor discourages such arrangements.

- An independent investment advisor receiving investment advisory fees is prohibited from receiving commissions for the same UT System retirement account.
- All agreements between the investment advisor and the participant for ORP accounts must comply with Coordinating Board Rules.

e. Commissioned Sales Representatives

Commissioned sales representatives are permitted to assist in the distribution of a bundled variable annuity product. All representatives should be managed and supervised by Contractor.

f. Internet-Based / Direct Service

Internet-based asset allocation tools must be provided by Contractor at no cost to the UT System or to participating employees who become Contractor's clients. These must include an online tool that provides an independent portfolio analysis, along with unbiased recommendations on the various investment options offered by Contractor.

B. Employee Communication and Education Strategy

This section applies only to the UT Retirement Programs as described in **Section 1.2 A-D**

An important objective of the UT System Retirement Program is to provide financial literacy and promote increased awareness and, where appropriate, participation in the voluntary retirement savings programs. Preference will be given to Proposers who demonstrate that their marketing plan has a financial literacy and education component and has increased participation and overall retirement program awareness in other plans similar in size and nature to the UT System retirement program operating in a multi-vendor environment.

UT System will market and communicate the retirement program as UT System plans. UT System may share demographic data on all eligible employees with Contractors (subject to the confidentiality clause set forth in the Agreement) for the sole purpose of sending UT Retirement Program branded educational materials on behalf of UT System.

a. Marketing and Communication Team

Proposer must agree to contribute a team of marketing professionals with at least one (1) representative who will meet with the UT System and collaborate with all contracted retirement Contractors on a regular basis to discuss marketing and communication initiatives. These employee communications will address various stages of an employee's retirement planning process, including:

- Financial literacy
- Overall plan awareness
- Enrollment process
- Asset allocation
- Maximizing deferrals
- Planning for retirement

- Distribution options
- Major life changes

This requirement is a key concept of the UT Retirement Program and an essential element of this RFP. Proposer must be willing and able to collaborate to build retirement program awareness and engagement in a vendor-neutral manner.

b. Cost of Communication Materials

Proposer must agree to pay a proportionate amount of the cost of UT System's marketing and education materials for its retirement programs. This includes printing, mailing, and other costs associated with the distribution of these materials.

c. Other Communication Objectives

Proposer must agree to collaborate with the UT System in building and maintaining educational tools and resources located on the UT Retirement Program website and social media. In addition, the UT System conducts an annual Benefits and Human Resource Conference, usually in June. Proposer agrees to provide a representative to attend and participate in this event. UT System institutions conduct benefit and retirement fairs throughout the year. Proposer agrees to provide support for these institution events by providing representatives to attend and educational materials for distribution.

C. UT System-Specific Website And Media

Contractor must establish a System-specific website and an app compatible with most cell phones and tablets with the primary goal of allowing employees to easily access plan information, investment fund information, representative contact information, access to enrollment, and customer service toll-free numbers. The website and apps must meet all requirements as detailed in this **Section 5.3.2.C**.

Contractor's System-specific website must be available to the UT System for testing no later than July 1, 2018. The final UT System-approved website for plan year 2018–2019 must be completed by July 15, 2018. The UT System must approve new website additions or redesigns at least two weeks prior to any scheduled launch date.

5.3.3 Administration

A. Administration Requirements (for both the UT Retirement Programs and the UT System 457(f) plans as described in **Section 1.2**.)

a. List of Vendor Contacts

Contractor must submit to the UT System a list of the Contractor's implementation team. In addition, representative responsibilities will include, but are not limited to, answering questions from UT System and institutional benefits offices, scheduling Contractor attendance at institution information meetings, and coordinating the distribution of various plan materials.

b. Same-Day Credit

Proposer agrees that it will deposit each participant's retirement program contributions into the accounts or funds designated by the participant effective on the same day that the contributions are received by Contractor.

d. Return of Non-Vested ORP Contributions

Proposer agrees that the entire amount of the State's first-year matching contribution will be refunded to the UT System institution, upon request by the UT System or the UT System institution, in the event the participant does not meet the ORP vesting requirement. Within thirty (30)- days of receiving the request from the UT System institution, the unvested employer contributions must be returned and the participant must be notified of the transaction, indicating the reason for the reduction in the account balances.

e. Confirmation of Funds Transfer

Proposer agrees to provide confirmation of each transaction, including transfers from one fund or investment or account to another fund or investment or account, immediately upon execution of such transaction. This confirmation must be submitted directly to the participant unless the participant specifically waives the provision of this confirmation in writing. The confirmation shall include all transfer information, including a statement of any applicable charges.

For UT Retirement Programs Only

f. **Documentation of Restrictions of ORP Distributions**

Proposer must agree to include the statutory ORP distribution restriction provisions in all ORP contracts with participants.

g. **Qualified Domestic Relations Orders (QDROs)**

Proposer must agree to be solely responsible for determining whether a domestic relations order is qualified and payable for all retirement plans, both qualified and nonqualified, and, where applicable, as provided by federal law and Texas Government Code, Chapter 804. The QDRO requirements for any retirement plan not directly required by federal or state law should meet the requirements of federal law as close as possible.

h. **No Commingling of ORP and Non-ORP Funds**

Proposer must certify the following:

- Non-Texas ORP funds will not be rolled over or transferred to an ORP account prior to the participant's termination of ORP participation;
- Amounts that have been contributed by the participant through the UTSaver TSA or another tax-sheltered annuity program will not be rolled over or transferred to an ORP account prior to the participant's termination of participation; and

- ORP contributions will only be made to a contract that is authorized by the UT System for Texas ORP contributions, even if the participant already has a contract with the Proposer from a period of prior employment with another employer, whether a Texas ORP employer or not.

i. Remittance Processing Requirements

The UT System contracts with a third party to provide a web-based common remitter and online enrollment system. Proposer must agree to accept and comply with all common remitter requirements now established and defined in **APPENDIX TEN**, Common Remitter Requirements, or to be established by UT System. In addition, Proposer must have the administrative capability to accept the electronic transfer of retirement contributions and must agree to accept this information through the Internet via a secured transmission process.

For UT System 457(f) Plans Only

j. Return of Non-Vested System 457(f) Plan Contributions

Each Proposer must certify that it will return to UT System, upon request of UT System, the entire then balance of the account of a participant in the System 457(f) Plan in the event the participant does not meet the System 457(f) Plan vesting requirement.

k. Return of Non-Vested Prototype 457(f) Contributions

Each Proposer must certify that it will return to the adopting UT System institution, upon request of the adopting UT System institution, the entire then balance of the account of a participant in its Prototype 457(f) Plan in the event the participant does not meet the prototype 457(f) vesting requirement.

l. Qualified Domestic Relations Orders (QDROs)

Each Proposer must agree to be solely responsible for determining whether a domestic relations order is qualified and payable for 457(f) Plans, and where applicable, as provided by federal or state law. The QDRO requirements for any 457(f) Plan not directly required by federal or state law should meet the requirements of federal law as close as possible.

m. Remittance Processing Requirements

Each responding vendor must have the administrative capability to accept the electronic transfer of retirement contributions and must agree to accept this information through the internet via a secured transmission process. For the System 457(f) plan, the retirement contributions will be sent from the System, and for the Prototype 457(f) Plan the retirement contributions will be sent from the UT System institutions.

B. Administrative Performance Requirements

Proposer must agree to comply with UT System requirements listed below and to report the required information to UT System in an Administrative Requirements

Report on a quarterly basis. The report must be provided in the format shown in **APPENDIX THIRTEEN**. In addition, UT System retains the option of using an audit firm of its choice to conduct periodic audits of any Contractor on behalf of UT System to determine compliance with these and other standards. Representatives of the State Auditor's Office and the UT System Audit Office may also examine and audit Contractor's books, records, and documents related to work performed or contributions received, as described in the Sample Agreement. The results of any audit conducted by or on behalf of the UT System shall be used by the UT System to determine whether to retain Contractor as a currently authorized vendor in addition to any other criteria adopted by UT System for assessing Contractor performance.

a. Complaints

UT System requirement: The average time for Contractor to resolve UT System participants' complaints should not exceed thirty (30) calendar days.

Quarterly Administrative Requirements Report: Contractor must report its total number of written and emailed complaints received from UT System participants and the average length of time to resolve those complaints as shown in **APPENDIX THIRTEEN**.

b. Processing of Financial Transactions

UT System Requirement: Contractor must process financial transactions, including loans and hardship withdrawals, with 100% accuracy and within three (3) days after receipt of the request. Financial transactions do not include remittance processing.

c. Remittance Processing

UT System Requirement: Contractor must process remittances within twenty-four (24) hours after receipt in good order, as defined in the Sample Agreement(s). Contractor must report any delay in remittance processing, including an explanation for the delay, within seventy-two (72) hours.

d. Responsibility to Correct Mistakes

Contractor must confirm that if Contractor's designated representative delivers incorrect information or makes errors that result in any financial loss, Contractor must rectify the error at Contractor's expense.

e. Prohibited Distributions

Contractor must agree that if Contractor provides a participant with access to ORP funds prior to the earlier of the participant's termination of employment with all ORP employers or attainment of age 70 ½, Contractor must have made a prohibited distribution and Contractor must redeposit the funds to the participant's ORP account as if no withdrawal had been made and provide written verification to UT System that the account has been fully restored with no adverse impact to the employee.

Additionally, Contractor's agreement with UT System may be terminated at any time if Contractor fails to comply with these provisions.

A prohibited distribution, such as a loan that is not authorized under the Chapter 830 of the *Texas Government Code* is not related to ORP and must be treated as a separate transaction between Contractor and the individual, for example, as an unsecured loan.

C. Performance Penalties

The following pertains to the UT Retirement Program only.

Contractors, selected through this RFP to administer the UT Retirement Program, may be subject to the following financial penalties, as noted below, if certain performance requirements are not met, as described in this **Section 5.4.3** of this RFP. The assessment or payment of a performance penalty however, does not affect, alter, or restrict UT System's right to cancel or terminate the Agreement in accordance with the provisions of the Agreement.

a. Telephone Calls

A financial penalty of \$2,000 may be assessed by UT System against Contractor for each quarter that Contractor's average abandonment rate exceeds 5%.

A financial penalty of \$2,000 may be assessed by UT System against Contractor for each quarter that the participant's average time in queue (waiting time) exceeds thirty (30) seconds.

b. Submission of Account Balance Files

Contractor must submit an account balance file as of the end of the prior month no later than the 15th of every month to the UT System common remitter vendor. The file layout of the account balance file is included in **APPENDIX TEN, Common Remitter Requirements**.

UT System may assess a financial penalty of \$2,000 against Contractor for each month in which the account balance file is not received or is not received in the proper format by the 15th of the month by the UT System common remitter vendor.

D. Required Reports

Contractor must provide regular reports as required herein to UT System or its participating employees.

In addition to those reports described below, the UT System may, from time to time, require a Contracting Vendor to provide information specific to the UT System for analysis. A Contracting Vendor must cooperate with and act in good faith in working with the UT System staff and must be prepared to respond to these requests within the requested time period.

For the UT Retirement Programs Only

a. Participant Reports

Provide a quarterly and an annual report to each participant having a UT System retirement account(s) with Contractor, including accounts that are no longer receiving current contributions, containing the following information:

- Name and address of the participant;
- Identifying number;
- Total payments received during the reporting period;
- Expense charges during the reporting period;
- Net payments during the reporting period;
- Total value of account at the end of the reporting period; and
- Net cash surrender value of account at the end of the reporting period reflecting all potential charges against the account if it were surrendered for cash as of the last day of the reporting period.

The annual report for fixed and variable annuity accounts must contain the following additional information:

- Interest rate or rates paid on the account from the previous reporting period to the end of the current reporting period; and
- Where multilevel rates of interest were paid on an account, a breakdown showing the amount in the participant's account at each interest level, the amount of interest earned at each interest level, and the rates of interest. Contractor may exclude the information required by this subparagraph concerning multilevel rates of interest from the annual report, but if this information is not provided on at least an annual basis, Contractor must provide it at any time upon the participant's request.

The annual report for variable annuity and custodial accounts must contain the following additional information:

- Units of each fund or investment or account purchased during the reporting period;
- Total units of each fund or investment in the account at the end of the reporting period; and
- Value of unit of each fund or investment or account at the end of the reporting period.

b. Quarterly Administrative Requirements Report

Contractor must provide a quarterly administrative report in the format shown in **APPENDIX THIRTEEN**. The report must provide the following information:

- Aggregate Plan Balance;
- Plan Contributions;
- Balance Per Product Type (Mutual Fund, Annuity, etc.);
- Gross Asset-Based Revenues by Product Type;
- Contributing Participants;
- Participants With a Balance;
- Summary of any defaulted 457(b) loans;
- Any remittance delays over twenty-four (24) hours;
- Any remittance delays over three (3) days;

- Any transactions broken down by type exceeding three (3) days;
- Telephone statistics;
- Any new participants not contacted within thirty (30) and sixty (60) days, or any participants in default investments due to a failure to contact;
- Contractor services including campus events and appointments;
- Complaints broken down by written / email or phone, and the average time to resolve.

c. Utilization of New Participant Report

UT System currently contracts with a common remitter and enrollment system that makes available a report of all newly enrolled participants. Contactor must confirm that it will utilize this report to contact any participants who do not have existing accounts prior to Contractor's receipt of the first remittance.

The report, currently titled "New Participant Report", is available for download from UT System's current remitter system that includes those new participants that have selected Contractor through an online salary reduction agreement and who have indicated that they have not completed a new account application.

If Contractor fails to notify the new participant and make every reasonable attempt to establish an account for that new participant, the UT System may assess a financial penalty of \$250 against Contractor for each new participant whose name has appeared on the report for greater than thirty (30) days.

d. Additional Reporting Requirements

UT System may, from time to time, require Contractor to provide information specific to the UT System for analysis. Contractor must cooperate with and act in good faith in working with UT System staff and must be prepared to respond to these requests within the requested time period.

For the UT System 457(f) Plans Only

e. **Required Reports**

Contractor must provide a quarterly and an annual report to each participant having a UT System retirement account(s) with Contractor, including accounts that are no longer receiving current contributions, containing the following information:

- Name and address of the participant;
- Identifying number;
- Total payments received during the reporting period;
- Expense charges during the reporting period;
- Net payments during the reporting period;
- Total value of account at the end of the reporting period; and

- Net cash surrender value of account at the end of the reporting period reflecting all potential charges against the account if it were surrendered for cash as of the last day of the reporting period.

The annual report for fixed and variable annuity accounts must contain the following additional information:

- Interest rate or rates paid on the account from the previous reporting period to the end of the current reporting period; and
- Where multilevel rates of interest were paid on an account, a breakdown showing the amount in the participant's account at each interest level, the amount of interest earned at each interest level, and the rates of interest. Contractor may exclude the information required by this subparagraph concerning multilevel rates of interest from the annual report, but if this information is not provided on at least an annual basis, the Contracting Vendor must provide it at any time upon the participant's request.

The annual report for variable annuity and custodial accounts must contain the following additional information:

- Units of each fund or investment or account purchased during the reporting period;
- Total units of each fund or investment in the account at the end of the reporting period; and
- Value of unit of each fund or investment or account at the end of the reporting period.

5.4 Types of Services Offered by Proposer

Proposer shall place an "X" on the appropriate line below to indicate which Services Proposer is proposing to provide:

_____ Investment products and services for the UT Retirement Program (ORP, UTGRA, UTSaver TSA and UTSaver DCP), and the capability to accept Roth 457(b);

_____ Investment products and services for the 457(f) Plans.

5.5 Additional Questions Specific to this RFP

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

5.5.1 Deviations from the RFP

Proposer must identify the location of any provision in the proposal that does not conform to the standards described in this RFP. For each of these deviations, provide a detailed explanation as to how the provision differs from the RFP and why.

5.5.2 Administration (35%)

General Information

1. Indicate how many years Proposer's company has been active in the defined contribution business, i.e., 457(b), 403(b), 415(m), 401(a), 457(f), etc.
2. Indicate the total value of assets in all deferred compensation plans for which Proposer provides recordkeeping services.
3. Indicate the total number of participants in all deferred compensation plans for which Proposer provides recordkeeping services.
4. State the number of deferred compensation plans Proposer currently administers in the following categories:

Number of Employees	Plans	Percentage of Total DC Plans
Under 100		
100-999		
1,000-4,999		
5,000-9,999		
10,000-24,999		
Over 25,000		
Total		

References

5. Provide five (5) references of current clients who have similar plan demographics (i.e., size and plan design). At least one (1) of the five (5) should have converted within the last year. Provide client name, contact name, address, phone number, services provided, and year they became a client.

Note: By responding to this request, Proposer authorizes UT System to contact the current clients to discuss the services Proposer has provided for these current clients, Proposer authorizes the current clients to provide such information to the UT System, and Proposer agrees to release the UT System and the current clients from any liability arising from their actions.

6. Provide three (3) references of former clients who had similar plan demographics (i.e., size and plan design). At least one (1) of the three (3) should have left within the last year. Provide the former client name, contact name, address, phone number, services provided, and year they became a client and the year they ceased to be a client and the reason(s).

Note: By responding to this request, Proposer authorizes the UT System to contact the former clients to discuss the services Proposer has provided for these former clients, Proposer authorizes the former clients to provide such information to the UT System, and Proposer agrees to release the UT System and the former clients from any liability arising from their actions.

Account Team

7. Describe the account team that would deal directly with UT System during the transition and ongoing. Indicate staff size, experience and turnover rates.
8. What is the average number of clients managed by the account team for plans of this size?
9. How many of Proposer's employees work on defined contribution plans? Provide a breakdown by functional area.

10. What are Proposer's client retention statistics for each of the last three (3) years?
11. Describe Proposer's organization's commitment to quality and the philosophy / approach to client services.
12. Describe Proposer's procedures for monitoring client and participant satisfaction.
13. Describe Proposer's service / timing standards.
14. What checks and balances does Proposer have in place to assure plan administration integrity and accuracy including participant account data?
15. Proposer must submit a list of their service representatives to be dedicated to the UT System account. This list should include a primary and a secondary contact.

Recordkeeping / Administration

16. Affirm that Proposer will provide one main contact for the daily administrative needs of the plan?
17. Affirm that Proposer provides daily valuation. Describe in detail how your system allocates earnings.
18. What methods of data transmission are available?
19. Describe in detail how Proposer's system processes contributions, including how Proposer verifies the source of the incoming contributions.
20. Describe in detail, including timing, how Proposer's system processes withdrawals.
21. Describe in detail, including timing, how Proposer's system processes: a) lump-sum distributions, b) systematic payments / installments, c) rollovers to another plan or an IRA, and d) required minimum distributions.
22. Describe in detail how Proposer's system processes transfers / rollovers (including frequency / limitations). Are confirmations sent?
23. Describe Proposer's process and methods of reallocation (percent and / or dollar).
24. Affirm that employer and employee contributions be tracked separately?
25. Describe in detail how Proposer's system handles federal and state tax reporting and how you will provide tax form preparation and filing.
26. Describe in detail how Proposer administers and qualifies domestic relations orders (DROs).
27. What checks and balances does Proposer have in place to ensure transaction integrity?
28. Will Proposer provide an administration manual?
29. Will Proposer record keep nonproprietary investment vehicles? Describe the process and systems used.

30. What other administrative services does Proposer provide?
31. Describe in detail the fees and revenue sharing amounts you receive with any nonproprietary investment vehicles.
32. Affirm Proposer's credit ratings specifications by providing copies of all claims-paying ratings which it has received, whether voluntarily or involuntarily.
33. Describe in detail how Proposer might price the services requested in this RFP in a transparent, flat fee structure rather than on the assets under management.
34. Provide a sample contract with all applicable guaranteed rates, investment periods, annuitization rates, surrender fees, mortality and expense fees and all other numerical entries inserted therein for any variable or fixed annuity contract proposed to be in use or introduced shortly after September 1, 2017.
35. Describe any value-added benefits or features not mentioned within this RFP but available through Proposer's company that would be beneficial to a participant's overall financial planning.
36. Affirm that Proposer's system would handle Roth contribution option to the 457(b).
37. Proposer agrees to provide at least quarterly a statement to participants that includes a confirmation of receipt of UT Retirement Program contributions. A sample of the participant statement must be enclosed in Proposer's proposal.

Information Security: General Data Protection

38. Describe the security features incorporated into the proposed products and services.
39. List all products, including imbedded products, in the proposal and their corresponding owning company.
40. Describe the monitoring procedures and tools used for monitoring the integrity and availability of the systems interacting with the service proposed, detecting security incidents and ensuring timely remediation.
41. Describe the physical access controls used to limit access to Proposer's data center and network components.
42. What procedures and best practices does Proposer follow to harden all systems that would interact with the service proposed including any systems that would hold, process, or from which University data may be accessed?
43. What technical security measures does Proposer take to detect and prevent unintentional [accidental] and intentional corruption or loss of University data?
44. If Proposer were to be selected, would Proposer agree to a vulnerability scan by the UT System of the web portal application that would interact with the service proposed including any systems that would hold, process, or from which UT System data may be accessed? If Proposer objects to the vulnerability scan, Proposer must, as part of its proposal, identify and describe in detail the reasons for Proposer's objection.
45. Does Proposer have a Data Backup and Recovery Plan supported by policies and procedures, in place for the hosted environment? If yes, describe the outline of the

Plan and how often it is updated. If no, describe what alternative methodology Proposer uses to ensure the restoration and availability of UT System data.

46. Does Proposer encrypt UT System data backups? If yes, describe the methods used by the responding vendor to encrypt backup data. If no, what alternative safeguards does Proposer use to protect UT System data backups against unauthorized access?
47. Proposer must describe any assumptions made in the preparation of the proposal regarding information security outside those already supplied by Proposer's company in the proposal.
48. Provide results (they can be redacted) of a website and / or mobile application vulnerability and penetration test conducted by UT System or a third party. If Proposer provides results from tests conducted by a third party, the testing must have been completed within the previous 365 days of contract award.

Proposer must describe:

- The authentication mechanism for accessing the website and mobile application;
- The protocols governing administrator access to data included in the website and mobile application;
- The architecture of the website and mobile application.

49. Describe the storage facility that will be used by the Proposer.
50. Will the Proposer store UT System data in a cloud-based environment? Explain.
51. Will the Proposer store UT System data with a third-party storage facility? If so, provide the hosting organization and describe how UT System data will be isolated from other customer data and what security controls are in place for the hosting environment.

Access Control

52. 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 UT System Electronic Board Books to ensure need-to-know-based access.
53. How will users authenticate to the proposed web portal application?
54. Describe Proposer's password policy including password strength, password generation procedures, and frequency of password changes. If passwords are not used for authentication to the proposed system, describe what alternative controls are used to manage user access.
55. What procedures and best practices does Proposer have in place to ensure that user credentials are updated and terminate as required by changes in role and employment status?
56. Does the proposed web portal application provide the capability to use local credentials (i.e., federated authentication) for user authentication and login. If yes, describe how the product provides that capability.

Use of Data

57. 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 all systems that would hold, process, or from which UT System data may be accessed to ensure that UT System data and resources will not be accessed or used in an unauthorized manner.
58. What safeguards does Proposer have in place to segregate UT System data from system and other customers' data to prevent accidental and / or unauthorized access to UT System data?
59. What safeguards does Proposer have in place to prevent the unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access, or disclosure of UT System data.
60. What procedures and safeguards does Proposer have in place for sanitizing and disposing of UT System data according to prescribed retention schedules or following the conclusion of a project or termination of a contract to render it unrecoverable and prevent accidental and / or unauthorized access to UT System data?
61. Describe Proposer's implementation strategy for segregating sensitive and non-sensitive data including: 1) How Proposer ensures different levels of protection mechanisms and security controls based on the University of Texas System Data Classification scheme; and 2) How Proposer integrates updated or new data security controls specified by the University of Texas System.

Data Transmission

62. Describe the connections to transmit data among all parties in the Proposers solution. If connecting over a public network (e.g., the Internet), describe the way Proposer will safeguard Institution data.
63. Does the product secure the data transmission between UT System institution and Proposer? If yes, describe how Proposer provides that security. If no, what alternative safeguards are used to protect UT System institution data in transit?
64. Explain how strong encryption using a robust algorithm with keys of required strength are used for encryption in transmission and in processing per requirements identified in NIST 800-53v4.
65. Explain how cryptographic keys are managed, protection mechanisms, and who has access to them.
66. Describe how strong data encryption is used for web sessions and other network communication including data upload and downloads.
67. Define how encryption in transmission is used to ensure data security between applications (whether cloud or on premise) and during session state.
68. Does the product encrypt confidential data in transit and at rest? If yes, describe how strong data encryption is applied to data at rest in all locations where confidential information is stored, including the type and level of security is in place for data at rest and in transit. If no, what alternative methods are used to safeguard confidential data in transit and at rest?

Notification of Security Incidents

69. Describe what procedures Proposer has in place to isolate or disable all systems that would interact with the service proposed in case a security breach should be identified? Including any systems that would hold, process, or from which UT System institution data may be accessed.
70. What procedures, methodology, and timetables does Proposer have in place to detect information security breaches and notify UT System and customers?
71. Describe the procedures and methodology in place to detect information security breaches and notify customers in a manner that meets the requirements of the state breach notification law.

Personnel Security

72. Administrator Staff and Separation of Duties. Provide evidence that processes are in place to compartmentalize the job responsibilities of the provider's administrators from the responsibilities of other staff and different administrators to ensure the principles of Least Privilege and Separation of Duties.
73. Training. Provide documentation regarding HIPAA and Security Awareness training that meets industry standards (e.g. NIST 800-53v4, HIPAA Rules).
74. Malicious Insiders. Provide policy, procedures, and controls to demonstrate how provider protects against malicious insiders.
75. Acceptable Use Policies. Describe the service provider's process to ensure all personnel read and understand the provider's acceptable use policy, and negotiate an agreement.

Compliance with Law

76. Describe the procedures and methodology in place to retain, preserve, backup, delete, and search data in a manner that meets the requirements of electronic discovery rules. Specifically, how and in what format UT System data is kept and what tools are available to UT System to access UT System data.
77. Describe the safeguards in place to ensure that all systems that would interact with the service proposed including any systems that would hold, process, or from which UT System data may be accessed reside within continental US.

Regulatory and Legal Services

78. Describe the type of legal support included in the proposal and any fees that apply.
79. How does Proposer keep plan sponsors informed and updated on any regulatory and legislative changes?
80. How does Proposer ensure that the recordkeeping system is in compliance with all regulations?
81. Describe any past or pending litigation, within the last five (5) years, relating to or regarding services similar to the services Proposer is proposing to provide.

Loans (UTSaver TSA and UTSaver DCP Only)

82. Describe in detail Proposer's loan processing capabilities.
83. Does Proposer have paperless loan capabilities? If so, describe.
84. Does Proposer have paperless, online plan sponsor approval capabilities? If so, describe.
85. Describe the flexibility in Proposer's loan repayment processing (i.e., additional loan payments, multiple loans, missed payments).
86. How does Proposer handle delinquent and / or defaulted loans?
87. Does Proposer's company limit the number of loans available to participants. If so, describe the limitations.
88. Describe any other features and / or limitations of the loan system not detailed above (e.g., loan modeling, amortization scheduling, etc.).

Hardship and Unforeseeable Emergency Withdrawals (UTSaver TSA and UTSaver DCP and 457(f) Plans only)

89. Describe in detail Proposer's hardship or unforeseeable emergency processing capabilities.
90. Does Proposer have paperless hardship or unforeseeable emergency capabilities? If so, describe.
91. Does Proposer have paperless, online plan sponsor approval capabilities? If so, describe.

Reporting

92. Describe the standard reporting package that Proposer would provide UT System as well as the medium(s) used. Provide samples.
93. Describe any customized or ad hoc reporting capabilities including Internet capabilities.
94. Describe Proposer's standard participant-level statements and documents. Provide samples.
95. Describe Proposer's customization capabilities for participant-level statements.
96. What is the standard timeframe for providing each report after the reporting period ends?
97. Describe in detail Proposer's organization's remitter system. If such a system is capable of operating in a multi-vendor environment, describe in detail how your system would work for participants and administrative users.

5.5.3 Education and Communication (30%)

Employee Service Voice Response System

98. Describe the services available through Proposer's voice response system (VRS).
99. How are transactions processed? How are transactions documented? Are confirmations sent?
100. Describe how data is secured within the system (e.g., PIN, audit trail, confirmations).
101. Describe the level of customization available within Proposer's VRS.
102. What are the standard hours of operation?
103. Are there any transactions that cannot be processed through the VRS?
104. Is the menu easy for participants to use? Does it include "help" information? Describe the structure in detail.
105. Can a participant elect to move from the VRS to a service representative? When and what services are available?
106. How often is the data on the VRS updated? How does the VRS interface with the recordkeeping system?

Call Center

107. Identify Proposer's toll-free service center standards. Include for each of the last three (3) calendar quarters, statistics related to actual performance, including number of calls, average length of calls, average response time, percentage of calls requiring follow-up, call abort rate, percentage of incoming calls totally handled via VRS versus toll-free live service center representative assistance, and percentage of service requests handled via website versus call center and VRS.
108. What training is provided to toll-free service center representatives before they are allowed to handle incoming calls?
109. Does Proposer monitor and / or tape toll-free calls?
110. What are Proposer's case management procedures for calls that have service issues?
111. What information is available to toll-free service representatives to allow them to effectively answer participant questions?

Access by Disabled Persons

112. Describe Proposer's methods of providing access to the voice response system, the participant website, and the call center to disabled persons, including the visually impaired.
113. Explain the procedures Proposer have implemented or will implement to assure compliance with the provision of Section 508 of the Rehabilitation Act (29 U.S.C. 794d) and the Section 508 Standards adopted under that section (36 C.F.R. Part 1194).

Investment Representatives

114. Explain Proposer's method of providing one-on-one financial education to UT System employees.
115. Provide the number of investment representatives that will be provided by Proposer's organization at each institution.
116. How many of the investment representatives will be paid on a commission versus a salary basis at each institution?
117. What training is provided to investment representatives before they are allowed to service employees?
118. What ongoing training do you provide to investment representatives?
119. How does Proposer respond to employee complaints and concerns regarding investment representatives?
120. Will Proposer's investment representatives be dedicated to providing financial education and service to UT System or will they service multiple clients?

Communication and Education (UT Retirement Program only)

121. Briefly describe Proposer's background and experience in providing communication and education programs in a multi-vendor environment.
122. Identify the key elements provided as part of a standard communication and education program package included in the proposal.
123. Identify the key elements provided as part of a financial literacy program included in the proposal.
124. Who will Proposer provide as personnel resources as part of both the initial and ongoing communication and education program?
125. Does Proposer provide communication and education material in a foreign language? If so, what language(s) and what material?
126. Does Proposer create all of its communication and education material in-house or through third parties?
127. Describe the process Proposer uses to help plan sponsors measure the effectiveness of employee education efforts.
128. Does Proposer's organization provide any services (e.g., personal questionnaires, software) that would help individual participants with financial planning? Describe any electronic education tools Proposer provides, both software-based and web-based.
129. Describe Proposer's position on providing investment advice to participants. What fiduciary responsibility does Proposer assume if advice is provided?
130. If advice is offered, is it in-house or via a third party? Describe Proposer's process, mode and scope of advice.

131. Describe education tools or programs designed to support IRA rollovers and/or retirement distributions.
132. Provide samples of initial enrollment and ongoing communication and enrollment materials. Provide the result of the communication (e.g., increased participation, etc.).
133. Provide samples of financial literacy information or tools.
134. Provide samples of communication and education materials used to target different age groups and employees at different life stages. This could be print, email, web-based or designs appropriate for social media.

5.5.4 Investment Products (35%)

Investments

135. Discuss Proposer's ability to provide investment vehicles for defined contribution plans. Be sure to disclose if Proposer is providing these vehicles in-house or through external managers.
136. Identify the number and types of investment vehicles Proposer would make available.
137. How does Proposer determine which investment vehicles to make available?
138. Proposer that offers a fixed-interest rate annuity investment product (whether via a fixed annuity or via a fixed-interest rate option within a variable annuity) must describe the interest rate crediting procedures and must also display such product's net return during the five (5)-year period ending September 30, 2017.
139. Discuss Proposer's ability to make available the lowest expense share class funds for UT System's plans. How else can Proposer make investment fees and expenses as low as possible for UT employees?
140. Does Proposer's organization offer a self-directed brokerage window as a potential investment option? Fully describe the service and fees associated with the administration of the brokerage accounts.
141. If Proposer offers a self-directed brokerage window, a copy of the proposed hold-harmless agreement should be included with this response.
142. Discuss any other investment opportunities available to employees that can offer a guaranteed income. Discuss in detail the cost structure and benefits of such products.
143. If Proposer is proposing a Stable Value product, describe in detail the method for crediting earnings to a participant's account and describe such product's net return during the five-year period ending September 30, 2017.
144. Describe the credit and duration characteristics of the underlying securities used in Proposer's Stable Value investment.

University of Texas System 457(f) Plans only)

145. If any offered option pays any type of fee or provides any type of service to the responding vendor offering such option within its menu, Proposer must fully disclose the amounts and terms of such fees or services in Proposer's proposal.
146. Proposer must certify that the products offered in the Proposer's proposal do not contain a life insurance feature.

SECTION 6

PRICING AND DELIVERY SCHEDULE

Proposal of: _____
(Proposer Company Name)

To: The University of Texas System

RFP No.: 720-1806 Investment Products and Services Providers for the University of Texas Retirement Program and The University of Texas System 457(f) Plans

Ladies and Gentlemen:

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

6.1 Compensation

Describe Proposer's compensation policy.

6.2 Discounts

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

6.3 Delivery Schedule of Events and Time Periods

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

_____ Calendar Days

6.4 Payment Terms

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

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

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

**APPENDIX ONE
PROPOSAL REQUIREMENTS**

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SECTION 1

GENERAL INFORMATION

1.1 Purpose

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

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

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

1.2 Inquiries and Interpretations

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

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

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

1.3 Public Information

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

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

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

1.4 Type of Agreement

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

1.5 Proposal Evaluation Process

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

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

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

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

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

1.6 Proposer's Acceptance of RFP Terms

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

1.7 Solicitation for Proposal and Proposal Preparation Costs

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

1.8 Proposal Requirements and General Instructions

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

1.9 Preparation and Submittal Instructions

1.9.1 Specifications and Additional Questions

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

1.9.2 Execution of Offer

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

1.9.3 Pricing and Delivery Schedule

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

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

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

1.9.4 Proposer's General Questionnaire

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

1.9.5 Addenda Checklist

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

1.9.6 Submission

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

Proposer must also submit one (1) copy of the HUB Subcontracting Plan (also called the HSP) as required by **Section 2.5** of this RFP.

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

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

SECTION 2

EXECUTION OF OFFER

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

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

is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at University's option, may result in termination of any resulting Agreement.

- 2.4 Antitrust Certification.** Neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, nor anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in [§15.01 et seq., Business and Commerce Code](#), or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
- 2.5 Authority Certification.** The individual signing this document and the documents made a part of this RFP, is authorized to sign the documents on behalf of Proposer and to bind Proposer under any resulting Agreement.
- 2.6 Child Support Certification.** Under [§231.006, Family Code](#), relating to child support, the individual or business entity named in Proposer's proposal is not ineligible to receive award of the Agreement, and any Agreements resulting from this RFP may be terminated if this certification is inaccurate.
- 2.7 Relationship Certifications.**
- No relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Proposer that is a sole proprietorship, the officers or directors of any Proposer that is a corporation, the partners of any Proposer that is a partnership, the joint venturers of any Proposer that is a joint venture, or the members or managers of any Proposer that is a limited liability company, on one hand, and an employee of any member institution of University, on the other hand, other than the relationships which have been previously disclosed to University in writing.
 - Proposer has not been an employee of any member institution of University within the immediate twelve (12) months prior to the Submittal Deadline.
 - No person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in Proposer's proposal or any contract resulting from this RFP (ref. [§669.003, Government Code](#)).
 - All disclosures by Proposer in connection with this certification will be subject to administrative review and approval before University enters into any Agreement resulting from this RFP with Proposer.
- 2.8 Compliance with Equal Employment Opportunity Laws.** Proposer is in compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 2.9 Compliance with Safety Standards.** All products and services offered by Proposer to University in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law ([Public Law 91-596](#)) and the *Texas Hazard Communication Act*, [Chapter 502, Health and Safety Code](#), and all related regulations in effect or proposed as of the date of this RFP.
- 2.10 Exceptions to Certifications.** Proposer will and has disclosed, as part of its proposal, any exceptions to the information stated in this [Execution of Offer](#). All information will be subject to administrative review and approval prior to the time University makes an award or enters into any Agreement with Proposer.
- 2.11 Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act Certification.** If Proposer will sell or lease computer equipment to University under any Agreement resulting from this RFP then, pursuant to [§361.965\(c\), Health & Safety Code](#), Proposer is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in [Chapter 361, Subchapter Y, Health & Safety Code](#), and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in [30 TAC Chapter 328, §361.952\(2\), Health & Safety Code](#), states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term "computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.
- 2.12 Conflict of Interest Certification.**
- Proposer is not a debarred vendor or the principal of a debarred vendor (i.e. owner, proprietor, sole or majority shareholder, director, president, managing partner, etc.) either at the state or federal level.
 - Proposer's provision of services or other performance under any Agreement resulting from this RFP will not constitute an actual or potential conflict of interest.
 - Proposer has disclosed any personnel who are related to any current or former employees of University.
 - Proposer has not given, nor does Proposer intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to an officer or employee of University in connection with this RFP.
- 2.13 Financial Advisor Disclosure**
- 2.13.1** Proposer is / is not a Financial Advisor or service provider for purposes of [Chapter 2263, Government Code](#). If Proposer is a Financial Advisor, Proposer certifies that it has disclosed the following, in writing, to the administrative head of the University and the State Auditor's Office ("SAO"):
- any relationship Financial Advisor or Proposer has with any party to a transaction with the University, other than a relationship necessary to the investment or funds management services that the Financial Advisor or Proposer performs for University, if a reasonable person could expect the relationship to diminish the Financial Advisor's or Proposer's independence of judgment in the performance of responsibilities to University; and
 - all direct or indirect pecuniary interests the Financial Advisor or Proposer has in any party to a transaction with University, if the transaction is connected with any financial device or service the Financial Advisor or Proposer provides to the entity or member, in connection with the management or investment of University funds.

2.13.2 Proposer will:

- (a) disclose any relationship described in **Section 2.13.1**, without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship; and
- (b) file no later than April 15th (for the previous calendar year period) on a form prescribed by the entity, an annual statement with the administrative head of the University and with the SAO disclosing the relationships outlined in **Section 2.13.1**. If no relationship existed during the applicable disclosure period (previous calendar year), the statement will indicate this fact affirmatively.

214 Proposer should complete the following information:

If Proposer is a Corporation, then State of Incorporation: _____

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

RFP No.: 720-1806 Investment Products and Services Providers for the University of Texas Retirement Program and The University of Texas System 457(f) Plans

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

Submitted and Certified By:

(Proposer Institution's Name)

(Signature of Duly Authorized Representative)

(Printed Name / Title)

(Date Signed)

(Proposer's Street Address)

(City, State, Zip Code)

(Telephone Number)

(FAX Number)

(Email Address)

SECTION 3

PROPOSER'S GENERAL QUESTIONNAIRE

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

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

3.1 Proposer Profile

3.1.1 Legal name of Proposer company:

Address of principal place of business:

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

Number of years in Business: _____

State of incorporation: _____

Number of Employees: _____

Annual Revenues Volume: _____

Name of Parent Corporation, if any _____

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

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

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

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

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

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

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

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

3.2 Approach to Project Services

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

3.3 General Requirements

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

3.4 Service Support

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

3.5 Quality Assurance

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

3.6 Miscellaneous

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

SECTION 4

ADDENDA CHECKLIST

Proposal of: _____
(Proposer Company Name)

To: The University of Texas System

Ref.: Investment Products and Services Providers for the University of Texas Retirement Program and
The University of Texas System 457(f) Plans

RFP No.: 720-1806

Ladies and Gentlemen:

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

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

No. 1 _____ No. 2 _____ No. 3 _____ No. 4 _____ No. 5 _____

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

APPENDIX TWO
SAMPLE AGREEMENT
(INCLUDED AS SEPARATE ATTACHMENT)

APPENDIX THREE
HUB SUBCONTRACTING PLAN
(INCLUDED AS SEPARATE ATTACHMENT)

APPENDIX FOUR
(INTENTIONALLY OMITTED)

APPENDIX FIVE

ACCESS BY INDIVIDUALS WITH DISABILITIES

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

APPENDIX SIX

ELECTRONIC AND INFORMATION RESOURCES ENVIRONMENT SPECIFICATIONS

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

Basic Specifications

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

Security

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

Integration

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

Accessibility Information

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

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

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

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

APPENDIX SEVEN

SECURITY CHARACTERISTICS AND FUNCTIONALITY OF CONTRACTOR'S INFORMATION RESOURCES

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

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

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

General Protection of University Records

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

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

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

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

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

Access Control

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

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

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

Use of Data

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

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

Data Transmission

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

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

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

Notification of Security Incidents

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

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

Compliance with Applicable Legal & Regulatory Requirements

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

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

APPENDIX EIGHT

INTENTIONALLY OMITTED

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

APPENDIX TEN

COMMON REMITTER REQUIREMENTS

Retirement Manager is a web-based employee retirement plan benefit system that provides

- Plan enrollment;
- Vendor selection changes;
- Vendor neutral Retirement Planning information and tools;
- Information concerning the selected Vendor company's retirement benefit package;
- Employee access to individual Retirement Plan accounts; and
- Common Remittance platform for all Vendors.

The program elements that will affect Retirement Vendors are:

- Access will be granted to the *Retirement Manager* web site so contribution files can be securely downloaded.
- Wire transfers will be sent for all retirement plan contributions.
- Information on new participants that have selected a particular Vendor will be made available on a weekly basis. An example of the New Participant report is below.
- Information on terminated employees that may have an account balance with a particular Vendor will be made available on a weekly basis.
- Selected forms will be available online and each Vendor must provide a link to their forms.
- Weekly SPARK files for each retirement plan must be provided for display in the *Retirement Manager* system. SPARK Information refers to the Best Practices Information Sharing format developed by The Spark Institute. More information regarding this format can be found at www.sparkinstitute.org.

Retirement Plan Enrollment

The selected Vendor is responsible for providing contact information that will be posted on the site.

The selected Vendor is responsible for downloading the New Participant report on a monthly basis to ensure all new participants are contacted and properly enrolled with the Vendor.

Vendor Selection Changes

If a participant desires to change their Vendor, they will be prompted to fill out a new application for the new Vendor.

Retirement Planning Information and Tools

Information specific to the selected Vendor will be requested for inclusion in this section of the web site after the Vendors are selected.

Employee Access to Individual Retirement Plan Accounts

Vendors are responsible for providing a link to the vendor's online service center where employees can access their account. This link will be provided for participants to access the vendor's site to obtain current balance information, change their fund allocations and transfer funds among available investment vehicles.

The only Vendor specific account information provided on the web site is the account balance and YTD contributions. In addition, the selected Vendor will be responsible for providing a link to online forms to assist participants in making transactions to their account(s). At a minimum, links must be provided to forms that allow participants to enroll or transfer their current account balance to another Vendor.

Common Remittance Platform for All Vendors

All Vendors will be required to retrieve contribution files from the *Retirement Manager* web site. Upon receipt of the completed Vendor Reply Form, access identifications and passwords will be issued to those Vendors selected by the UT System. It is the selected Vendor's responsibility to ensure Retirement Manager is notified if an identification should be revoked or a new identification should be issued.

A standard file layout will be provided to each Vendor. If a Vendor would like a unique code added to the file for that company, it must be provided on the Vendor Reply Form.

Any questions or concerns with the remittance process should be communicated to Retirement Manager. If the selected Vendor cannot resolve a question or concern with them, that Vendor should contact the client Benefits Manager or Payroll Officer to obtain resolution.

Test files will be provided at least one (1) month prior to the first live payroll. A Retirement Manager production contact will be assigned when the implementation phase is complete.

Retirement Manager Questions and Answers

1. Can VALIC Retirement Services Company (VRSCo) provide an overview of the site and VRSCo's involvement in the process of working with Higher Education?

The VALIC Retirement Services Company, VRSCo, operates/hosts *Retirement Manager* for several clients. VRSCo is a Third Party Administrator and is a wholly owned subsidiary of AIG VALIC. VRSCo does not own or maintain the data within the site. All the financial tools and educational material provided on the *Retirement Manager* site is Vendor neutral.

VRSCo will administer the common remitter process. VRSCo has entered into a service agreement with each client to ensure information concerning employees' remittances to Vendors and information gained by VRSCo in the common remitter process is not shared with AIG

VALIC or any other unauthorized parties. The common remitter process will provide a consistent remittance format to each Vendor.

2. How will changes to Vendor investment allocations be processed?

The Retirement Manager site will facilitate these changes. If an employee selects a Vendor for whom they are not currently remitting, the site will guide the employee through the process of establishing an account with the selected Vendor(s).

3. How will investment fund selections be handled?

Retirement Manager does not facilitate the selection of specific investments. Each Vendor's current process for selecting and maintaining fund allocations will remain unchanged.

4. How will contribution monies and files be received?

VRSCo will provide an access identification and password to each person authorized for access by each Vendor. Upon completing the remittance process, the RM site will e-mail each Vendor informing them that their remittance file is ready for pick up or the preferred method would be to set up FTP connection to transfer remittance files directly to each vendor. At the same time, wires will be generated to each Vendor based on the information provided in the Vendor Reply Form.

When good order files and monies are received by VRSCo by 10:00am CST, wires and balanced files will be initiated to each Vendor same day.

5. What is the format of the Common Remitter file?

The file format is attached.

6. How will address and demographic changes be transmitted?

Address and demographic information will be sent as part of the remittance file. The file format is attached.

7. What, if any, data will be provided to AIG VALIC?

No data will be fed back to AIG VALIC other than the remittance data for employees that have selected AIG VALIC as one of their Vendors.

8. Whom should I contact with Common Remitter questions?

Any questions pertaining to the Common Remitter implementation should be forwarded to the VRSCo contact listed on the Vendor Reply Form, which will be provided after vendor selection has occurred. A primary and secondary VRSCo production contact will be assigned when the Common Remitter implementation is complete. These individuals will be available to assist with any questions or concerns related to the Common Remitter process.

9. Describe the enrollment process facilitated by RM in more detail.

Online enrollment instructions will be provided when an employee enrolls/selects a new Vendor. Upon selecting a Vendor, their specific enrollment procedures are provided. Employees are also provided with the proper forms/contact information for the Vendor. Employees must make these elections a minimum of 2 weeks prior to their first payroll deduction effected by the change. This should allow enough time for the Vendor to receive the required forms/information and establish an account prior to the first remittance from the employee.

Vendors can also download a file of new participants that have selected them as a Vendor. **Retirement Manager** will e-mail the Vendor contact(s) when the file is ready. This file is in the same format as the remittance file. The product code on the file is NEWP for New Participant and the remittance amounts will be blank. In addition, the Vendor is provided with employee demographic data as part of the remittance file. This information will allow the Vendor to establish a temporary account and contact the participant directly if enrollment information has not been received in good order.

Attachment 1 Vendor Remittance File Format

Field Name	Length	Data Type	Comments
Format Code	4	alpha	Required field - REMF = Remittance File, NewP = New Participant, TERM = Terminated Participant, VEST = Newly Vested
Paygroup ID	12	alpha-numeric	This code is provided by the Vendor and reflects their identifier of the Group/Plan.
SSN	9	numeric	NOTE: MAY only be last 4 digits on the NEWP report as full SSN is provided for the first time with the first remittance not demographic file.
Employee ID	20	alpha-numeric	EID
Participant First Name	30	alpha	
Participant Middle Name	30	alpha	
Participant Last Name	30	alpha	
Address 1	35	alpha-numeric	
Address 2	35	alpha-numeric	
City	20	alpha-numeric	
State/Country Code	2	alpha	Standard 2-letter state postal code; if outside US and Canada, use standard 2-letter country postal code
Zip	9	alpha-numeric	Format ##### or #####
Payroll Date	8	numeric	Format MMDDYYYY
Contribution Source 1	7	numeric	Format 0000000. No decimals or dollar signs (implied decimal for hundredths). Denote negative number with dash in place of first zero of the series "-000000"
Contribution Source 2	7	numeric	Format 0000000. No decimals or dollar signs (implied decimal for hundredths). Denote negative number with dash in place of first zero of the series "-000000"
Contribution Source 3	7	numeric	Format 0000000. No decimals or dollar signs (implied decimal for hundredths). Denote negative number with dash in place of first zero of the series "-000000"
Contribution Source 4	7	numeric	Format 0000000. No decimals or dollar signs (implied decimal for hundredths). Denote negative number with dash in place of first zero of the series "-000000"
Contribution Source 5	7	numeric	Format 0000000. No decimals or dollar signs (implied decimal for hundredths). Denote negative number with dash in place of first zero of the series "-000000"
Loan ID	2	numeric	Code which identifies a loan against a plan used to communicate with vendor.
Employee Status	1	alpha	V -Vested, T - Terminated, N - Newly Eligible, C -Contacted
Employee Status Date	8	numeric	Format MMDDYYYY
Phone	15	numeric	Format #####
Birth Date	8	numeric	Format MMDDYYYY
Gender ID	1	alpha	M -Male, F- Female, or blank-filled
Location Code / HR Area	4	alpha-numeric	Primary Payroll Location Code - Optional
HR SubArea	4	alpha	Secondary Payroll Location Code - Optional
Address 3	35	alpha-numeric	
Email Address	100	alpha-numeric	One email address per participant

Note: VRSCo paygroup ID will be appended to the end of each remittance file.

New Participant Report File Format

Field Name	Field Length	Data Type	Comments
Format Code	4	Alpha-numeric	NEWP = New Participant Download File
Provider Plan ID	12	Alpha-numeric	Code provided by the provider and reflects their identifier of the plan. This identifier also appears in the remittance file.
Participant SSN	9	Numeric	Complete 9 digit SSN
Participant Employee ID	20	Alpha-numeric	Assigned by the plan sponsor
Participant First Name	30	Alpha-numeric	
Participant Middle Name	30	Alpha-numeric	
Participant Last Name	30	Alpha-numeric	
Participant Address 1	35	Alpha-numeric	
Participant Address 2	35	Alpha-numeric	
Participant City	20	Alpha-numeric	
Participant State or Country Code	2	Alpha-numeric	Standard 2-letter state postal code; if outside US and Canada, use standard 2-letter country postal code
Participant ZIP Code	9	Alpha-numeric	Format ##### or #####
Filler	43	Numeric	Zero Fill
Filler	2	Alpha-numeric	Space Fill
Contact Type	1	Alpha-numeric	Always N
Effective Date	8	Date	MMDDYYYY
Participant Telephone	10	Numeric	Format ##### or space fill
Filler	5	Alpha-numeric	Space Fill
Date of Birth	8	Date	MMDDYYYY
Gender ID	1	Alpha-numeric	M = Male, F = Female, or Space Fill
Location Code / HR Area	4	alpha-numeric	
HR SubArea	4	Alpha-numeric	
Participant Address 3	35	alpha-numeric	
Participant Email Address	100	alpha-numeric	
Filler	5	Alpha-numeric	Space Fill

APPENDIX ELEVEN
SALES SOLICITATION AGREEMENT
(INCLUDED AS SEPARATE ATTACHMENT)

APPENDIX TWELVE
INVESTMENT OPTIONS AND PRICING REPORT SAMPLE
(INCLUDED AS SEPARATE ATTACHMENT)

APPENDIX THIRTEEN
ADMINISTRATIVE REQUIREMENTS REPORT SAMPLE
(INCLUDED AS SEPARATE ATTACHMENT)

AGREEMENT BETWEEN BOARD AND COMPANY

**THE UNIVERSITY OF TEXAS SYSTEM RETIREMENT PLANS:
Optional Retirement Program
UTSaver Tax-Sheltered Annuity Program
UTSaver Deferred Compensation Plan
The University of Texas System Governmental Retirement Arrangement**

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

WHEREAS, Board administers an Optional Retirement Program (hereinafter referred to as "ORP") established pursuant to Chapter 830, *Texas Government Code*, for the benefit of eligible employees of the institutions of higher education governed by the Board who elect to participate in the ORP (the "Participants");

WHEREAS, Board administers The University of Texas System Governmental Retirement Arrangement (hereinafter referred to as "UTGRA") within the meaning of Section 415(m) of the *Internal Revenue Code of 1986*, as amended established pursuant to Section 830.004 *Texas Government Code*, to provide eligible employees of the institutions of higher education governed by the Board that portion of an eligible employee's benefits that would otherwise be payable under the terms of the ORP except for the limitations on benefits imposed by Section 415 of the *Internal Revenue Code of 1986*, as amended (the "Participants");

WHEREAS, Board administers a tax-sheltered annuity program within the meaning of Sections 403(b) and 415 of the *Internal Revenue Code of 1986*, as amended and Vernon's Texas Revised Civil Statutes Ann. Article 6228A-5, known as the UTSaver Tax-Sheltered Annuity Program (hereinafter referred to as "UTSaver TSA"), for the benefit of all employees of the institutions of higher education governed by the Board who elect to participate in the UTSaver TSA (the "Participants");

WHEREAS, Board administers a deferred compensation plan within the meaning of Section 457(b) of the *Internal Revenue Code of 1986*, as amended, known as the UTSaver Deferred Compensation Plan (hereinafter referred to as "UTSaver DCP") established pursuant to Chapter 609, Subchapter D, *Texas Government Code*, for the benefit of all employees of the institutions of higher education governed by the Board who elect to participate in the UTSaver DCP (the "Participants");

WHEREAS, Board has exercised its authority to limit the number of vendors that may offer investment products to Participants in the Retirement Plans, and has identified those certain vendors as "currently authorized vendor(s);"

WHEREAS, the Company is a [type] corporation, domiciled in the State of [state], and licensed to do business in the State of Texas under the supervision of the Texas Department of Insurance, that issues and administers investment and/or annuity contracts providing retirement benefits which conform to the applicable requirements of the *Internal Revenue Code of 1986*, as amended (26 USC 403(b), 415, and 457) and the requirements of Chapter 830 of the *Texas Government Code*, Chapter 609, Subchapter D of the *Texas Government Code*, and Article 6228A-5 *Vernon's Texas Revised Civil Statutes Annotated*;

WHEREAS, Board wishes to provide Participants an option to utilize the services offered by the Company to participate in investment options under the Retirement Plans; and

WHEREAS, the Company is qualified to offer contracts for such investment options and desires to do so;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **Definitions.** In addition to the other defined terms set forth in this Agreement, for the purposes of this Agreement, the following words and phrases shall have the meaning assigned to them below:

“**Account**” means the individual recordkeeping account(s) established by Company for each Electing Employee under a contract with the Company.

“**Accumulated Balance**” means the total contributions made to the Account(s) of a Participant in the respective Retirement Plans (less authorized charges), together with the total interest credited to fixed accounts or the investment earnings credited to variable or mutual fund accounts, less any transfers and/or withdrawals.

“**Agreement**” means this Agreement and its Exhibits and other documents attached hereto at the time of execution, as amended in writing from time to time.

“**Applicable Laws**” means all federal, state or local, laws, statutes, regulations and ordinances relevant to the performance of Work.

“**Authorized Products**” means those investments meeting the requirements of Sections 403(b) and 457 of the Code and fixed or variable retirement annuity contracts meeting the requirements of Sections 403(b), 401(g), and 457 of the Code and offered to Participants by currently authorized companies.

“**Board**” means the Board of Regents of The University of Texas System, or the authorized representatives of the Board of Regents who have been delegated responsibilities related to the Retirement Plans.

“**Business Day**” means a day on which the New York Stock Exchange and the Company are open for the transaction of business.

“**Code**” means the *Internal Revenue Code of 1986*, as amended, and the regulations adopted thereunder.

“**Company**” means [company].

“**Contribution(s)**” means those amounts contributed to the Retirement Plans by Electing Employees through salary reductions, as well as those amounts contributed to the Retirement Plans for the benefit of Electing Employees by the State of Texas, through the institutions employing Electing Employees.

“**Electing Employee**” means a Participant in one or more of the Retirement Plans who has elected to utilize the services offered by the Company.

“**GCA**” means the Section 403(b)(7) Group Custodial Account Agreement dated [date], for the ORP and UTSaver TSA between Company and the Board. **[if applicable]**

“**In Good Order**” means in a state or condition which the parties agree is reasonably necessary for accurate execution of the intended transaction. With regard to contributions, “In Good Order”

shall have the meaning as defined herein including the following: (i) the remitted data has successfully loaded to the **[company]** recordkeeping system, (ii) Participant accounts have been successfully established prior to 4:00 p.m. Eastern Time, (iii) all errors have been addressed, and the data has been validated and reconciled, and (iv) funding has been received at **[company]** by the close of the fed wire system on that day.

“Institution” means an institution of higher education, as defined in Section 61.003, *Texas Education Code* that is now or hereafter designated by statute as an institution of The University of Texas System.

“Other Vendor” means, with respect to a particular Electing Employee, any vendor of investment products that (i) is not a currently authorized company, but (ii) with whom the particular Electing Employee currently maintains an account that was opened prior to September 1, 2012, under one or more of the Retirement Plans.

“ORP” means the Optional Retirement Program adopted effective January 1, 2012, which is a written plan established and administered pursuant to and in compliance with Section 403(b) of the Code and Chapter 830 of the Texas Government Code, and the applicable rules and regulations of the Texas Higher Education Coordinating Board and the Board as each may be amended. The ORP plan document as it may be amended from time to time is hereby incorporated by reference and the current plan document is designated as **Exhibit “B”** to this Agreement as a part hereto for all purposes.

“Participant” means an employee of an Institution who is eligible for participation and has chosen to participate in one or more of the Retirement Plans.

“Project” means collectively the Work that will be provided in connection with UT Retirement Program and all other related, necessary and appropriate services.

“Recordkeeping Agreement” means collectively and individually the Recordkeeping Agreements between The University of Texas System and **[company]** dated **[date]**, as amended from time to time. ***[if applicable]***

“Request for Proposals” means the Request for Proposals for U.T. System Retirement Programs issued by the UT System on February, 2018. The Request for Proposals is hereby incorporated by reference and designated as **Exhibit “A”** to this Agreement and a part hereof for all purposes.

“Retirement Plans” means, collectively, the ORP, UTGRA, UTSaver TSA, and UTSaver DCP.

“Trust Agreement” means the Trust Agreement between the Board and **[company]** for the UTSaver DCP, dated **[date]**, as amended from time to time. ***[if applicable]***

“UTGRA” means The University of Texas System Governmental Retirement Arrangement, which is a written plan established and administered pursuant to and in compliance with Section 415(m) of the Code and the Texas Government Code Section 830.004, and the applicable rules and regulations of the Board as each may be amended. The UTGRA plan document adopted effective October 1, 1997, and Amended and Restated September 1, 2003, as it may be amended from time to time is hereby incorporated by reference and the current plan document is designated as Exhibit “C” to this Agreement as a part hereof for all purposes.

“UTSaver DCP” means the UTSaver Deferred Compensation Plan which is a written eligible deferred compensation plan within the meaning of Section 457 of the Code established and administered pursuant to Chapter 609, subchapter D, Texas Government Code and the applicable rules and regulations of the Board as each may be amended. The UTSaver DCP plan

document adopted effective June 16, 2005, with first Amended and Restated Plan adopted effective July 22, 2005, with Second Amended and Restated Plan adopted effective January 1, 2008, and with the Third Amended and Restated Plan adopted effective January 1, 2011, as it may be amended from time to time is hereby incorporated by reference and the current plan document is designated as Exhibit "D" to this Agreement as a part hereof for all purposes.

"**UTSaver TSA**" means the UTSaver Tax-Sheltered Annuity Program which is a written tax-sheltered annuity program established and administered pursuant to Section 403(b) of the Code and Vernon's Texas Civil Statutes Ann. Article 6228a-5 and the applicable rules and regulations of the Board as each may be amended. The UTSaver TSA plan document adopted effective January 1, 1968, and an amendment and restatement thereof adopted effective January 1, 2012, as it may be amended from time to time is hereby incorporated by reference and the current plan document is designated as Exhibit "E" to this Agreement as apart hereof for all purposes.

2. Scope of Work.

- 2.1 Company will perform the scope of the work (**Work**) in **Exhibit A**, to the satisfaction of Board. Time is of the essence in connection with this Agreement. Board will have no obligation to accept late performance or waive timely performance by Company.
- 2.2 Company will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by **Applicable Laws** for the performance of Work.

3. Relationship of Parties and Parties' Specific Obligations.

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Company is an independent contractor and is not a state employee, partner, joint venturer, or agent of University. Company will not bind nor attempt to bind Board to any agreement or contract. As an independent contractor, Company is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance. This Agreement shall not prevent Company from performing, for other parties, services similar to or of the type to be performed hereunder, provided that there is no conflict with Company's obligations and duties under this Agreement. The authority granted to Company under this Agreement is not exclusive, and Board may contract with other companies to act as providers of services in connection with operation of the Retirement Plans. Simultaneously with the execution of this Agreement, the parties shall notify one another of the names of the representative or representatives, who shall be authorized to issue instructions in connection with operations under this Agreement, until written notification of a successor representative or representatives. Company shall incur no liability to the Board for executing, failing to execute, for any mistake in the execution of, or for any action taken or omitted in reliance on instructions given by the Board's designated representatives, except to the extent that Company has failed to exercise ordinary care.

3.1 PROVISIONS APPLICABLE TO OPTIONAL RETIREMENT PROGRAM

3.1.1 ORP Benefit Payments

Company shall not permit loans, cash surrender, assignment of funds, or any other arrangement that permits the availability of benefits in the ORP prior to an Electing Employee's attainment of age 70-1/2 years or termination as an employee in all Texas public institutions of higher education. Company shall request written confirmation from the Board when it is necessary to determine whether a Participant has terminated employment or has become vested under the ORP. Upon written direction from Board in accordance with ORP provisions, Company shall pay benefits directly to Electing Employees and, as payor, shall be responsible for withholding any applicable federal or state taxes and reporting such sums and filing any related report forms with the Internal Revenue Service and/or to any applicable state taxing authorities. In the event of the death of an Electing Employee, Company shall distribute the Accumulated Balance of the deceased Electing Employee's account, without surrender charges, as previously directed by the Electing Employee, or in the absence of such directions, as directed by the Electing Employee's beneficiary. Company shall be responsible for providing notices to recipients of distributions required by Code Section 402(f) with regard to eligibility for rollover treatment and other matters.

3.2 PROVISIONS APPLICABLE TO UTSAVER TAX-SHELTERED ANNUITY PROGRAM

3.2.1 UTSaver TSA Distributions

Company shall permit such distribution of benefits from the UTSaver TSA to an Electing Employee only as provided by law. Company shall request written or electronic confirmation from the Board when it is necessary to determine whether a Participant is eligible for a distribution of benefits. Upon direction from the Board in accordance with UTSaver TSA provisions, Company shall pay benefits directly to Electing Employees and, as payor, shall be responsible for withholding any applicable federal or state taxes and reporting such sums and filing any related report forms with the Internal Revenue Service and/or any applicable state taxing authorities. Company shall be responsible for providing notices to recipients of distributions required by Code Section 402(f) with regard to eligibility for rollover treatment and other matters.

3.3 PROVISIONS APPLICABLE TO UTSAVER DEFERRED COMPENSATION PLAN

3.3.1 UTSaver DCP Trust Agreements

This Agreement is entered into pursuant to the provisions of Code Section 457(g), which permits the UTSaver DCP to utilize custodial accounts and annuity contracts described in Code Section 401(f). Company acknowledges and agrees that its Accounts are custodial accounts and/or annuity contracts that satisfy the requirements of Treas. Reg. §1.457-8(a)(3). Company further acknowledges and agrees that, for purposes of the UTSaver DCP, Company shall be a trustee of all UTSaver DCP funds and other assets it holds on behalf of the UTSaver DCP and UTSaver DCP Participants, and shall have sole and absolute discretion of, the management of all UTSaver DCP funds held by it under the UTSaver DCP and this Agreement.

3.3.2 Deferred Compensation Trust Fund

Company acknowledges and agrees that all Accounts established with Company for UTSaver DCP Participants, all UTSaver DCP Contributions, and all UTSaver DCP Accumulated Balances are part of the Deferred Compensation Trust Fund, as that term is defined in the UTSaver DCP, and are subject to the terms and conditions of the UTSaver DCP.

3.3.3 Exclusive Benefit of Participants

Company acknowledges and agrees that it shall hold all UTSaver DCP funds in trust for the exclusive benefit of Participants and that it shall not be possible, prior to the satisfaction of all liabilities with respect to Participants for any part of the UTSaver DCP Accumulated Balances to be used for, or diverted to, purposes other than for the exclusive benefit of UTSaver DCP Participants as provided for in the UTSaver DCP.

3.3.4 UTSaver DCP Distributions

Company shall permit such distribution of benefits from the UTSaver DCP to an Electing Employee only as provided in the UTSaver DCP. Company shall request confirmation from the Board when it is necessary to determine whether a Participant is eligible for a distribution of benefits. Upon direction from the Board in accordance with UTSaver DCP provisions, Company shall pay benefits directly to Electing Employees and, as payor, shall be responsible for withholding any applicable federal or state taxes and reporting such sums and filing any related report forms with the Internal Revenue Service and/or any applicable state taxing authorities. Company shall be responsible for providing notices to recipients of distributions required by Code Section 402(f) with regard to eligibility for rollover treatment and other matters

3.4 PROVISIONS APPLICABLE TO THE UNIVERSITY OF TEXAS SYSTEM GOVERNMENTAL RETIREMENT ARRANGEMENT

3.4.1 UTGRA Participants

Company shall perform all obligations with regard to UTGRA Participants that are set forth below, in accordance with all applicable terms and conditions of this Agreement.

- i. Provide appropriate administration, products and services for the UTGRA in accordance with Code Section 415(m) and Section 830.004, *Texas Government Code*;
- ii. Provide a Form W-2 directly to each UTGRA Participant, for the tax years in which distributions from UTGRA take place, in accordance with federal tax regulations;
- iii. Provide distributions directly to UTGRA Participants in accordance with the UTGRA plan document and U.T. System policies;
- iv. Provide separate accounts for UTGRA contributions and must not commingle UTGRA funds with ORP funds;
- v. Provide, for UTGRA Participants, equivalent investment products under the same terms as otherwise required in this Agreement for ORP participants; and

- vi. Provide all reports concerning UTGRA required by the Board and the UTGRA Trust Administrator in a timely and accurate manner.

3.5 PROVISIONS APPLICABLE TO ALL RETIREMENT PLANS

3.5.1 Appointment of Company

Appointment. Board hereby appoints and authorizes Company and Company hereby accepts such appointment and authorization to act as one of the currently authorized companies to provide investment options under the Retirement Plans and to provide contracts for retirement benefits to Electing Employees in accordance with the provisions of the Retirement Plans and applicable law.

Quality of Service. Company shall exercise its best efforts to ensure that all services provided to Electing Employees under this Agreement shall conform to the highest standards of value and quality attainable by Company. The Board shall have the right to submit a complaint concerning any element of Company's services under this Agreement and to request that Company's undesired practice be either discontinued or modified within a reasonable period of time to conform to standards specified by the Board.

Section 403(b) Representations. Company hereby represents and warrants that it will comply, and require its subcontractors to comply, with the rules under Code Section 403(b) and that the Company GCA and Authorized Products are Code Section 403(b) compliant. Company acknowledges it will comply with all Code Section 403(b) compliance obligations and associated administrative requirements imposed on Company in the ORP and UTSaver TSA plans and will amend any GCA and Authorized Product to be consistent with the applicable Retirement Plan document (or, if not amended, will be deemed to be amended). Company will execute all documents necessary or appropriate to effectuate all of the foregoing required amendments.

3.5.2 General Duties of Company

Authorized Products. Company shall make available to Electing Employees the authorized products set forth in Company's Response to the Board's Request for Proposals ("Company's Response"), pursuant to which this Agreement has been made. Company may offer new investment products to Electing Employees, other than the authorized products described in Company's Response; provided, however, that new products must meet the requirements specified for Authorized Products in the Request for Proposals, and further provided that the Board must receive prior written notice describing the new investment product(s). Company's authorized products shall not distinguish, in the payment of benefits, on the basis of any factors proscribed by federal law. Company and Board agree that neither the State of Texas nor the Board shall be a party to any Retirement Plan contract issued by Company to provide retirement benefits to Electing Employees.

Personnel. Company shall ensure that a sufficient number of representatives are assigned to U.T. System accounts to provide the required services to the Participants. Company shall maintain sufficient personnel in its principal processing office to handle daily transactions, answer inquiries as to account balances and other records maintained by Company, and otherwise fulfill its duties under this Agreement.

The Board shall have the right to request the immediate replacement of any account representative or any of Company's employees, agents, or contractors for good cause as determined by the Board, or for actions considered to be not in the best interest of the Retirement Plans; provided that replacement shall not be required in violation of law.

Fees Charged to Electing Employees. Company may charge those fees, for performance of its services to Electing Employees that are in compliance with the Request for Proposals.

Compliance with Laws and Rules. Company shall at all times comply with the criteria established in the Request for Proposals and shall perform its services under this Agreement in compliance with the criteria established in the Request for Proposals. Further, Company shall at all times be responsible for monitoring the performance of subcontractor(s) performing services for the Retirement Plans pursuant to the Request for Proposals and for ensuring compliance by those entities with this Agreement. Company will amend, and will in the future amend (as necessary), all of its Code Section 403(b) contracts with the Board or any ORP or UTSAver Participant to comply with Code Section 403(b) and the Treasury Regulations promulgated thereunder.

3.5.3 **Marketing**

Informational and education materials related to the overall plan design and administration of the Retirement Plans will be designed by the Board in collaboration with the Company and all other currently authorized vendors and will be printed and distributed as described in the Request for Proposals. Company shall abide by any marketing guidelines which may be established by Board, and all materials to be made available to Participants under the Retirement Plans shall be submitted to Board for approval prior to use.

3.5.4 **Administrative Duties**

Contributions. Contributions under the Retirement Plans shall be remitted each pay period by the Board to Company in accordance with the directions of Electing Employees. Upon receipt by Company of the Contributions remitted by the Board In Good Order, Company shall (i) process and allocate such Contributions in accordance with the requirements of the Retirement Plans, as communicated by the Board, and the Institution's payroll and data processing systems; and (ii) direct the investment of Contributions in the authorized products designated by the Electing Employee, under the terms and conditions of the Retirement Plans, and this Agreement.

Account Transfers. Electing Employees shall have the right to transfer all or part of their Accumulated Balances in the Retirement Plans within variable annuity or mutual fund options without cost, damages or penalties of any kind, except in conformity with the criteria as established in the Request for Proposals and any mutual fund prospectus as applicable for investment options offered in the Retirement Plans. Upon request of any Electing Employee, Company shall arrange for the transfer of any part or all of such Electing Employee's Accumulated Balance to other Authorized Products available under the Electing Employee's contract with Company. Company will allow unlimited changes in allocations of Contributions to each of Company's Authorized Products and an unlimited number of transfers between Authorized Products.

Company shall permit transferability of Accumulated Balances or any portion

thereof to another currently authorized company, subject to any applicable federal laws and the requirements of the Retirement Plans. Company will accept a transfer of any part or all of an Electing Employee's Accumulated Balance from another currently authorized company or Other Vendor, subject to any applicable federal laws and the terms of the applicable Retirement Plan. Transfers from other companies and Other Vendors will be treated in the same manner as Contributions, and no charges will be assessed on transfers. Company shall process an Electing Employee's transfer request and issue all instructions required to complete the transfer request by the close of the next business day following receipt of the request In Good Order at Company's principal processing office; any checks that are required to affect a transfer shall be issued and mailed within seven (7) calendar days.

Records. Company shall establish and maintain Records for each Electing Employee's Account(s) with Company. Company's Records shall be maintained in accordance with generally accepted accounting principles and shall comply with the applicable portions of the Code and the regulations adopted thereunder. Specifically, Company shall maintain Records for each Participant, beneficiary and alternate payee of separate accounts (a) for each source of Retirement Plan contributions (including without limitations employer Institution, employee, elective deferral, Roth, rollovers and transfers) and earnings and losses thereon, (b) for any excess Contributions (within the meaning of Code Section 415) identified by Board and (c) for any non-vested employer Institution Contributions to ORP.

Refunds. Insofar as may be permitted by law and consistent with the terms of Company's Authorized Products, Company shall make available refunds, to include appropriate tax withholding and/or reporting, to the employer Institution as directed by the Board, or to the Electing Employee, for reasons including mistaken contributions, erroneous reductions, excessive reductions, employee deferral cancellations or administrative errors, and failure of an Electing Employee to meet the vesting requirements of the ORP. Additionally, Company shall make all refunds required by the terms of the ORP and UTSaver TSA plan documents, including in connection with failure of an Electing Employee to meet the vesting requirements of ORP.

Reports to Board. Company shall deliver to the Board the following reports, in an electronic or written format as determined by the Board, concerning Company's administration of the Retirement Plans:

1. Quarterly enrollment report showing the numbers of Electing Employees for the previous and current years;
2. Quarterly report showing assets under management for Retirement Plans;
3. Annual report and review of the investment options including discussions of performance and ranking by asset class; confirming each investment option's compliance with the Request for Proposals, including any failure to meet the criteria and a discussion of actions that should be taken by the Board to restore compliance;
4. Quarterly report of UTSaver DCP and UTSaver TSA benefit payments made in the previous quarter, including hardship withdrawals, qualified domestic relations order payments, and loans;

5. Quarterly Administrative Requirements Report, as outlined in the Request for Proposals;
6. Other reports as necessary to comply with all present or later enacted IRS requirements; and
7. Other additional reports as may be reasonably requested by Board from time to time.

Electing Employee Reports. Company shall provide to Electing Employees, at least quarterly and no later than 15 days following the end of the calendar quarter, statements of their Accounts in a format mutually agreed to by Company and Board.

Financial Statements and Notices. Company shall furnish a copy of its annual Audited Financial Report, Statutory Financial Report, Moody's Insurance Credit Report, and Standard & Poor's Insurance Claims Paying Ability Report to Board as available annually. Company shall deliver to Board immediate written notice of any of the following occurrences:

- a) A material adverse change in Company's financial condition;
- b) A reduction in Company's rating (if any) by A.M. Best, Standard & Poor's, Moody's, Fitch, or Duff & Phelps;
- c) Any action taken by any regulatory body of any jurisdiction to place Company on any "watch list" with respect to its financial condition or to suspend sales activity by Company;
- d) Any impending administrative or judicial action which could have the effect of suspending or terminating Company's authorization to do business in any state or jurisdiction;
- e) Any impending administrative or judicial action which could have the effect of placing the Company in receivership or similar circumstances;
- f) Any cease and desist order, suspension order, or material administrative fine or penalty imposed by any jurisdiction against Company; and
- g) Any final judgment or decree rendered by a Court of appropriate jurisdiction, the effect of which is to enjoin practices of Company with respect to the sale of mutual fund or annuity products.

Company shall deliver written notice to Board of any and all actual actions, rules, regulations, federal or state laws which shall affect the services Company supplies under this Agreement. Such notice shall include a description of the action, rule, regulation or law; the manner in which the Agreement or any Electing Employee may be affected; and the comments or response of the Company. Company shall provide appropriate notice to the Board of proposed actions, rules, or regulations, of which Company is aware and that seem likely to be adopted in a form that would affect the services or benefits provided by Company.

Approval of Changes. Company shall make no change in the existing benefits, rights, options, or privileges, or in the operation of the Company's services which affects the Retirement Plans or the Authorized Products offered by Company thereunder except in accordance with **Section 3.5.2**, unless Board's prior written approval has been first obtained or unless such change is required by changes in the Retirement Plans or by requirements of the Internal Revenue Service or other applicable state or federal law.

3.5.5 **Fidelity Bond**

Company shall obtain and maintain in force a fidelity bond, in a form and amount satisfactory to the Board, to protect the Board, the Retirement Plans, and Electing Employees from any loss resulting from fraud or dishonesty by Company's officers, employees, or agents; provided, however, that any subcontract for services involving the handling of money or financial instruments shall require fidelity bond coverage in such form and amount as shall be satisfactory to the Board; and provided further that fidelity bond requirements hereunder shall not conflict with applicable fidelity bond requirements under state or federal law.

3.5.6 **Audit**

Company shall maintain its books, records, and documents related to Work performed or Contributions received under this Agreement in accordance with generally accepted accounting principles. Company shall supply the Board with copies of any documentation related to this Agreement upon request. Representatives of the State Auditor's Office, the U.T. System Audit Office, or another audit firm of the Board's choice shall have the right to examine and audit Company's books, records, and documents related to Work performed or Contributions received under this Agreement during regular office hours and following reasonable notice to Company. The results of any audit conducted by or on behalf of the Board shall be used by the Board to determine whether to reauthorize or recertify Company as a currently authorized vendor. Company understands that the Texas State Auditor's office, or any successor agency, may conduct an audit or investigation in connection with the Agreement pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), Texas Education Code. Company agrees to cooperate with any auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Company will include this provision in all contracts with permitted subcontractors.

3.6 DUTIES OF BOARD

3.6.1 **Employee Information**

The Board will supply Company with the information concerning Electing Employees that is necessary for Company to carry out its duties under the Retirement Plans, and this Agreement. Upon Company's request, the Board will provide confirmation of whether a Participant has terminated employment or has become vested under the ORP.

3.6.2 **Contributions**

Board will collect Contributions allocable to Eligible Employees and will promptly remit Contributions to Company after processing each pay period.

4. Time for Commencement and Completion.

The term (**Initial Term**) of this Agreement will begin on the Effective Date and expire on August 31, 2021, or (i) the last expiration date of any policies Board procures through Company, or (ii) the day after all claims or disputes related to all policies procured by Board through Company are finally resolved and settled to Board's satisfaction. Board will have the option to renew this Agreement for one additional three (3) year term (**Renewal Term**). The Initial Term and Renewal Term are collectively referred to as the **Term**.

5. Company's General Obligations.

- 5.1 Company will perform Work in compliance with (a) all Applicable Laws, and (b) the Board of Regents of The University of Texas System; and the institutional rules, regulations and policies of Board (collectively, **Board Rules**). Company represents and warrants that neither Company nor any firm, corporation or institution represented by Company, 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 Company's response to Board's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.
- 5.2 Company represents and warrants that (a) it will use its best efforts to perform Work in a good and workmanlike manner and in accordance with the highest standards of Company's profession or business, and (b) all Work to be performed will be of the quality that prevails among similar businesses of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances.
- 5.3 Company will call to Board's attention in writing all information in any materials supplied to Company (by Board or any other party) that Company regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.
- 5.4 Board at all times is relying on Company's skill and knowledge in performing Work. Company represents and warrants that Work will be accurate and free from any material defects. Company's duties and obligations under this Agreement will not be in any way diminished by reason of any approval by Board. Company will not be released from any liability by reason of any approval by Board.
- 5.5 Company will, at its own cost, correct all material defects in Work as soon as practical after Company becomes aware of the defects. If Company fails to correct material defects in Work within a reasonable time, then Board may correct the defective Work at Company's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Work that Board may have at law or in equity.
- 5.6 Company will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Company will cause all persons connected with Company directly in charge of Work to be duly registered and licensed under all Applicable Laws. Company will assign to the Project a designated representative who will be responsible for administration and coordination of Work.
- 5.7 Company represents and warrants it is duly organized, validly existing and in good standing under the laws of the state of its organization; it is duly authorized and in good standing to conduct business in the State of Texas; it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and the individual executing this Agreement on behalf of Company has been duly authorized to act for and bind Company.
- 5.8 Company represents and warrants that neither the execution and delivery of this Agreement by Company nor the performance of its duties and obligations under this Agreement will (a) result in the violation of any provision of its organizational documents; (b) result in the violation of any provision of any agreement by which it is bound; or (c) conflict with any order or decree of any court or other body or authority having jurisdiction.

- 5.9 Company represents and warrants that: (i) Work will be performed solely by Company, 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 Company (for the benefit of Board); (ii) Board will receive free, good and clear title to all Work Material developed under this Agreement; (iii) Work Material and the intellectual property rights protecting Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges and other restrictions; (iv) 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 Work Material will not violate the rights of any third parties in Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.
- 5.10 If this Agreement requires Company's presence on Board's or Institution's premises or in Board's or Institution's facilities, Company agrees to cause its employees, representatives, agents, or subcontractors to become aware of, fully informed about, and in full compliance with all applicable Board Rules, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.

6. Ownership and Use of Work Material.

- 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 Company or any subcontractors in connection with Work (collectively, **Work Material**), whether or not accepted or rejected by Board, are the sole property of Board and for its exclusive use and re-use at any time without further compensation and without any restrictions.
- 6.2 Company grants and assigns to Board all rights and claims of whatever nature and whether now or hereafter arising in and to Work Material and will cooperate fully with Board in any steps Board may take to obtain or enforce patent, copyright, trademark or like protections with respect to Work Material.
- 6.3 Company will deliver all Work Material to Board upon expiration or termination of this Agreement. Board will have the right to use Work Material for the completion of Work or otherwise. Board may, at all times, retain the originals of Work Material. Work Material will not be used by any person other than Board on other projects unless expressly authorized by Board in writing.
- 6.4 Work Material will not be used or published by Company or any other party unless expressly authorized by Board in writing. Company will treat all Work Material as confidential.

7. Default, Suspension, and Termination

- 7.1 In the event of a material failure by a party to this Agreement to perform in accordance with its terms (**default**), the other party may terminate this Agreement upon ninety (90) 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 ninety-day (90-day) period.
- 7.2 Board may, without cause, terminate this Agreement at any time upon giving ninety (90) days' advance written notice to Company. Notwithstanding any provision in this Agreement to the

contrary, Board will not be required to pay or reimburse Company for any services performed or for expenses incurred by Company after the date of the termination notice, that could have been avoided or mitigated by Company.

- 7.3 Termination under **Sections 7.1** or **7.2** will not relieve Company from liability for any default or breach under this Agreement or any other act or omission of Company.
- 7.4 If Company fails to cure any default within thirty (30) days after receiving written notice of the default, Board will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Company under this Agreement, any and all reasonable expenses incurred in connection with Board's curative actions.
- 7.5 The Board may suspend delivery of Contributions to Company upon written notice to Company, in the event the Board becomes aware of (i) any fraud or intentional misapplication of Retirement Plan funds by Company, its employees, agents, or subcontractors, (ii) any occurrence described above in Section 3.5.4; (iii) any act or omission by Company, its employees, agents, or subcontractors that is not in conformity with the Request for Proposals; or (iv) any act or omission by Company, its employees, agents, or subcontractors, that jeopardizes the status of the ORP as a qualified plan under Section 403(b) of the Code, the status of UTGRA as a qualified plan under Section 415(m) of the Code, the status of the UTSaver TSA as an eligible plan under Section 403(b) of the Code, or the status of the UTSaver DCP as an eligible plan under Section 457(b) of the Code. During a period of suspension of Contributions, Company shall continue to perform all its duties hereunder. Promptly following any suspension, representatives of Company and Board shall consult concerning the event leading to the suspension. If the Board is not satisfied that appropriate measures have been implemented to ensure the security of the Electing Employees' funds and the Retirement Plans, then the Board shall have the right to terminate this Agreement by giving written notice of termination to Company no later than twenty (20) days prior to the specified date of termination.
- 7.6 If this Agreement is canceled or terminated as provided herein, Company shall temporarily hold each Electing Employee's Accumulated Balance pending instructions from the Electing Employee. Upon instructions from the Electing Employee or the Board, the Company shall transfer the Accumulated Balances to other currently authorized companies, in accordance with instructions from the Electing Employee, as permitted under the applicable Retirement Plans. Company's final charges to Electing Employees' Accounts shall be calculated and settled prior to such transfer, in accordance with the Request for Proposals attached hereto. Company's duties as to recordkeeping and reporting shall survive any cancellation or termination of this Agreement, until all Electing Employees' Accumulated Balances are transferred out of Company's custody, as provided herein.

8. Indemnification

8.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, COMPANY WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY BOARD, AND HOLD HARMLESS BOARD AND RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY, **INDEMNITEES**) FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY, **CLAIMS**) BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM COMPANY'S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT, INCLUDING COMPANY'S PERFORMANCE OR PROVISION OF THE INVESTMENT PRODUCTS OR SERVICES TO CURRENT, PROSPECTIVE, OR FORMER U.T. SYSTEM PARTICIPANTS, AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF COMPANY, ANYONE DIRECTLY EMPLOYED BY COMPANY OR ANYONE FOR WHOSE ACTS COMPANY MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

8.2 IN ADDITION, COMPANY WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY BOARD, 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 COMPANY, OR THE USE BY INDEMNITEES, AT THE DIRECTION OF COMPANY, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, BOARD WILL PROMPTLY NOTIFY COMPANY AND COMPANY WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, BOARD AGREES TO REASONABLY COOPERATE WITH COMPANY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

9. Insurance

9.1 Company, 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-:VIII or better, and in amounts not less than the following minimum limits of coverage:

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

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

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

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

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

Products - Completed Operations Aggregate \$2,000,000

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

- 9.1.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for Bodily Injury and Property Damage;
- 9.1.4 Professional Liability (Errors & Omissions) Insurance with limits of not less than \$5,000,000 each occurrence. Such insurance will cover all Work performed by or on behalf of Company 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, Company agrees to purchase an Extended Reporting Period Endorsement, effective twenty-four (24) months after the expiration or cancellation of the policy. No Professional Liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least twenty-four (24) months after the expiration or termination of this Agreement for any reason.
- 9.1.5 Company will maintain Cyber Liability insurance with limits of not less than \$10,000,000 for each wrongful act, that provides coverage for:
- Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of University Data, whether by Contractor or any of subcontractor or cloud service provider used by Company;
 - Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management / public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
 - Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
 - Liability for technological products and services;
 - PCI fines, fees, penalties and assessments;
 - Cyber extortion payment and response costs;
 - First and Third Party Business Interruption Loss resulting from a network security failure;
 - Costs of restoring, updating or replacing data;
 - Liability losses connected to network security, privacy, and media liability;

Certificates of Insurance and Additional Insured Endorsements reflecting applicable limits, sub-limits, self-insured retentions and deductibles will be provided to Board upon request. Company will be responsible for any and all deductibles, self-insured retentions or waiting period requirements. If the Cyber Liability policy is written on a claims-made basis, the retroactive date should be prior to the commencement of this agreement/addendum. If the Cyber Liability policy is written on a claims-made basis and non-renewed at any time during and up until the project completion signing date, Company shall purchase an Extended Reporting Period for at least a two-year period. The Board will be named as an

additional insureds and Company's policy will provide a carve-back to the "Insured versus Insured" exclusion for claims brought by or on behalf of additional insureds. The Board will be provided with a waiver of subrogation, both by endorsement to the required Cyber Liability policy. All insurance carrier(s) must carry an A.M. Best rating of at least A-, Class VIII.

9.2 Company will deliver to Board:

9.2.1 Evidence of insurance on a Texas Department of Insurance approved certificate form (Acord Form is a TDI preapproved form) verifying the existence and actual limits of all required insurance policies after the execution and delivery of this Agreement and prior to the performance of any Work by Company 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.

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

9.2.1.2 Company hereby waives all rights of subrogation against the Board of Regents of The University of Texas System and Board. **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 and Board. No policy will be canceled until after thirty (30) days' unconditional written notice to Board. **All insurance policies** will be *endorsed* to require the insurance carrier providing coverage to send notice to Board thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this **Section 9**.

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

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

Name: Eric Agnew
Address: 210 West 7th Street, Austin, TX 78701
Facsimile Number: 512-499-4524
Email Address: eagnew@utsystem.edu

9.3 Company's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by Board or Company's or subcontractor's insurance will be kept in force until all Work has been fully performed and accepted by Board in writing, *except* as provided in this **Section 9.3**.

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

10. **Miscellaneous.**

10.1 **Assignment and Subcontracting.** Except as specifically provided in **Exhibit F**, Historically Underutilized Business Subcontracting Plan, or with prior written approval from Board Company's interest in this Agreement (including Company's duties and obligations under this Agreement, and the fees due to Company under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on Board; and (b) be a breach of this Agreement for which Company will be subject to all remedial actions provided by Applicable Laws, including [Chapter 2161, Texas Government Code](#), and [34 TAC §§20.101 – 20.108](#). The benefits and burdens of this Agreement are assignable by Board.

10.2 **Texas Family Code Child Support Certification.** Pursuant to [§231.006, Texas Family Code](#), Company certifies it is not ineligible to receive the award of or payments under this Agreement, and acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

10.3 **Tax Certification.** If Company is a taxable entity as defined by [Chapter 171, Texas Tax Code](#), then Company certifies it is not currently delinquent in the payment of any taxes due under Chapter 171, Company is exempt from the payment of those taxes, or Company is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

10.4 **Payment of Debt or Delinquency to the State.** Pursuant to [§§2107.008](#) and [2252.903, Texas Government Code](#), Company agrees any payments owing to Company under this Agreement may be applied directly toward any debt or delinquency Company owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until paid in full.

10.5 **Loss of Funding.** Performance by Board under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (**Legislature**) and/or allocation of funds by the Board of Regents of The University of Texas System (**Board**). If Legislature fails to appropriate or allot necessary funds, or Board fails to allocate necessary funds, then Board will issue written notice to Company and Board may terminate this Agreement without further duty or obligation. Company acknowledges that appropriation, allotment, and allocation of funds are beyond Board's control.

10.6 **Entire Agreement; Modifications.** This Agreement (including the Request for Proposals, Company's Response to Request for Proposals, the GCA, ORP, UTSaver TSA, UTSaver DCP, UTGRA and all recordkeeping, service provider or other similar agreements and other attachments and Exhibits) supersedes all prior agreements, written or oral, between Company and Board and will constitute the entire Agreement and understanding between the parties with respect to its subject matter. 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 Board and Company. All Exhibits are attached to this Agreement and incorporated for all purposes.

- 10.7 **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**). Provided, however, in the event of a force majeure occurrence, Company agrees to use its best efforts to mitigate the impact of the occurrence so that Board may continue to provide mission critical services during the occurrence.
- 10.8 **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.
- 10.9 **Venue; Governing Law.** Travis County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions and all of the rights and obligations of its parties, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.
- 10.10 **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.
- 10.11 **Confidentiality and Safeguarding of Board Records; Press Releases; Public Information.** Under this Agreement, Company may (1) create, (2) receive from or on behalf of Board, or (3) have access to, records or record systems (collectively, **Board Records**). Among other things, Board Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws. Company represents, warrants, and agrees that it will: (1) hold Board Records in strict confidence and will not use or disclose Board Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by Board in writing; (2) safeguard Board 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, as well as the Payment Card Industry Data Security Standards) that are no less rigorous than the standards by which Company protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that Board Records are safeguarded and the confidentiality of Board Records is maintained in accordance with all Applicable Laws and the terms of this Agreement; and (4) comply with Board Rules regarding access to and use of Board's computer systems, including UTS165 at <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy>. At the request of Board, Company agrees to provide Board with a written summary of the procedures Company uses to safeguard and maintain the confidentiality of Board Records.
- 10.11.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any Board Records occurs, Company will provide written notice to Board within one (1) business day after Company's discovery of that use or disclosure. Company will promptly provide Board with all information requested by Board regarding the impermissible use or disclosure.
- 10.11.2 **Return of Board Records.** Company agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all Board Records created or received from or on behalf of Board will be (1) returned to Board, with no copies retained by Company; or (2) if return is not feasible, destroyed. Twenty

(20) days before destruction of any Board Records, Company will provide Board with written notice of Company's intent to destroy Board Records. Within five (5) days after destruction, Company will confirm to Board in writing the destruction of Board Records.

- 10.11.3 **Disclosure.** If Company discloses any Board Records to a subcontractor or agent, Company will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Company by this **Section 10.11**.
- 10.11.4 **Press Releases.** Except when defined as part of Work, Company will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Company as an independent contractor of Board 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 Board.
- 10.11.5 **Public Information.** Board 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 §§[552.002](#) and [2252.907](#), *Texas Government Code*, and at no additional charge to Board, Company will make any information created or exchanged with Board pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by Board that is accessible by the public.
- 10.11.6 **Termination.** In addition to any other termination rights in this Agreement and any other rights at law or equity, if Board reasonably determines that Company has breached any of the restrictions or obligations in this Section, Board may immediately terminate this Agreement without notice or opportunity to cure.
- 10.11.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.
- 10.12 **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.
- 10.13 **Records.** Records of Company's costs, reimbursable expenses pertaining to the Project and payments will be available to Board or its authorized representative during business hours and will be retained for four (4) years after final Payment or abandonment of the Project, unless Board otherwise instructs Company in writing.
- 10.14 **Notices.** Except as otherwise provided by this Section, notices, consents, approvals, demands, requests or other communications required or permitted under this Agreement, will be in writing and sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is provided below), or email (to the extent an email address is provided below) as indicated below, and notice will be deemed given (i) if delivered by certified mailed, 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 provided below) or email (to the extent an email address is provided below), when received:

If to Board: _____

Fax: _____
Email: _____
Attention: _____

with copy to:

Fax: _____
Email: _____
Attention: _____

If to Company:

Fax: _____
Email: _____
Attention: _____

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

Notwithstanding any other requirements for notices given by a party under this Agreement, if Company intends to deliver written notice to Board pursuant to [§2251.054, Texas Government Code](#), then Company will send that notice to Board as follows:

Fax: _____
Email: _____
Attention: _____

with copy to:

Fax: _____
Email: _____
Attention: _____

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

10.15 **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.

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

- 10.17 **Limitation of Liability.** EXCEPT FOR BOARD'S OBLIGATION (IF ANY) TO PAY COMPANY CERTAIN FEES AND EXPENSES BOARD WILL HAVE NO LIABILITY TO COMPANY OR TO ANYONE CLAIMING THROUGH OR UNDER COMPANY BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING ANY DUTY OR OBLIGATION OF BOARD TO COMPANY OR TO ANYONE CLAIMING THROUGH OR UNDER COMPANY, NO PRESENT OR FUTURE AFFILIATED ENTERPRISE, SUBCONTRACTOR, AGENT, OFFICER, DIRECTOR, EMPLOYEE, REPRESENTATIVE, ATTORNEY OR REGENT OF BOARD, OR THE UNIVERSITY OF TEXAS SYSTEM, OR ANYONE CLAIMING UNDER BOARD HAS OR WILL HAVE ANY PERSONAL LIABILITY TO COMPANY OR TO ANYONE CLAIMING THROUGH OR UNDER COMPANY BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.
- 10.18 **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.
- 10.19 **Breach of Contract Claims.** 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 Laws, the dispute resolution process provided for in [Chapter 2260](#) will be used, as further described herein, by Board and Company to attempt to resolve any claim for breach of contract made by Company:
- 10.19.1 Company'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, Company will submit written notice, as required by [subchapter B](#) of Chapter 2260, to Board in accordance with the notice provisions in this Agreement. Company'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 Board allegedly breached, the amount of damages Company seeks, and the method used to calculate the damages. Compliance by Company with [subchapter B](#) of Chapter 2260 is a required prerequisite to Company's filing of a contested case proceeding under [subchapter C](#) of Chapter 2260. The chief business officer of Board, or another officer of Board as may be designated from time to time by Board by written notice to Company in accordance with the notice provisions in this Agreement, will examine Company's claim and any counterclaim and negotiate with Company in an effort to resolve the claims.
- 10.19.2 If the parties are unable to resolve their disputes under **Section 10.19.1**, the contested case process provided in [subchapter C](#) of Chapter 2260 is Company's sole and exclusive process for seeking a remedy for any and all of Company's claims for breach of this Agreement by Board.
- 10.19.3 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 Board nor any other conduct, action or inaction of any representative of Board relating to this Agreement constitutes or is intended to constitute a waiver of Board's or the state's

sovereign immunity to suit and (ii) Board has not waived its right to seek redress in the courts.

10.19.4 The submission, processing and resolution of Company'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.

10.19.5 Board and Company agree that any periods provided in this Agreement for notice and cure of defaults are not waived.

10.20 **Undocumented Workers.** The *Immigration and Nationality Act* ([8 USC §1324a](#)) (**Immigration Act**) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the [Form I-9 Employment Eligibility Verification Form \(I-9 Form\)](#) as the document to be used for employment eligibility verification ([8 CFR §274a](#)). Among other things, Company is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by Applicable Laws. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Company employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by Applicable Laws, Board may terminate this Agreement in accordance with **Section 7**. Company represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

10.21 **Limitations.** THE PARTIES ARE AWARE THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS (**LIMITATIONS**) ON THE AUTHORITY OF BOARD (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THIS AGREEMENT, INCLUDING TERMS AND CONDITIONS RELATING TO LIENS ON BOARD'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, AND TERMS AND CONDITIONS RELATED TO LIMITATIONS WILL NOT BE BINDING ON BOARD EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

10.22 **Ethics Matters; No Financial Interest.** Company and its employees, agents, representatives and subcontractors have read and understand [Board's Conflicts of Interest Policy](#), [Board's Standards of Conduct Guide](#), and applicable state ethics laws and rules at <http://utsystem.edu/offices/general-counsel/ethics>. Neither Company nor its employees, agents, representatives or subcontractors will assist or cause Board employees to violate Board's Conflicts of Interest Policy, Board's Standards of Conduct Guide, or applicable state ethics laws or rules. Company 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.

10.23 **Enforcement.** Company agrees and acknowledges that Board is entering into this Agreement in reliance on Company's special and unique knowledge and abilities with respect to performing Work. Company's services provide a peculiar value to Board. Board cannot be

reasonably or adequately compensated in damages for the loss of Company's services. Accordingly, Company acknowledges and agrees that a breach by Company of the provisions of this Agreement will cause Board irreparable injury and damage. Company, therefore, expressly agrees that Board will be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.

10.24 **Access by Individuals with Disabilities. Access by Individuals with Disabilities.** Company represents and warrants (**EIR Accessibility Warranty**) the electronic and information resources and all associated information, documentation, and support Company provides to Board under this Agreement (**EIRs**) comply with applicable requirements in [1 TAC Chapter 213](#) and [1 TAC §206.70](#) (ref. [Subchapter M, Chapter 2054, Texas Government Code](#)). To the extent Company becomes aware the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Company represents and warrants it will, at no cost to Board, 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. If Company fails or is unable to do so, Board may terminate this Agreement and, within thirty (30) days after termination, Company will refund to Board all amounts Board paid under this Agreement.

10.25 **INTENTIONALLY OMITTED**

10.26 **Historically Underutilized Business Subcontracting Plan.** Company agrees to use good faith efforts to subcontract Work in accordance with the Historically Underutilized Business Subcontracting Plan (**HSP**) (ref. **Exhibit F**). Company agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to Board 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 Board determines that Company has failed to subcontract as set out in the HSP, Board will notify Company of any deficiencies and give Company 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 Company. If Board determines that Company failed to implement the HSP in good faith, Board, in addition to any other remedies, may report nonperformance to the TPSS in accordance with [34 TAC §§20.101 through 20.108](#). Board may also revoke this Agreement for breach and make a claim against Company.

10.26.1 **Changes to the HSP.** If at any time during the Term, Company desires to change the HSP, before the proposed changes become effective (a) Company must comply with [34 TAC §20.14](#); (b) the changes must be reviewed and approved by Board; and (c) if Board approves changes to the HSP, this Agreement must be amended in accordance with **Section 12.6** to replace the HSP with the revised subcontracting plan.

10.26.2 **Expansion of Work.** If Board expands the scope of Work through a change order or any other amendment, Board will determine if the additional Work contains probable subcontracting opportunities *not* identified in the initial solicitation for Work. If Board determines additional probable subcontracting opportunities exist, Company will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of [34 TAC §20.14](#) before (a) this Agreement may be amended to include the additional Work; or (b) Company may perform the additional Work. If Company subcontracts any of the additional subcontracting opportunities identified by Board without prior authorization and without complying with [34 TAC §20.14](#), Company will be deemed to be in breach of this Agreement under **Section 7** and will be subject to any

remedial actions provided by Applicable Laws, including [Chapter 2161, Texas Government Code](#), and [34 TAC §20.14](#). Board may report nonperformance under this Agreement to the TPSS in accordance with [34 TAC §§20.101 through 20.108](#).

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

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

- 10.28 **Office of Inspector General Certification.** Company acknowledges that Board is prohibited by federal regulations from allowing any employee, representative, agent or subcontractor of Company to work on site at Board'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, Company 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 Board's premises or facilities. Company 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 Board's premises or facilities. Company acknowledges that Board will require immediate removal of any employee, representative, agent, or subcontractor of Company assigned to work at Board'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://exclusions.oig.hhs.gov/>
- 10.29 **External Terms.** This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Company's performance or provision of goods or services under this Agreement (**External Terms**). External Terms are null and void and will have no effect under this Agreement, even if Board or its employees, contractors, or agents express assent or agreement to External Terms. External Terms include any shrinkwrap, clickwrap, browswrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that Board or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Company.
- 10.30 **INTENTIONALLY OMITTED**
- 10.31 **Discrimination Prohibited.** Board and Company will abide by the requirements of [41 CFR §§60-1.4\(a\), 60-300.5\(a\)](#) and [60-741.5\(a\)](#) (collectively, **Regulations**). The regulations (1) prohibit discrimination against qualified individuals based on their status as protected

veterans or individuals with disabilities, and (2) prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, the regulations require that Board and Company take affirmative action to employ and advance in employment, individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability

- 10.32 **Access to Documents.** To the extent applicable to this Agreement, in accordance with §1861(v)(l)(i) of the Social Security Act ([42 USC §1395x](#)) as amended, and the provisions of [42 CFR §420.300 et seq](#), Company 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 Company 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.
- 10.33 **Company Certification regarding Boycotting Israel.** Pursuant to Chapter 2270, *Texas Government Code* Company certifies Company (1) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. Company acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 10.34 **Company Certification regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, *Texas Government*, Company certifies Company (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Company acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 10.35 **Other Remedies.** The remedies provided for in this Agreement, including the rights of cancellation or termination, are in addition to any other remedies available to either party under law or equity, by statute or otherwise. The decision by a party to seek one or more remedies shall not preclude the pursuit of other available remedies by that party.

Board and Company have executed and delivered this Agreement to be effective as of the Effective Date.

BOARD:

COMPANY:

THE UNIVERSITY OF TEXAS SYSTEM

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Attach:

- EXHIBIT A – Request for Proposal**
- EXHIBIT B – ORP**
- EXHIBIT C – UTRGA**
- EXHIBIT D – UTSaver DCP**
- EXHIBIT E – UTSaver TSA**
- EXHIBIT F – HUB Subcontracting Plan**

EXHIBIT A

SCOPE OF WORK

[Note: Provide a detailed description and break-down of all tasks Contractor is to perform and technical standards for the tasks, if appropriate.]

EXHIBIT B
SCHEDULE

EXHIBIT C

Payment for Services

EXHIBIT D

UTSaver DCP

EXHIBIT E

UTSAVER TSA

EXHIBIT F

HUB SUBCONTRACTING PLAN

AGREEMENT BETWEEN BOARD AND COMPANY

THE UNIVERSITY OF TEXAS SYSTEM 457(f) RETIREMENT PLANS

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

WHEREAS, Board administers The University of Texas System Deferred Compensation Plan (the "System Plan") WHEREAS, UT System Institutions, with the approval of UT System, may adopt and administer The University of Texas System Deferred Compensation Prototype Plan (the "Prototype Plans") to provide UT System Institution contributions to employees of such Institutions who are members of a select group of management and highly compensated employees designated by the Institution president;

WHEREAS, as of the date of publication of the Response for Proposals, the following six Institutions have adopted the Prototype Plan – The University of Texas at Austin, The University of Texas at San Antonio, The University of Texas Health Science Center at Houston, The University of Texas Southwestern Medical Center, The University of Texas Medical Branch at Galveston and The University of Texas M.D. Anderson Cancer Center;

WHEREAS, Board has exercised its authority to limit the number of vendors that may offer investment products to Participants in the 457(f) Retirement Plans, and has identified those certain vendors as "currently authorized vendor(s);"

WHEREAS, the Company is a [type] corporation, domiciled in the State of [state], and licensed to do business in the State of Texas under the supervision of the Texas Department of Insurance, that issues and administers investment and/or annuity contracts providing retirement benefits which conform to the applicable requirements of the *Internal Revenue Code of 1986*, as amended (26 USC 457f)) and the requirements of Article 6228A-5 *Vernon's Texas Revised Civil Statutes* Annotated;

WHEREAS, Board wishes to provide Participants an option to utilize the services offered by the Company to participate in investment options under the 457(f) Retirement Plans; and

WHEREAS, the Company is qualified to offer contracts for such investment options and desires to do so;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **Definitions.** In addition to the other defined terms set forth in this Agreement, for the purposes of this Agreement, the following words and phrases shall have the meaning assigned to them below:

"**Account**" means the individual recordkeeping account(s) established by Company for each Electing Employee under a contract with the Company.

"**Agreement**" means this Agreement and its Exhibits and other documents attached hereto at the time of execution, as amended in writing from time to time.

"**Applicable Laws**" means all federal, state or local, laws, statutes, regulations and ordinances relevant to the performance of Work.

“**Authorized Products**” means those investments meeting the requirements of Section 457(f) of the Code and fixed or variable retirement annuity contracts meeting the requirements of Section 457(f) of the Code and offered to Participants by currently authorized companies.

“**Board**” means the Board of Regents of The University of Texas System, or the authorized representatives of the Board of Regents who have been delegated responsibilities related to the 457(f) Retirement Plans.

“**Business Day**” means a day on which the New York Stock Exchange and the Company are open for the transaction of business.

“**Code**” means the *Internal Revenue Code of 1986*, as amended, and the regulations adopted thereunder.

“**Company**” means [company].

“**Contribution(s)**” means those amounts contributed to the Retirement Plans by Electing Employees through salary reductions, as well as those amounts contributed to the Retirement Plans for the benefit of Electing Employees by the State of Texas, through the institutions employing Electing Employees.

“**Deferred Compensation Account**” means the total contributions made to the Account(s) of a Participant in the respective 457(f) Retirement Plans (less authorized charges), together with the total interest credited to fixed accounts or the investment earnings credited to variable or mutual fund accounts, less any transfers and/or withdrawals.

“**Electing Employee**” means a Participant in one or more of the Retirement Plans who has elected to utilize the services offered by the Company.

“**GCA**” means the Section 403(b)(7) Group Custodial Account Agreement dated [date], for the ORP and UTSaver TSA between Company and the Board. *[if applicable]*

“**In Good Order**” means in a state or condition which the parties agree is reasonably necessary for accurate execution of the intended transaction. With regard to contributions, “In Good Order” shall have the meaning as defined herein including the following: (i) the remitted data has successfully loaded to the [company] recordkeeping system, (ii) Participant accounts have been successfully established prior to 4:00 p.m. Eastern Time, (iii) all errors have been addressed, and the data has been validated and reconciled, and (iv) funding has been received at [company] by the close of the fed wire system on that day.

“**Institution**” means an institution of higher education, as defined in Section 61.003, *Texas Education Code* that is now or hereafter designated by statute as an institution of The University of Texas System.

“**Other Vendor**” means, with respect to a particular Electing Employee, any vendor of investment products that (i) is not a currently authorized company, but (ii) with whom the particular Electing Employee currently maintains an account that was opened prior to September 1, 2012, under one or more of the Retirement Plans.

“**Participant**” means an employee of an Institution who is eligible for participation and has chosen to participate in one or more of the Retirement Plans.

“**Project**” means collectively the Work that will be provided in connection with _____ and all other related, necessary and appropriate services.

“**Recordkeeping Agreement**” means collectively and individually the Recordkeeping Agreements between The University of Texas System and **[company]** dated **[date]**, as amended from time to time. *[if applicable]*

“**Request for Proposals**” means the Request for Proposals for U.T. System Retirement Programs issued by the Board on _____, 2018. The Request for Proposals is hereby incorporated by reference and designated as **Exhibit “A”** to this Agreement and a part hereof for all purposes.

“**U.T. System**” means The University of Texas System.

“**457(f) Retirement Plans**” means, collectively, The System Plan and Prototype Plans. The System Plan document and the Prototype Plan document as they may be amended from time to time are hereby incorporated by reference and the current plan documents are designated as Exhibit “B” (System Plan) and Exhibit “C” (prototype plan) to this Agreement as a part hereto for all purposes.

2. Scope of Work.

- 2.1 Company will perform the scope of the work (**Work**) in **Exhibit A**, to the satisfaction of Board. Time is of the essence in connection with this Agreement. Board will have no obligation to accept late performance or waive timely performance by Company.
- 2.2 Company will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by **Applicable Laws** for the performance of Work.

3. Relationship of Parties and Parties' Specific Obligations.

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Company is an independent contractor and is not a state employee, partner, joint venturer, or agent of University. Company will not bind nor attempt to bind Board to any agreement or contract. As an independent contractor, Company is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance. This Agreement shall not prevent Company from performing, for other parties, services similar to or of the type to be performed hereunder, provided that there is no conflict with Company's obligations and duties under this Agreement. The authority granted to Company under this Agreement is not exclusive, and Board may contract with other companies to act as providers of services in connection with operation of the Retirement Plans. Simultaneously with the execution of this Agreement, the parties shall notify one another of the names of the representative or representatives, who shall be authorized to issue instructions in connection with operations under this Agreement, until written notification of a successor representative or representatives. Company shall incur no liability to the Board for executing, failing to execute, for any mistake in the execution of, or for any action taken or omitted in reliance on instructions given by the Board's designated representatives, except to the extent that Company has failed to exercise ordinary care.

3.1 PROVISIONS APPLICABLE TO THE 457(f) RETIREMENT PLANS

3.1.1 Arrangement

The contributions to the 457(f) Retirement Plans by U.T. System or the Institution for the benefit of a designated Participant are subject to a substantial risk of forfeiture should the Participant leave employment before the end of a stated term in a deferred compensation agreement between the Participant and U.T. System or Institution except for termination because of death, disability or involuntary termination of employment. The contributions are held in an Account for the Participant maintained by the Company, another currently authorized company or, in some case, Other Vendors. Until the participant vests, the Participant's Deferred Compensation Account balance remains the property of U.T. System or Institution. However, the Participant is able to direct investment of his or her Account balance in Authorized Products offered by currently authorized companies or, in some cases, Other Vendors. The Participant may also receive distributions for unforeseeable emergencies as determined by U.T. System or Institution.

3.1.2 Company Obligations

This Agreement is entered into pursuant to the provisions of Code Section 457(g), which permits the UTSaver DCP to utilize custodial accounts and annuity contracts described in Code Section 401(f). Company acknowledges and agrees that its Accounts are custodial accounts and/or annuity contracts that satisfy the requirements of Treas. Reg. §1.457-8(a)(3). Company further acknowledges and agrees that, for purposes of the UTSaver DCP, Company shall be a trustee of all UTSaver DCP funds and other assets it holds on behalf of the UTSaver DCP and UTSaver DCP Participants, and shall have sole and absolute discretion of, the management of all UTSaver DCP funds held by it under the UTSaver DCP and this Agreement.

3.1.2 Company Obligations

Company shall perform all obligations with regard to UT System, Institution and Participants that are set forth below, in accordance with all applicable terms and conditions of the Agreement and the 457(f) Plans.

- i. Provide appropriate administration, products and services for the 457(f) Retirement Plans in accordance with Code Sections 457(f) and 409A.
- ii. Upon request of U.T. System or Institution, as applicable, make distribution to the U.T. System or Institution of all or part of a Participant's Account for U.T. System or Institution to make payments in its sole determination to Participant or Participant's beneficiary pursuant to the terms of the applicable 457(f) Retirement Plan upon vesting or unforeseeable emergency.
- iii. Upon request of U.T. System or Institution, as applicable, make distribution of Participant's Account to U.T. System or Institution when U.T. System or Institution in its sole determination concludes that a Participant has forfeited his or her Account under the terms of the applicable 457(f) Retirement Plan.
- iv. The above decisions concerning distributions by U.T. System or the Institution are the sole responsibility of U.T. System or Institution with which Company must comply and no distributions may be made to anyone other than U.T. System or Institution.
- v. Provide separate Accounts for contributions for each Participant.
- vi. Responsible as provided in the Request for Proposals for determining whether a domestic relations order is qualified and payable for 457(f) Retirement Plans.

3.2 PROVISIONS APPLICABLE TO ALL 457(f) RETIREMENT PLANS

3.2.1 Appointment of Company

Appointment. Board hereby appoints and authorizes Company and Company hereby accepts such appointment and authorization to act as one of the currently authorized companies to provide investment options under the 457(f) Retirement Plans and to provide contracts for retirement benefits to Electing Employees in accordance with the provisions of the 457(f) Retirement Plans and applicable law.

Quality of Service. Company shall exercise its best efforts to ensure that all services provided to Electing Employees under this Agreement shall conform to the highest standards of value and quality attainable by Company. The Board shall have the right to submit a complaint concerning any element of Company's services under this Agreement and to request that Company's undesired practice be either discontinued or modified within a reasonable period of time to conform to standards specified by the Board.

3.2.2 General Duties of Company

Authorized Products. Company shall make available to Electing Employees the Authorized Products set forth in Company's Response to the Board's Request for Proposals ("Company's Response"), pursuant to which this Agreement has been made. Company may offer new investment products to Electing Employees, other than the Authorized Products described in Company's Response; provided, however, that new products must meet the requirements specified for Authorized Products in the Request for Proposals, and further provided that the Board must receive prior written notice describing the new investment product(s). Company's Authorized Products shall not distinguish, in the payment of benefits, on the basis of any factors proscribed by federal law.

Personnel. Company shall ensure that a sufficient number of representatives are assigned to U.T. System or Institution accounts to provide the required services to the Participants. Company shall maintain sufficient personnel in its principal

processing office to handle daily transactions, answer inquiries as to Account balances and other records maintained by Company, and otherwise fulfill its duties under this Agreement. The Board shall have the right to request the immediate replacement of any account representative or any of Company's employees, agents, or contractors for good cause as determined by the Board, or for actions considered to be not in the best interest of the 457(f) Retirement Plans; provided that replacement shall not be required in violation of law.

Compliance with Laws and Rules. Company shall at all times comply with the criteria established in the Request for Proposals and shall perform its services under this Agreement in compliance with the criteria established in the Request for Proposals.

3.2.3 **Marketing**

Informational and education materials related to the overall plan design and administration of the 457(f) Retirement Plans will be designed by the Board in collaboration with the Company and all other currently authorized vendors and will be printed and distributed as described in the Request for Proposals. Company shall abide by any marketing guidelines which may be established by Board, and all materials to be made available to Participants under the 457(f) Retirement Plans shall be submitted to Board for approval prior to use.

3.2.4 **Administrative Duties**

Contributions. Contributions under the 457(f) Retirement Plans shall be remitted usually annually by the Board to Company in accordance with the directions of Electing Employees. Upon receipt by Company of the Contributions remitted by the Board In Good Order, Company shall (i) process and allocate such Contributions in accordance with the requirements of the 457(f) Retirement Plans, as communicated by the Board, and the Institution's payroll and data processing systems; and (ii) direct the investment of Contributions in the Authorized Products designated by the Electing Employee, under the terms and conditions of the 457(f) Retirement Plans, the deferred compensation agreement between the employee and UT System or Institution, and this Agreement.

Account Transfers. Employees shall have the right to transfer all or part of their Deferred Compensation Account in the 457(f) Retirement Plans within variable annuity or mutual fund options without cost, damages or penalties of any kind, except in conformity with the criteria as established in the Request for Proposals and any mutual fund prospectus as applicable for investment options offered in the 457(f) Retirement Plans. Upon request of any Electing Employee, Company shall arrange for the transfer of any part or all of such Electing Employee's Deferred Compensation Account to other Authorized Products available under the Electing Employee's contract with Company. Company will allow unlimited changes in allocations of Contributions to each of Company's Authorized Products and an unlimited number of transfers between Authorized Products. Company shall permit transferability of Deferred Compensation Account or any portion thereof to another currently authorized company or Other Vendor pursuant to a Prototype Plan, subject to any applicable federal laws and the requirements of the 457(f) Retirement Plans. Company will accept a transfer of any part or all of an Electing Employee's Deferred Compensation Account from another currently authorized company or Other Vendor, subject to any applicable federal laws and the terms of the applicable 457(f) Retirement Plan. Transfers from other companies and Other Vendors will be treated in the same manner as

Contributions, and no charges will be assessed on transfers. Company shall process an Electing Employee's transfer request and issue all instructions required to complete the transfer request by the close of the next business day following receipt of the request In Good Order at Company's principal processing office; any checks that are required to affect a transfer shall be issued and mailed within seven (7) calendar days.

Records. Company shall establish and maintain records for each Electing Employee's Account(s) with Company. Company's records shall be maintained in accordance with generally accepted accounting principles and shall comply with the applicable portions of the Code and the regulations adopted thereunder.

Refunds. Insofar as may be permitted by law and consistent with the terms of Company's Authorized Products, Company shall make available refunds, to the employer UT System/Institution as directed by the Board or Institution, for reasons including mistaken contributions, erroneous reductions, excessive reductions, or administrative errors, and failure of an Employee to meet the vesting requirements of the 457(f) Retirement Plans.

Reports to Board. Company shall deliver to the Board the following reports, in an electronic or written format as determined by the Board, concerning Company's administration of each of the 457(f) Retirement Plans:

- 1) Quarterly enrollment report showing the numbers of Electing Employees for the previous and current years;
- 2) Quarterly report showing assets under management for each of the 457(f) Retirement Plans;
- 3) Annual report and review of the investment options including discussions of performance and ranking by asset class; confirming each investment option's compliance with the Request for Proposals, including any failure to meet the criteria and a discussion of actions that should be taken by the U.T. System to restore compliance;
- 4) Quarterly report of benefit payments made in the previous quarter, including qualified domestic relations order payments;
- 5) Other reports as necessary to comply with all present or later enacted IRS requirements; and
- 6) Other additional reports as may be reasonably requested by Board from time to time.

Electing Employee Reports. Company shall provide to Electing Employees, at least quarterly and no later than 15 days following the end of the calendar quarter, statements of their Accounts in a format mutually agreed to by Company and Board.

Financial Statements and Notices. Company shall furnish a copy of its annual Audited Financial Report, Statutory Financial Report, Moody's Insurance Credit Report, and Standard & Poor's Insurance Claims Paying Ability Report to Board as available annually. Company shall deliver to Board immediate written notice of any of the following occurrences:

- a) A material adverse change in Company's financial condition;
- b) A reduction in Company's rating (if any) by A.M. Best, Standard & Poor's, Moody's, Fitch, or Duff & Phelps;
- c) Any action taken by any regulatory body of any jurisdiction to place Company on any "watch list" with respect to its financial condition or to

- suspend sales activity by Company;
- d) Any impending administrative or judicial action which could have the effect of suspending or terminating Company's authorization to do business in any state or jurisdiction;
 - e) Any impending administrative or judicial action which could have the effect of placing the Company in receivership or similar circumstances;
 - f) Any cease and desist order, suspension order, or material administrative fine or penalty imposed by any jurisdiction against Company; and
 - g) Any final judgment or decree rendered by a Court of appropriate jurisdiction, the effect of which is to enjoin practices of Company with respect to the sale of mutual fund or annuity products.

Company shall deliver written notice to Board of any and all actual actions, rules, regulations, federal or state laws which shall affect the services Company supplies under this Agreement. Such notice shall include a description of the action, rule, regulation or law; the manner in which the Agreement or any Electing Employee may be affected; and the comments or response of the Company. Company shall provide appropriate notice to the Board of proposed actions, rules, or regulations, of which Company is aware and that seem likely to be adopted in a form that would affect the services or benefits provided by Company.

Approval of Changes. Company shall make no change in the existing benefits, rights, options, or privileges, or in the operation of the Company's services which affects the 457(f) Retirement Plans or the Authorized Products offered by Company thereunder except in accordance with Section 3.2.2, unless Board's prior written approval has been first obtained or unless such change is required by changes in the 457(f) Retirement Plans or by requirements of the Internal Revenue Service or other applicable state or federal law.

3.2.5 **Audit**

Company shall maintain its books, records, and documents related to work performed or Contributions received under this Agreement in accordance with generally accepted accounting principles. Company shall supply the Board with copies of any documentation related to this Agreement upon request. Representatives of the State Auditor's Office, the U.T. System Audit Office, or another audit firm of the Board's choice shall have the right to examine and audit Company's books, records, and documents related to work performed or Contributions received under this Agreement during regular office hours and following reasonable notice to Company. The results of any audit conducted by or on behalf of the Board shall be used by the Board to determine whether to reauthorize or recertify Company as a currently authorized vendor. Company understands that the Texas Auditor's office, or any successor agency, may conduct an audit or investigation in connection with the Agreement pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), Texas Education Code. Company agrees to cooperate with any auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Company will include this provision in all contracts with permitted subcontractors.

3.2.6 **Fidelity Bond**

Company shall obtain and maintain in force a fidelity bond, in a form and amount satisfactory to the Board, to protect the Board, the 457(f) Retirement Plans, and Electing Employees from any loss resulting from fraud or dishonesty by Company's officers, employees, or agents; provided, however, that any subcontract for services involving the handling of money or financial instruments

shall require fidelity bond coverage in such form and amount as shall be satisfactory to the Board; and provided further that fidelity bond requirements hereunder shall not conflict with applicable fidelity bond requirements under state or federal law.

3.2.7 **Representations and Warranties of Company**

If Company is a corporation or a limited liability company, Company warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approval to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Company has been duly authorized to act and bind Company.

3.3 DUTIES OF BOARD

3.3.1 **Employee Information**

The Board will supply Company with the information concerning employees that is necessary for Company to carry out its duties under the 457(f) Retirement Plans, and this Agreement. Upon Company's request, the Board will provide confirmation of whether a Participant has terminated employment or has become vested under the applicable 457(f) Retirement Plan.

3.3.2 **Contributions**

Board or Institution will promptly remit Contributions to Company after the date specified in the Deferred Compensation Agreement with each Participant.

4. Time for Commencement and Completion.

The term (**Initial Term**) of this Agreement will begin on the Effective Date and expire on August 31, 2021, or (i) the last expiration date of any policies Board procures through Company, or (ii) the day after all claims or disputes related to all policies procured by Board through Company are finally resolved and settled to Board's satisfaction. Board will have the option to renew this Agreement for one additional three (3) year term (**Renewal Term**). The Initial Term and Renewal Term are collectively referred to as the **Term**.

5. Company's General Obligations.

5.1 Company will perform Work in compliance with (a) all Applicable Laws, and (b) the Board of Regents of The University of Texas System, and the institutional rules, regulations and policies of Board (collectively, **Board Rules**). Company represents and warrants that neither Company nor any firm, corporation or institution represented by Company, 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 Company's response to Board's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.

5.2 Company represents and warrants that (a) it will use its best efforts to perform Work in a good and workmanlike manner and in accordance with the highest standards of Company's profession or business, and (b) all Work to be performed will be of the quality that prevails among similar businesses of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances.

- 5.3 Company will call to Board's attention in writing all information in any materials supplied to Company (by Board or any other party) that Company regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.
- 5.4 Board at all times is relying on Company's skill and knowledge in performing Work. Company represents and warrants that Work will be accurate and free from any material defects. Company's duties and obligations under this Agreement will not be in any way diminished by reason of any approval by Board. Company will not be released from any liability by reason of any approval by Board.
- 5.5 Company will, at its own cost, correct all material defects in Work as soon as practical after Company becomes aware of the defects. If Company fails to correct material defects in Work within a reasonable time, then Board may correct the defective Work at Company's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Work that Board may have at law or in equity.
- 5.6 Company will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Company will cause all persons connected with Company directly in charge of Work to be duly registered and licensed under all Applicable Laws. Company will assign to the Project a designated representative who will be responsible for administration and coordination of Work.
- 5.7 Company represents and warrants it is duly organized, validly existing and in good standing under the laws of the state of its organization; it is duly authorized and in good standing to conduct business in the State of Texas; it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and the individual executing this Agreement on behalf of Company has been duly authorized to act for and bind Company.
- 5.8 Company represents and warrants that neither the execution and delivery of this Agreement by Company nor the performance of its duties and obligations under this Agreement will (a) result in the violation of any provision of its organizational documents; (b) result in the violation of any provision of any agreement by which it is bound; or (c) conflict with any order or decree of any court or other body or authority having jurisdiction.
- 5.9 Company represents and warrants that: (i) Work will be performed solely by Company, 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 Company (for the benefit of Board); (ii) Board will receive free, good and clear title to all Work Material developed under this Agreement; (iii) Work Material and the intellectual property rights protecting Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges and other restrictions; (iv) 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 Work Material will not violate the rights of any third parties in Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.
- 5.10 If this Agreement requires Company's presence on Board's or Institution's premises or in Board's or Institution's facilities, Company agrees to cause its employees, representatives, agents, or subcontractors to become aware of, fully informed about, and in full compliance with all applicable Board Rules, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.

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

- 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 Company or any subcontractors in connection with Work (collectively, **Work Material**), whether or not accepted or rejected by Board, are the sole property of Board and for its exclusive use and re-use at any time without further compensation and without any restrictions.
- 6.2 Company grants and assigns to Board all rights and claims of whatever nature and whether now or hereafter arising in and to Work Material and will cooperate fully with Board in any steps Board may take to obtain or enforce patent, copyright, trademark or like protections with respect to Work Material.
- 6.3 Company will deliver all Work Material to Board upon expiration or termination of this Agreement. Board will have the right to use Work Material for the completion of Work or otherwise. Board may, at all times, retain the originals of Work Material. Work Material will not be used by any person other than Board on other projects unless expressly authorized by Board in writing.
- 6.4 Work Material will not be used or published by Company or any other party unless expressly authorized by Board in writing. Company will treat all Work Material as confidential.

7. **Default, Suspension, and Termination**

- 7.1 In the event of a material failure by a party to this Agreement to perform in accordance with its terms (**default**), the other party may terminate this Agreement upon ninety (90) 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 ninety-day (90-day) period.
- 7.2 Board may, without cause, terminate this Agreement at any time upon giving ninety (90) days' advance written notice to Company. Notwithstanding any provision in this Agreement to the contrary, Board will not be required to pay or reimburse Company for any services performed or for expenses incurred by Company after the date of the termination notice, that could have been avoided or mitigated by Company.
- 7.3 Termination under **Sections 7.1** or **7.2** will not relieve Company from liability for any default or breach under this Agreement or any other act or omission of Company.
- 7.4 If Company fails to cure any default within thirty (30) days after receiving written notice of the default, Board will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Company under this Agreement, any and all reasonable expenses incurred in connection with Board's curative actions.
- 7.6 The Board may suspend delivery of Contributions to Company upon written notice to Company, in the event the Board becomes aware of (i) any fraud or intentional misapplication of 457(f) Retirement Plan funds by Company, its Electing Employees, agents, or subcontractors, (ii) any occurrence described above in Section 3.2.4, items a through g; (iii) any act or omission by Company, its employees, agents, or subcontractors that is not in conformity with the Request for Proposals; or (iv) any act or omission by Company, its

employees, agents, or subcontractors, that jeopardizes the status of any 457(f) Retirement Plan as an ineligible plan under Section 457(f) of the Code. During a period of suspension of Contributions, Company shall continue to perform all its duties hereunder. Promptly following any suspension, representatives of Company and Board shall consult concerning the event leading to the suspension. If the Board is not satisfied that appropriate measures have been implemented to ensure the security of the Employees' funds and the 457(f) Retirement Plans, then the Board shall have the right to terminate this Agreement by giving written notice of termination to Company no later than twenty (20) days prior to the specified date of termination.

- 7.7 If this Agreement is canceled or terminated as provided herein, Company shall temporarily hold each Electing Employee's Deferred Compensation Account pending instructions from the Electing Employee. Upon instructions from the Electing Employee or the Board, the Company shall transfer the Deferred Compensation Accounts to other currently authorized companies, in accordance with instructions from the Electing Employee, as permitted under the applicable 457(f) Retirement Plans. Company's final charges to Electing Employees' Accounts shall be calculated and settled prior to such transfer, in accordance with the Request for Proposals attached hereto. Company's duties as to recordkeeping and reporting shall survive any cancellation or termination of this Agreement, until all Electing Employees' Deferred Compensation Accounts are transferred out of Company's custody, as provided herein.

8. Indemnification

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

9. Insurance.

Commented [CLR1]: Confirm this section with ORM.

9.1 Company, 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-:VIII or better, and in amounts not less than the following minimum limits of coverage:

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

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

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

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

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

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

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

9.1.4 Professional Liability (Errors & Omissions) Insurance with limits of not less than \$5,000,000 each occurrence. Such insurance will cover all Work performed by or on behalf of Company 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, Company agrees to purchase an Extended Reporting Period Endorsement, effective twenty-four (24) months after the expiration or cancellation of the policy. No Professional Liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least twenty-four (24) months after the expiration or termination of this Agreement for any reason.

9.1.5 Company will maintain Cyber Liability insurance with limits of not less than \$10,000,000 for each wrongful act, that provides coverage for:

- Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of University Data, whether by Contractor or any of subcontractor or cloud service provider used by Company;

- Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management / public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
- Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
- Liability for technological products and services;
- PCI fines, fees, penalties and assessments;
- Cyber extortion payment and response costs;
- First and Third Party Business Interruption Loss resulting from a network security failure;
- Costs of restoring, updating or replacing data;
- Liability losses connected to network security, privacy, and media liability;

Certificates of Insurance and Additional Insured Endorsements reflecting applicable limits, sub-limits, self-insured retentions and deductibles will be provided to Board upon request. Company will be responsible for any and all deductibles, self-insured retentions or waiting period requirements. If the Cyber Liability policy is written on a claims-made basis, the retroactive date should be prior to the commencement of this agreement/addendum. If the Cyber Liability policy is written on a claims-made basis and non-renewed at any time during and up until the project completion signing date, Company shall purchase an Extended Reporting Period for at least a two-year period. The Board will be named as an additional insureds and Company's policy will provide a carve-back to the "Insured versus Insured" exclusion for claims brought by or on behalf of additional insureds. The Board will be provided with a waiver of subrogation, both by endorsement to the required Cyber Liability policy. All insurance carrier(s) must carry an A.M. Best rating of at least A-, Class VIII.

9.2 Company will deliver to Board:

9.2.1 Evidence of insurance on a Texas Department of Insurance approved certificate form (Acord Form is a TDI preapproved form) verifying the existence and actual limits of all required insurance policies after the execution and delivery of this Agreement and prior to the performance of any Work by Company 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.

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

9.2.1.2 Company hereby waives all rights of subrogation against the Board of Regents of The University of Texas System and Board. **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 and Board. No policy will be canceled until after thirty (30) days' unconditional written notice to Board. **All insurance policies** will be *endorsed* to require the insurance carrier providing coverage to send notice to Board thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this **Section 9**.

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

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

Name: Eric Agnew
Address: 210 West 7th Street, Austin, TX 78701
Facsimile Number: 512-499-4524
Email Address: eagnew@utsystem.edu

9.3 Company's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by Board or Company's or subcontractor's insurance will be kept in force until all Work has been fully performed and accepted by Board in writing, *except* as provided in this **Section 9.3**.

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

10. **Miscellaneous.**

10.1 **Assignment and Subcontracting.** Except as specifically provided in **Exhibit D**, Historically Underutilized Business Subcontracting Plan, or with prior written approval from Board Company's interest in this Agreement (including Company's duties and obligations under this Agreement, and the fees due to Company under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on Board; and (b) be a breach of this Agreement for which Company will be subject to all remedial actions provided by Applicable Laws, including [Chapter 2161, Texas Government Code](#), and [34 TAC §§20.101 – 20.108](#). The benefits and burdens of this Agreement are assignable by Board.

10.2 **Texas Family Code Child Support Certification.** Pursuant to [§231.006, Texas Family Code](#), Company certifies it is not ineligible to receive the award of or payments under this Agreement, and acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

10.3 **Tax Certification.** If Company is a taxable entity as defined by [Chapter 171, Texas Tax Code](#), then Company certifies it is not currently delinquent in the payment of any taxes due under Chapter 171, Company is exempt from the payment of those taxes, or Company is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

- 10.4 **Payment of Debt or Delinquency to the State.** Pursuant to §§2107.008 and 2252.903, *Texas Government Code*, Company agrees any payments owing to Company under this Agreement may be applied directly toward any debt or delinquency Company owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until paid in full.
- 10.5 **Loss of Funding.** Performance by Board under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (**Legislature**) and/or allocation of funds by the Board of Regents of The University of Texas System (**Board**). If Legislature fails to appropriate or allot necessary funds, or Board fails to allocate necessary funds, then Board will issue written notice to Company and Board may terminate this Agreement without further duty or obligation. Company acknowledges that appropriation, allotment, and allocation of funds are beyond Board's control.
- 10.6 **Entire Agreement; Modifications.** This Agreement (including the Request for Proposals, Company's Response to Request for Proposals, the 457(f) Retirement Plans, and all recordkeeping, service provider or other similar agreements and other attachments and Exhibits) supersedes all prior agreements, written or oral, between Company and Board and will constitute the entire Agreement and understanding between the parties with respect to its subject matter. 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 Board and Company. All Exhibits are attached to this Agreement and incorporated for all purposes.
- 10.7 **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**). *Provided, however*, in the event of a force majeure occurrence, Company agrees to use its best efforts to mitigate the impact of the occurrence so that Board may continue to provide mission critical services during the occurrence.
- 10.8 **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.
- 10.9 **Venue; Governing Law.** Travis County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions and all of the rights and obligations of its parties, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.
- 10.10 **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.
- 10.11 **Confidentiality and Safeguarding of Board Records; Press Releases; Public Information.** Under this Agreement, Company may (1) create, (2) receive from or on behalf of Board, or (3) have access to, records or record systems (collectively, **Board Records**). Among other things, Board Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws. Company represents, warrants, and agrees that it will: (1) hold Board Records in strict confidence and will not use or disclose Board Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by Board in writing; (2) safeguard Board 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, as well as the Payment Card Industry Data Security Standards) that are no less rigorous than the standards by which Company protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that Board Records are safeguarded and the confidentiality of Board Records is maintained in accordance with all Applicable Laws and the terms of this Agreement; and (4) comply with Board Rules regarding access to and use of Board's computer systems, including UTS165 at <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy>. At the request of Board, Company agrees to provide Board with a written summary of the procedures Company uses to safeguard and maintain the confidentiality of Board Records.

- 10.11.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any Board Records occurs, Company will provide written notice to Board within one (1) business day after Company's discovery of that use or disclosure. Company will promptly provide Board with all information requested by Board regarding the impermissible use or disclosure.
- 10.11.2 **Return of Board Records.** Company agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all Board Records created or received from or on behalf of Board will be (1) returned to Board, with no copies retained by Company; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any Board Records, Company will provide Board with written notice of Company's intent to destroy Board Records. Within five (5) days after destruction, Company will confirm to Board in writing the destruction of Board Records.
- 10.11.3 **Disclosure.** If Company discloses any Board Records to a subcontractor or agent, Company will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Company by this **Section 10.11**.
- 10.11.4 **Press Releases.** Except when defined as part of Work, Company will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Company as an independent contractor of Board 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 Board.
- 10.11.5 **Public Information.** Board 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 §§[552.002](#) and [2252.907](#), *Texas Government Code*, and at no additional charge to Board, Company will make any information created or exchanged with Board pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by Board that is accessible by the public.
- 10.11.6 **Termination.** In addition to any other termination rights in this Agreement and any other rights at law or equity, if Board reasonably determines that Company has breached any of the restrictions or obligations in this Section, Board may immediately terminate this Agreement without notice or opportunity to cure.
- 10.11.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

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

10.13 **Records.** Records of Company's costs, reimbursable expenses pertaining to the Project and payments will be available to Board or its authorized representative during business hours and will be retained for four (4) years after final Payment or abandonment of the Project, unless Board otherwise instructs Company in writing.

10.14 **Notices.** Except as otherwise provided by this Section, notices, consents, approvals, demands, requests or other communications required or permitted under this Agreement, will be in writing and sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is provided below), or email (to the extent an email address is provided below) as indicated below, and notice will be deemed given (i) if delivered by certified mailed, 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 provided below) or email (to the extent an email address is provided below), when received:

If to Board: _____

Fax: _____
Email: _____
Attention: _____

with copy to: _____

Fax: _____
Email: _____
Attention: _____

If to Company: _____

Fax: _____
Email: _____
Attention: _____

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

Notwithstanding any other requirements for notices given by a party under this Agreement, if Company intends to deliver written notice to Board pursuant to [§2251.054, Texas Government Code](#), then Company will send that notice to Board as follows:

Fax: _____
Email: _____
Attention: _____

with copy to: _____

Fax: _____
Email: _____
Attention: _____

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

- 10.15 **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.
- 10.16 **State Auditor's Office.** Company understands acceptance of funds under this Agreement constitutes acceptance of authority of the Texas State Auditor's Office or any successor agency (**Auditor**), to conduct an audit or investigation in connection with those funds (ref. [§§51.9335\(c\), 73.115\(c\)](#) and [74.008\(c\), Texas Education Code](#)). Company agrees to cooperate with Auditor in the conduct of the audit or investigation, including providing all records requested. Company will include this provision in all contracts with permitted subcontractors.
- 10.17 **Limitation of Liability.** EXCEPT FOR BOARD'S OBLIGATION (IF ANY) TO PAY COMPANY CERTAIN FEES AND EXPENSES BOARD WILL HAVE NO LIABILITY TO COMPANY OR TO ANYONE CLAIMING THROUGH OR UNDER COMPANY BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING ANY DUTY OR OBLIGATION OF BOARD TO COMPANY OR TO ANYONE CLAIMING THROUGH OR UNDER COMPANY, NO PRESENT OR FUTURE AFFILIATED ENTERPRISE, SUBCONTRACTOR, AGENT, OFFICER, DIRECTOR, EMPLOYEE, REPRESENTATIVE, ATTORNEY OR REGENT OF BOARD, OR THE UNIVERSITY OF TEXAS SYSTEM, OR ANYONE CLAIMING UNDER BOARD HAS OR WILL HAVE ANY PERSONAL LIABILITY TO COMPANY OR TO ANYONE CLAIMING THROUGH OR UNDER COMPANY BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.
- 10.18 **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.
- 10.19 **Breach of Contract Claims.** 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 Laws, the dispute resolution process provided for in [Chapter 2260](#) will be used, as further described herein, by Board and Company to attempt to resolve any claim for breach of contract made by Company:

- 10.19.1 Company'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, Company will submit written notice, as required by [subchapter B](#) of Chapter 2260, to Board in accordance with the notice provisions in this Agreement. Company'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 Board allegedly breached, the amount of damages Company seeks, and the method used to calculate the damages. Compliance by Company with [subchapter B](#) of Chapter 2260 is a required prerequisite to Company's filing of a contested case proceeding under [subchapter C](#) of Chapter 2260. The chief business officer of Board, or another officer of Board as may be designated from time to time by Board by written notice to Company in accordance with the notice provisions in this Agreement, will examine Company's claim and any counterclaim and negotiate with Company in an effort to resolve the claims.
- 10.19.2 If the parties are unable to resolve their disputes under **Section 10.19.1**, the contested case process provided in [subchapter C](#) of Chapter 2260 is Company's sole and exclusive process for seeking a remedy for any and all of Company's claims for breach of this Agreement by Board.
- 10.19.3 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 Board nor any other conduct, action or inaction of any representative of Board relating to this Agreement constitutes or is intended to constitute a waiver of Board's or the state's sovereign immunity to suit and (ii) Board has not waived its right to seek redress in the courts.
- 10.19.4 The submission, processing and resolution of Company'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.
- 10.19.5 Board and Company agree that any periods provided in this Agreement for notice and cure of defaults are not waived.
- 10.20 **Undocumented Workers.** The *Immigration and Nationality Act* ([8 USC §1324a](#)) (**Immigration Act**) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the [Form I-9 Employment Eligibility Verification Form \(I-9 Form\)](#) as the document to be used for employment eligibility verification ([8 CFR §274a](#)). Among other things, Company is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the

documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by Applicable Laws. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Company employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by Applicable Laws, Board may terminate this Agreement in accordance with **Section 7**. Company represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

- 10.21 **Limitations.** THE PARTIES ARE AWARE THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS (**LIMITATIONS**) ON THE AUTHORITY OF BOARD (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THIS AGREEMENT, INCLUDING TERMS AND CONDITIONS RELATING TO LIENS ON BOARD'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, AND TERMS AND CONDITIONS RELATED TO LIMITATIONS WILL NOT BE BINDING ON BOARD EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
- 10.22 **Ethics Matters; No Financial Interest.** Company and its employees, agents, representatives and subcontractors have read and understand [Board's Conflicts of Interest Policy](#), [Board's Standards of Conduct Guide](#), and applicable state ethics laws and rules at <http://utsystem.edu/offices/general-counsel/ethics>. Neither Company nor its employees, agents, representatives or subcontractors will assist or cause Board employees to violate Board's Conflicts of Interest Policy, Board's Standards of Conduct Guide, or applicable state ethics laws or rules. Company 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.
- 10.23 **Enforcement.** Company agrees and acknowledges that Board is entering into this Agreement in reliance on Company's special and unique knowledge and abilities with respect to performing Work. Company's services provide a peculiar value to Board. Board cannot be reasonably or adequately compensated in damages for the loss of Company's services. Accordingly, Company acknowledges and agrees that a breach by Company of the provisions of this Agreement will cause Board irreparable injury and damage. Company, therefore, expressly agrees that Board will be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.
- 10.24 **Access by Individuals with Disabilities. Access by Individuals with Disabilities.** Company represents and warrants (**EIR Accessibility Warranty**) the electronic and information resources and all associated information, documentation, and support Company provides to Board under this Agreement (**EIRs**) comply with applicable requirements in [1 TAC Chapter 213](#) and [1 TAC §206.70](#) (ref. [Subchapter M, Chapter 2054, Texas Government Code](#)). To the extent Company becomes aware the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Company represents and warrants it will, at no cost to Board, 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. If Company fails or is unable to do so, Board may terminate this Agreement and, within thirty (30) days after termination, Company will refund to Board all amounts Board paid under this Agreement.
- 10.25 **INTENTIONALLY OMITTED**

- 10.26 **Historically Underutilized Business Subcontracting Plan.** Company agrees to use good faith efforts to subcontract Work in accordance with the Historically Underutilized Business Subcontracting Plan (**HSP**) (ref. **Exhibit D**). Company agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to Board 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 Board determines that Company has failed to subcontract as set out in the HSP, Board will notify Company of any deficiencies and give Company 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 Company. If Board determines that Company failed to implement the HSP in good faith, Board, in addition to any other remedies, may report nonperformance to the TPSS in accordance with [34 TAC §§20.101 through 20.108](#). Board may also revoke this Agreement for breach and make a claim against Company.
- 10.26.1 **Changes to the HSP.** If at any time during the Term, Company desires to change the HSP, before the proposed changes become effective (a) Company must comply with [34 TAC §20.14](#); (b) the changes must be reviewed and approved by Board; and (c) if Board approves changes to the HSP, this Agreement must be amended in accordance with **Section 12.6** to replace the HSP with the revised subcontracting plan.
- 10.26.2 **Expansion of Work.** If Board expands the scope of Work through a change order or any other amendment, Board will determine if the additional Work contains probable subcontracting opportunities *not* identified in the initial solicitation for Work. If Board determines additional probable subcontracting opportunities exist, Company will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of [34 TAC §20.14](#) before (a) this Agreement may be amended to include the additional Work; or (b) Company may perform the additional Work. If Company subcontracts any of the additional subcontracting opportunities identified by Board without prior authorization and without complying with [34 TAC §20.14](#), Company will be deemed to be in breach of this Agreement under **Section 7** and will be subject to any remedial actions provided by Applicable Laws, including [Chapter 2161, Texas Government Code](#), and [34 TAC §20.14](#). Board may report nonperformance under this Agreement to the TPSS in accordance with [34 TAC §§20.101 through 20.108](#).
- 10.27 **Responsibility for Individuals Performing Work; Criminal Background Checks.** Each individual who is assigned to perform Work under this Agreement will be an employee of Company or an employee of a subcontractor engaged by Company. Company is responsible for the performance of all individuals performing Work under this Agreement. Prior to commencing Work, Company will (1) provide Board with a list (**List**) of all individuals who may be assigned to perform Work on Board's or Institution's premises and (2) have an appropriate criminal background screening performed on all the individuals on the List. Company will determine on a case-by-case basis whether each individual assigned to perform Work is qualified to provide the services. Company will not knowingly assign any individual to provide services on Board's premises who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. Company will update the List each time there is a change in the individuals assigned to perform Work on Board's premises.

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

- 10.28 **Office of Inspector General Certification.** Company acknowledges that Board is prohibited by federal regulations from allowing any employee, representative, agent or subcontractor of Company to work on site at Board'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, Company 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 Board's premises or facilities. Company 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 Board's premises or facilities. Company acknowledges that Board will require immediate removal of any employee, representative, agent, or subcontractor of Company assigned to work at Board'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://exclusions.oig.hhs.gov/>
- 10.29 **External Terms.** This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Company's performance or provision of goods or services under this Agreement (**External Terms**). External Terms are null and void and will have no effect under this Agreement, even if Board or its employees, contractors, or agents express assent or agreement to External Terms. External Terms include any shrinkwrap, clickwrap, browsewrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that Board or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Company.
- 10.30 **INTENTIONALLY OMITTED**
- 10.31 **Discrimination Prohibited.** Board and Company will abide by the requirements of [41 CFR §§60-1.4\(a\)](#), [60-300.5\(a\)](#) and [60-741.5\(a\)](#) (collectively, **Regulations**). The regulations (1) prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and (2) prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, the regulations require that Board and Company take affirmative action to employ and advance in employment, individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability
- 10.32 **Access to Documents.** To the extent applicable to this Agreement, in accordance with §1861(v)(1)(i) of the Social Security Act ([42 USC §1395x](#)) as amended, and the provisions of [42 CFR §420.300 et seq.](#), Company 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 Company 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.
- 10.33 **Company Certification regarding Boycotting Israel.** Pursuant to Chapter 2270, *Texas Government Code* Company certifies Company (1) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. Company acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

10.34 **Company Certification regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, *Texas Government*, Company certifies Company (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Company acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

10.35 **Other Remedies.** The remedies provided for in this Agreement, including the rights of cancellation or termination, are in addition to any other remedies available to either party under law or equity, by statute or otherwise. The decision by a party to seek one or more remedies shall not preclude the pursuit of other available remedies by that party.

Board and Company have executed and delivered this Agreement to be effective as of the Effective Date.

BOARD:

COMPANY:

THE UNIVERSITY OF TEXAS SYSTEM

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Attach:

- EXHIBIT A** – Request for Proposal
- EXHIBIT B** – 457(f) Retirement Plans
- EXHIBIT C** – Prototype Plans
- EXHIBIT D** – HUB Subcontracting Plan

EXHIBIT A

SCOPE OF WORK

[Note: Provide a detailed description and break-down of all tasks Contractor is to perform and technical standards for the tasks, if appropriate.]

EXHIBIT B

457(f) Retirement Plans

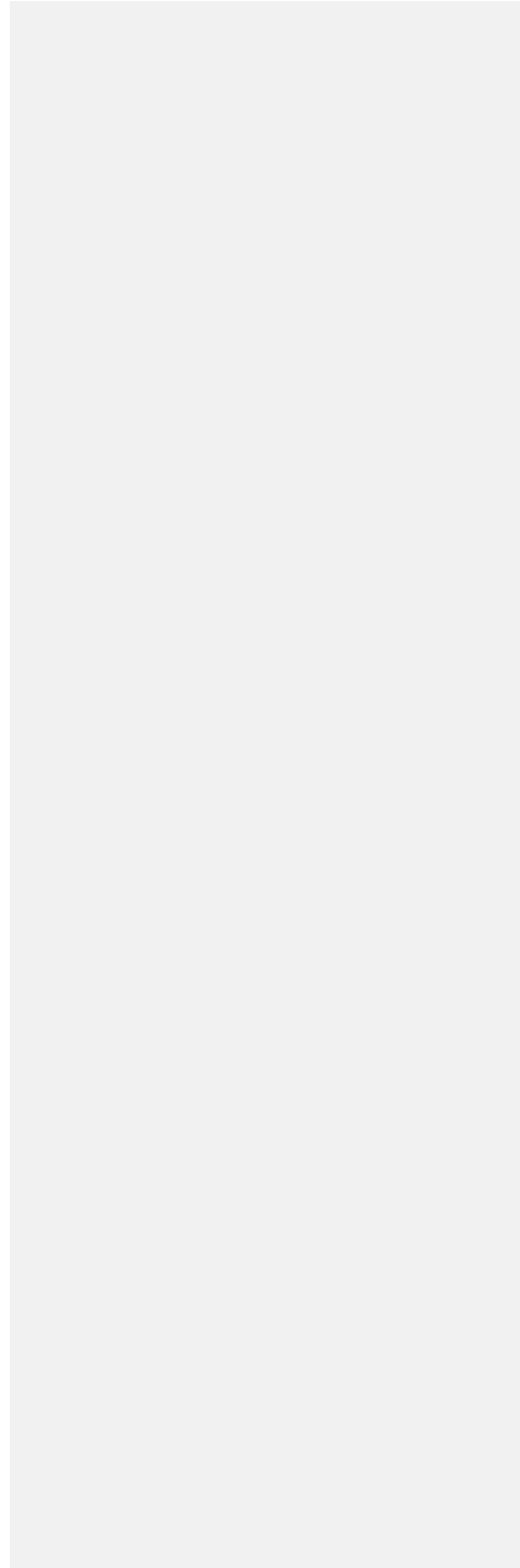


EXHIBIT C
Prototype Plans

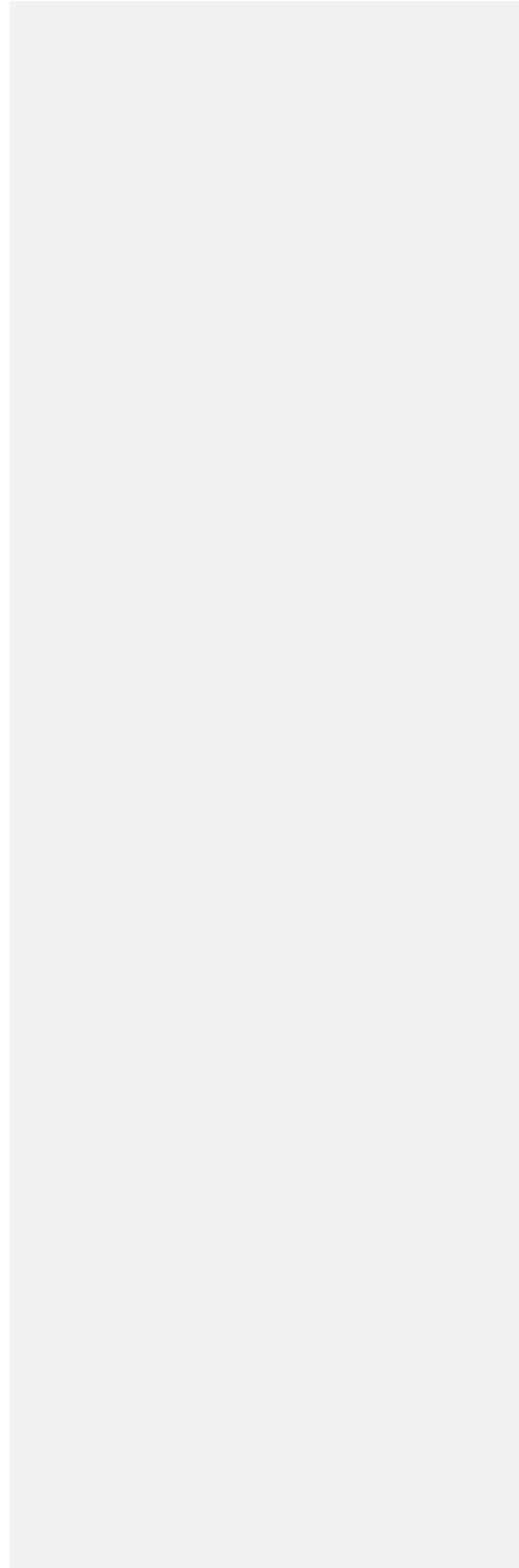
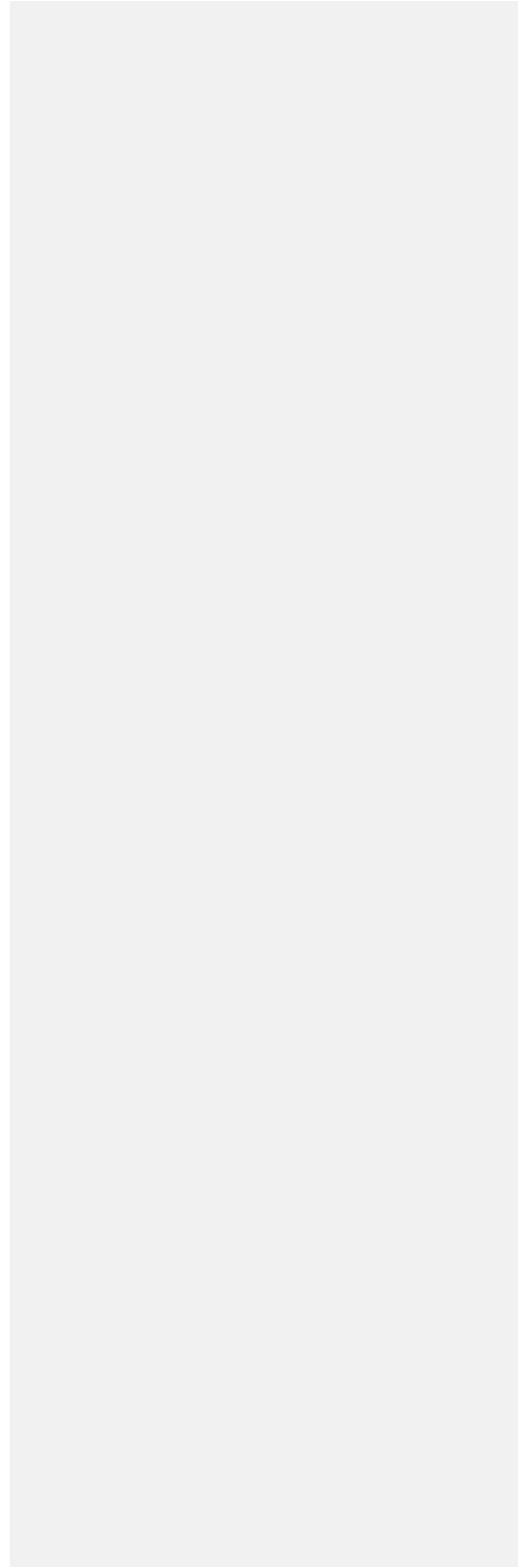


EXHIBIT D

HUB Subcontracting Plan



INFORMATION SECURITY

THIRD-PARTY ASSESSMENT SURVEY

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

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

Name & Description of Service/Product: _____

Describe the Target Users for the Service/Product: _____

Technical Description (client, agent, SSL, FTP, hosted website, ASP, cloud computing, etc.): _____

Other Customer Software Required to Run the Product/Service: _____

Describe Pertinent Outsourced/Contracted Service Arrangements: (such as: support, cloud services, third-party applications, etc.) _____

Describe Security Features/Testing/External Assessments: _____

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

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

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

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

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

Retirement Program Sales Solicitation Agreement



Please complete this form in its entirety. This agreement is not valid until the Office of Employee Benefits at UT System has accepted and acknowledged its receipt.

Send form to: **UT System Office of Employee Benefits**
210 W 6th St, Ste. B.140E
Austin, TX 78701
Or fax to: **(512) 579-5016**

ACKNOWLEDGEMENT and CERTIFICATION

As a representative of the Vendor indicated below, I agree that I will:

- Conduct myself in a professional manner and in accordance with the Regents' Rules and Regulations of The University of Texas System (U.T. System) and U.T. System institutions regarding sales activities; and
- Familiarize myself with and conduct my professional activities in accordance with U.T. System policies regarding sales activities.

I will not engage in the following activities:

- In-person, promotional cold-calls on employees;
- Promotional telephone calls to employees that interfere with the academic or institutional programs and activities of the U.T. System institution;
- Utilize the U.T. System institutional internal mail or electronic mail system for solicitation purposes; or
- Provide gifts or monetary directly or indirectly to any employee of the U.T. System for information on newly eligible employees.

I understand that an employee may request that a Vendor representative provide information about proposed plans or coverages to them during working hours, provided that such presentations do not disturb or interfere with the normal business of the U.T. System Institution. Any meetings to disseminate information about the UT Optional Retirement Program (ORP) are to be sponsored by either the U.T. System or a U.T. System Institution. Activity at such meetings is limited to providing information about the UTSaver Tax Sheltered Annuity (TSA), the UTSaver Deferred Compensation Plan (DCP) or the UT Optional Retirement Program. Any additional services must be provided outside of work hours.

I understand that any complaints indicating that I have not complied with the requirements of this agreement will be investigated by either the U.T. System Institution or the U.T. System Office of Employee Benefits. I understand that if I am found to have willfully or repeatedly violated the Regents' Rules and Regulations I may be suspended or disqualified from any sales or related activity at the U.T. System or at any U.T. System Institution, at the discretion of the U.T. System Office of Employee Benefits. I understand that multiple violations of these provisions by me may result in the removal of the Vendor I represent from the U.T. System's list of currently authorized Retirement Program providers.

To be completed by FINANCIAL ADVISOR

Signature (Financial Advisor) _____ Date _____

Print Name _____

Address _____

City _____ State _____ Zip _____

Phone Number _____

Email address _____

To be completed by Designated UT ACCOUNT MANAGER

Vendor Name _____

Signature (Designated UT Account Manager) _____

Print name _____

Institutions Authorized for Activity:

- | | |
|---|--|
| <input type="checkbox"/> UT System Administration | <input type="checkbox"/> UT San Antonio |
| <input type="checkbox"/> UT Arlington | <input type="checkbox"/> UT Tyler |
| <input type="checkbox"/> UT Austin | <input type="checkbox"/> UT Southwestern Medical |
| <input type="checkbox"/> UT Brownsville | <input type="checkbox"/> UT Medical Branch |
| <input type="checkbox"/> UT Dallas UT | <input type="checkbox"/> UT Health (HSC-Houston) |
| <input type="checkbox"/> UT El Paso | <input type="checkbox"/> UT HSC San Anton |
| <input type="checkbox"/> UT Pan American | <input type="checkbox"/> UT M.D. Anderson |
| <input type="checkbox"/> UT Permian Basin | <input type="checkbox"/> UT HSC Tyler |

To be completed by THE OFFICE OF EMPLOYEE BENEFITS

Agreement Accepted Agreement NOT Accepted

Retirement Program Representative _____ Date _____

University of Texas Quarterly Mutual Fund Report

Quarter:

Year:

Fund Name	Ticker	Morningstar Category	Investment Return						
			3 Month	YTD	1-Year	3-Year	5-Year	10-year	3 Month

YTD	Peer Percentile Rank				Meets 3 yr	Meets 5 yr	If No, then for	Exp Ratio	Category	Percent Fund Revenue
	1-Year	3-Year	5-Year	10-year	IPS Req (Y/N)	IPS Req (Y/N)	how many Qtrs		Expense Ratio	

Management in place
3 years or more?
(Y/N)

Short term
Redemption Fees?
(Y/N)

Participants
Contributing

Participants
with Balance

Total Fund
Balance

Passive/
Index Fund
(Y/N)

Default
Fund
(Y/N)

University of Texas Quarterly Variable Annuity Report

Quarter:

Year:

Fund Name	VA Fund Identifier	Morningstar Category	Investment Return						
			3 Month	YTD	1-Year	3-Year	5-Year	10-year	3 Month

YTD	Peer Percentile Rank				Meets 3 yr	Meets 5 yr	If No, then for	Exp Ratio	Category	Percent Fund Revenue
	1-Year	3-Year	5-Year	10-year	IPS Req (Y/N)	IPS Req (Y/N)	how many Qtrs		Expense Ratio	

Management in place
3 years or more?
(Y/N)

Short term
Redemption Fees?
(Y/N)

Participants
Contributing

Participants
with Balance

Total Fund
Balance

Passive/
Index Fund
(Y/N)

Default
Fund
(Y/N)

Instructions for the University of Texas System Quarterly Fund Performance Report

Information Requested:

Fund Name:	The publicly known name of the Mutual Fund (MF) or Variable Annuity (VA) product
Ticker/Identifier:	The public-traded Ticker symbol of the MF, or for VA, a common identifier for the fund.
Morning Star Category:	The category assigned to the MF or VA showing underlying securities.
Investment Return:	Provide the market returns for the MF or VA products for the period described, from 3-month through 12-month
Peer Percentile Rank:	Provide the peer rankings for performance of the MF or VA for the same periods as described in the investment return
Meets the 3-Year Investment Policy Statement Requirements (IPS) (Y/N)	Does the MF or VA product meet the 3-year IPS requirements (Y/N)
Meets the 5-Year IPS requirements:	Does the MF or VA product meet the 5-year IPS requirements (Y/N)

If no for either of the above, please indicate how many quarters it has not been compliance with the IPS.

Exp Ratio:	Please provide the net expense ratio for the fund paid by the participant.
Category Expense Ratio:	Please provide the average expense ratio for a MF or VA product in the same category
Percent Fund Revenue:	Percentage of revenue generated for the provider by MF or VA product
Management in place more than 3 years?	Has the management team of the MF or VA product been in place at least 3 years (Y/N)
# Participants Contributing:	Number of participants actively contributing to the fund
# Participants with a Balance:	Participants, active or inactive, with a balance in the MF or VA product

Total Fund Balance:

Total balance in the MF or VA product as of quarter end.

Passive Index Fund:

Is this a passively managed MF or VA product? (Y/N)

Default Fund:

Is this a default MF or VA product for UT employees who do not actively select a fund.

For any instances where the answer to a Y/N is "NO" please provide commentary under separate cover.

10 year reporting periods.

vestment Return.

PART 1: Plan Summary

	Aggregate Account Balance	Account Contributions	Quarter Balance Per P		
	Quarter	Quarter	MF	VA	FA
ORP EE					
ORP ER					
UTGRA EE					
UTGRA ER					
TSA					
DCP					

PART 2: DCP Loan Default Summary

DCP Loan Defaults

Campus Location Participant Name Last Four SSN Orig Lo: Outstanc Loan

PART 3: Administrative Summary

Remittance Proc
Delays over 24 hrs
SPARK File
Delays over 3 days
Trans Exceeding 3 days
Loans
Hardship/Emer WD
QDROs
Dist/Trans
70 1/2
Telephone Stats
Avg Time in Queue
Avg Aband Rate
Avg UT spec calls
New Participant Rpt
Over 30 days
Over 60 days
Parts in default
Vendor Services
Campus Events
Ind. Appts.
Complaints
Total written/email
Total phone
Avg time to resolve
Exc. 30 days

Product Type	Gross Asset-Based Revenue Amounts			Participation	
	MF	VA(Include M&	Brokerage (Fees and F	Contributing Parts	Parts with a Balance

Default Date Dates Late Notices were sent

ADDENDUM 1

DATE: January 10, 2019
PROJECT: Investment Products and Services Providers for the University of Texas Retirement Program and The University of Texas System 457(f) Plans
RFP NO: 720-1806
OWNER: The University of Texas System Administration
TO: Prospective Bidders

This Addendum forms part of Contract Documents and modifies Bid Documents dated February 26th, 2018 with amendments and additions noted below.

Extension of Bid Deadline

Due to the posting of Addendum 1, the deadline for the RFP has been postponed to allow adequate time for bid preparation. Bid submittal deadlines listed on the cover page, Section 2.1 (Submittal Deadline), and Section 2.4 (Key Events Schedule) of the original bid documents shall now read:

NEW Submittal Deadline: Thursday, March 29th, 2018 at 2:30 PM, CST

Questions and Answers:

1. Question: Response Instructions. Understanding section 5 of the RFP has 5 subsections, is UT expecting a response to each subsection? If not, what sections does UT expect responses. Specifically is UT expecting the vendor to include a detailed response to each item within the Scope of Work.

Answer: *UT System expects a response confirming Proposer's ability to comply or not comply with the terms and conditions in the RFP. UT System expects a detailed and thorough response to any deviations in the Proposer's response and a thorough answer to all questions in the RFP.*

2. Question: Response Instructions. Can you confirm if a vendor is choosing to respond to option 3, both sets of plans, is UT expecting two complete separate RFP responses inclusive of all documents and appendix items. In this case, some of the documents in response will be identical.
- If two separate responses does each vendor respond only to applicable questions for plan types or does vendor only have to provide one response covering both plan both set of plans?

- Is each vendor required to submit the HUB subcontracting Plan twice if the bid represents option 3 both sets of plans?

Answer: *If a proposer wishes to submit a proposal for both the UT Retirement Program and UT System 457(f) Plans, then two separate and complete proposals must be submitted.*

*A separate HSP is required for each set of plans. Proposer needs to specify in the body of the HSP submittal email which plan the submitted HSP covers. See **Section 2.5.4** for HSP submittal address. In addition, Proposer must specify the name of the plan (Section 5.4) in the transmittal letter contained in the HSP. UT System strongly encourages Proposers to contact the HUB Coordinator listed in Section 2.5.3 should they need assistance or clarification.*

3. Question: HUB. Is each vendor required to submit the HUB subcontracting Plan twice if the bid represents option 3 both sets of plans?

Answer: *See response on Question #2.*

4. Question: Plan Design. Will UT consider reducing down to four vendors as part of this RFP?

Answer: *The reference to four (4) vendors reflects the minimum number of vendors that will be selected through this process.*

5. Question: Cost of Communications. Section 5.3.3 B b requires proposer to pay a proportionate amount of the cost of UT System's marketing and education materials for its retirement programs. Please clarify if this relates to expenses incurred by UT System or the proposer.

Answer: *This refers to the cost of marketing and education materials incurred by the plan for materials that would be available to all employees. For example, all vendors have previously collaborated together and with UT to produce educational materials, and the cost of production and publication was shared proportionately by all providers.*

6. Question: UT System-Specific Website. Section 5.3.2 C requires testing to be completed no later than July 1, 2018. Does this apply to incumbent providers as well?

Answer: *Yes.*

7. Question: Investment Lineup. Section 5.3.1B g requires that proposed lineup include applicable information identified in Appendix 12 for the UT Retirement Program. Should proposers assume the same applies to the UT System 457(f) Plans?

Answer: Section 5.3.1BG, citing Appendix 12, applies only to the UT Retirement Programs.

The 457(F) plan does not have that requirement.

8. Question: Provide the total dollar amount of assets that can be transferred to another provider at the direction of the plan sponsor per plan across all vendors.

Answer: *Currently there is no total dollar figure applied to this.*

9. Question: Provide the total dollar amount of assets that require the participant to initiate an asset transfer to move to another provider per plan across all vendors.

Answer: *Currently there is no total dollar figure applied to this.*

10. Question: Provide the total annual distributions per plan across all vendors over the past three years.

Answer: *This information is not readily available.*

11. Question: Provide the total fixed assets per plan across all vendors that can be mapped.

Answer: *This information is not readily available.*

12. Question: Provide the total number of eligible participants per plan.

Answer: *The University of Texas has approximately 100,000 employees state wide that are eligible for the voluntary retirement plans.*

UT System does not have requested information for the 457 (F) Plan. The Plan defines Eligible Employee as “a person employed by the Institution, with the approval of the Executive Vice Chancellor, to be a member of a select group of management or highly compensated employees and who is designated by the Institution to be an Eligible Employee under the Plan.”

13. Question: Is there an IPS we should adhere to when suggesting the fund line up? If so, please provide a copy.

Answer: *See ADDENDUM TWO.*

14. Question: Please clarify how proposers submitting a response to both sets of plans should deliver their response to UT Systems (i.e. two separate deliveries).

Answer: *If a proposer wishes to submit a proposal for both the UT Retirement Program and UT System 457(f) Plans, then two separate and complete*

proposals must be submitted. Both submissions can be delivered at the same time.

15. Question: How will addenda be provided? Will they be sent to a contact, or will there be a website?

Answer: *All Addenda will be posted at the following website:*
<http://www.txsmartbuy.com/sp/1806>

16. Question: Is the University of Texas System open to entertaining alternative bids to Retirement Manager?

Answer: *Yes.*


17. Question: Regarding section 5.3.2-subsection B-Employee Education & Communication Strategy- Please explain the process for the marketing & communication team and how the collaboration between the UT System and retirement Contractors will work.

Answer: *Periodically all Providers and UT collaborate together to create educational materials about the Retirement Program. The purpose is to promote a plan-centric Program as opposed to a vendor-centric Program. Additionally, each campus works closely with Providers to create educational seminars and learning opportunities for their employees.*

18. Question: Please explain the fee structure UT System would like to see as a result of this RFP.

Answer: *Currently the UT Retirement Program operates on an asset-based fee structure. UT System is interested in exploring any alternate fee structures.*

END OF ADDENDUM 1

Office of Employee Benefits	Investment Policy Statement University of Texas System Retirement Program	840
Administrative Manual	EFFECTIVE DATE: MARCH 1, 2010	
	REVISION DATE: DECEMBER 31, 2011	
	PURPOSE: To establish the investment structure and document the guiding principles for the selection, ongoing monitoring, and replacement of Investment Options.	
	SCOPE: Employees of The University of Texas System	
	STATUTORY AND ADMINISTRATIVE REFERENCES: Internal Revenue Code of 1986, Section 403(b); Internal Revenue Code of 1986, Section 457 (b); <i>Texas Government Code</i> , Subchapter D, Chapter 609 <i>Texas Administrative Code</i> , Chapter 25	

THE UNIVERSITY OF TEXAS SYSTEM

Office of Employee Benefits

POLICY AND PROCEDURES MEMORANDUM

DATE: March 1, 2010

TO: System Administration Officials
Institutional Chief Business Officers
Institutional Chief Human Resources Officers

FROM: Office of Employee Benefits

SUBJECT: Investment Policy Statement

1. PURPOSE

The purpose of the Investment Policy Statement (IPS) is to establish the investment structure and document the guiding principles for the selection, ongoing monitoring, and replacement of Investment Options.

It is intended that the IPS be reviewed, at least annually, and updated as necessary and made available to Participants upon request.

2. RETIREMENT PROGRAM INFORMATION

The University of Texas System Retirement Program (Retirement Program) is comprised of the following plans:

- Mandatory 403(b) Optional Retirement Program (available to eligible employees only)
- University of Texas System Governmental Retirement Arrangement (available to eligible employees only)
- Voluntary UTSaver 403(b) Tax Sheltered Annuity (available to all employees)
- Voluntary UTSaver 457(b) Deferred Compensation Plan (available to all employees)

The Retirement Program is intended to provide Participants the opportunity to generate the long-term accumulation of retirement savings through contributions to the individual accounts and the earnings thereon.

3. DEFINITION OF KEY TERMS

Participant means an employee of The University of Texas System, which includes its component institutions, who is eligible for and has chosen to participate in the Retirement Program.

Plan Sponsor means The University of Texas System.

Retirement Provider means a company selected by the Plan Sponsor to provide Investment Options and services to the Retirement Program Participants.

Investment Option means one of the actual investment choices offered by a Retirement Provider which is available to a Participant for investment. Investment Options may consist of (a) a traditional annuity contract with fixed interest crediting to an account balance (b) variable account annuity contract with multiple subaccount funds from which to choose investment selections and (c) direct investments as allowed like mutual funds, stocks, bonds, cash equivalents etc.

4. RESPONSIBILITIES

4.1 Plan Sponsor Responsibilities:

- Retirement Program structure
- Retirement Provider selection
- Administration of the Retirement Program
- Monitoring of Retirement Providers and Retirement Program
- Monitoring of Investments Options in conjunction with the Retirement Providers and the investment consultant; including designating default investment options when appropriate.

4.2 Retirement Provider Responsibilities

- Offer Investment Options and funds within such option that reflect broad diversification opportunities
- Limit redundant fund options within an asset class
- Monitor and report on fund performance and overall participant activity to the Plan Sponsor at least annually in a format or template approved by the Plan Sponsor
- Identify funds that do not meet the investment criteria and provide recommendations for appropriate action at least quarterly
- Report to the Participants on a periodic basis the return performance and other data pertaining to its Investment Options in conjunction with the Plan Sponsor
- Communicate at least annually to Participants invested in a default investment option, explaining that other investment options are available

4.3 Participant Responsibilities

Each participant has the following responsibilities:

- Determine the amount of compensation to contribute to the voluntary plans
- Select investment choices based upon their own individual needs, goals, time horizon, and risk tolerances
- Monitor the investment selections by reviewing the quarterly participant statements
- Schedule periodic reviews with the retirement Provider(s).

5. OBJECTIVE AND DESIGN

The objective of the Plan Sponsor is to have each Provider offer investment options that will allow the construction of retirement portfolios suitable for a wide range of employee

retirement needs, goals and investment acumen. The investment options offered by a Provider shall be part of a Mutual Fund, Annuity Contract and/or Self-Directed Brokerage Platform

5.1 Investment Platforms:

a. Mutual Fund Investments Platform---This is a platform consisting of a specific listing of mutual funds assembled by the Provider. Participants may build retirement portfolios using one or more of the mutual funds made available by this platform.

b. Annuity Contract Investments Platform---This is a platform consisting of both fixed annuity investments and a specific listing of variable annuity subaccount fund investments, assembled by, and provided through an annuity contract (or contracts) issued by the Provider. Participants may build retirement portfolios using the fixed annuity benefits and/or using one or more of the variable annuity subaccount funds offered by the annuity contract.

c. Self-Directed Brokerage Investments Platform--- This is a platform whereby numerous mutual funds and individual securities are available for Participant investment. It is expected that the vast majority of Participants will be well served using only the Mutual Fund Investments and/or the Annuity Contract Investments Platforms to build their retirement portfolio. For those Participants needing or desiring an expanded investment array to build their retirement portfolio, the Self-Directed Brokerage Investment Platform is available. Additional conditions, requirements and fees apply to this investment platform.

5.2 Asset Class

It is intended that appropriate broad asset classes (suitable for retirement portfolio construction and diversification) will be represented by the mutual fund options and the variable annuity subaccount fund options available under the Mutual Fund Investments and the Annuity Contract Investments Platforms.

5.3 Default Investment Option

The default investment option is used when an employee selects a Provider(s) but does not select a fund(s) to invest the contributions. The default investment option may vary depending upon the Provider(s) selected and the retirement plan selected.

5.4 Investment Menu Options

While providing both a high quality and variety of investment options within and among asset classes is important, it is also important to keep the absolute number of funds offered (whether by mutual fund platform or variable annuity contract platform) at a manageable level. Accordingly, the Plan Sponsor will use the services of the Providers and of an outside investment consultant to assist in the selection of

the specific investment funds that are made available through the Mutual Fund and Annuity Contract Platforms. The following quality control criteria shall also be applied to any fund:

- a. The fund must have at least three years of investment experience as of the proposed date of addition or can otherwise present comparable demonstrations of appropriate experience
- b. The fund must have a return performance rank in the top first or second performance quartile within its asset class to which it is assigned as defined by Morningstar for either the five or three year period as of the proposed date of addition
- c. The fund must have a total expense ratio (i.e. the total of all fund management fees, 12b-1 fees, annuity contract M&E fees and other fees, less expense waivers) that is equal to or less than its asset category average as reported by Morningstar.
- d. The Morningstar asset class information used for fund expenses and performance results shall also assign funds to either mutual fund or variable annuity subaccount data for peer groupings as appropriate (i.e. mutual funds will be compared to other mutual funds and variable annuity subaccounts will be compared to other variable annuity subaccounts).
- e. The fund must not have a life insurance feature.

6. INVESTMENT MONITORING

Each specific option available within a given mutual fund or variable annuity subaccount fund menu shall be offered based upon its overall value within its asset class category. While frequent change in specific options is neither expected nor desirable, monitoring the investment performance is a fluid process as it is expected that investment options will be deleted and added from time to time as part of an ongoing evaluation process.

The value of an offered investment option will be based upon the following:

- Return performance rank shall be consistent with the criteria in the investment selection
- Total expense ratio shall be consistent with the criteria in the investment selection
- Risk characteristics
- Longevity, stability and experience of fund managers or other key professional staff
- Record of regulatory compliance
- Consistency of style within asset class
- Any other appropriate consideration

If a Provider determines that a fund does not meet the monitoring criteria, it will be placed on a watch list. Fund(s) placed on the watch list must be reviewed by the Provider every 90 days and recommendations made to the Plan Sponsor regarding appropriate action whether deletion, replacement or continued watch list monitoring.

The Providers will strive to use consistent return, benchmark, risk and style measurement metrics (Sharpe Ratio, upside/down side market capture ratio, standard deviation) in providing their recommendations to the Plan Sponsor.

Final decisions as to deletions and additions will be made by the Plan Sponsor. Decisions cannot be made by formula and will be based on the judgment of the Plan Sponsor after weighing appropriate qualitative and quantitative factors and considering the input from Retirement Providers and the investment consultant.

7. SELF-DIRECTED BROKERAGE ACCOUNTS

The option of using Self-Directed Brokerage Accounts (SDBA) is available within the Retirement Program. However, the investment options offered through the SDBA are not subject to the investment selection or monitoring standards set forth in this IPS.

Each Participant who elects to use a SDBA will sign an agreement with the selected Provider that certifies the Participant understands that the investment decisions within the SDBA are solely the Participant's responsibility.

8. EDUCATION

Regular investment education is critical and is provided to Participants in the following ways:

- Onsite meetings at the local institutions with Provider representatives
- Education from the Providers directly to the Participants invested with their company
- Electronic newsletters distributed by the Plan Sponsor
- Plan Sponsor website
- Online Fund Performance Summary
- Online enrollment