



THE TEXAS A&M UNIVERSITY SYSTEM

Office of HUB & Procurement Programs

REQUEST FOR PROPOSAL
RFP NUMBER: RFP01 SBA-21-097
Medical Review Services

PROPOSAL MUST BE RECEIVED BEFORE:
2:00 P.M. Central Time (CDT), March 29, 2021

EMAIL RFP RESPONSES TO:
SOPROCUREMENT@TAMUS.EDU
SUBJECT LINE: RFP01 SBA-21-097
Attn: Jeff Zimmermann

NOTE: PROPOSAL must be received by **The Texas A&M University System Office** of Procurement and HUB Program before the date and time specified for receipt of proposal in Section 2.3.

After the due date and time, only the names of Respondents will be made public.

REFER INQUIRIES TO:

Jeff Zimmermann, Director
The Texas A&M University System
Procurement & Business Services
email: soprocurement@tamus.edu

All proposals shall become the property of the State of Texas upon receipt. Proposals may be subject to public review after contracts have been executed. Refer to Section 4.15 for more information regarding public information.

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SECTION 1 – INTRODUCTION

1.1 Introduction

The Texas A&M University System (“A&M System”) is interested in receiving responses to its Request for Proposals (RFP) from qualified vendors/firms (“Respondent” or “Respondents”) to provide a review of proposed medical services to employees, graduate student employees, retirees, and their dependents enrolled in the A&M Care plan, a self-insured, Preferred Provider Organization (PPO) employee group health plan, with a contract commencement date of May 1, 2021. The A&M System desires proposals that represent the best combination of quality and cost.

The A&M System currently contracts with BlueCross BlueShield of Texas for administration of the A&M Care self-insured medical plans and with Express Scripts for administration of the self-insured prescription drug plan.

Respondents may access the A&M System Office of Benefits Administration website at <https://www.tamug.edu/business/benefits-administration/> to review the details of the current health and prescription drug plans offered by the A&M System.

Proposals shall be in accordance with the terms, conditions, and requirements set forth in this Request for Proposal (RFP).

1.2 Background

The A&M System is one of the largest systems of higher education in the nation, with a budget of \$6.3 billion. Through a statewide network of 11 universities, a comprehensive health science center, eight state agencies, including the Texas Division of Emergency Management, and the RELLIS Campus. The A&M System educates more than 151,000 students and makes more than 22 million additional educational contacts through service and outreach programs each year. System-wide, research and development expenditures exceeded \$1 billion in FY 2019 and helped drive the state’s economy. More information about the A&M System and all of its members can be found at <http://www.tamug.edu/about/>.

1.3 Plan Background

The A&M System offers second opinion medical review services to employees, retirees and their enrolled dependents on the A&M Care, 65Plus and J plans. Currently, these services are provided by 2nd MD. 2nd MD offers medical second opinions with world-renowned specialists via video or phone conference in approximately 72 hours at no cost to the member. In addition, 2nd MD offers the REACH program, which is a comprehensive, proactive outreach program that aims to engage members who are on the path to a high-cost or high-impact medical event before it happens. It’s a solution that uses proven strategies to engage members who could benefit the most from a consultation with an expert who specializes in their condition.

1.4 Enrollment

The A&M System has a total of 31,575 enrolled employees and retirees. Employees, retirees and their enrolled dependents on the A&M Care, 65Plus and J plans should be eligible for the second opinion medical review services.

1.5 Purpose

This RFP provides detailed information about the A&M System and its benefit needs and provides

the required format for the vendor's response. Proposals containing deviations are strongly discouraged. If included, deviations must be identified and described in detail in order to be considered. While a proposal with minor deviations from the RFP will not be disqualified, preference will be given to prospective vendors whose proposals contain the fewest and least significant deviations from the requirements presented herein.

The intent of this RFP is to allow all Respondents to provide a sufficient amount of data that will enable the A&M System to assess the proposal and qualifications of the Respondent. To this end, each Respondent shall furnish, as a part of the proposal, a complete general description of experience in their respective fields.

By submitting responses, each Respondent certifies that it understands this RFP and has full knowledge of the scope and nature of the opportunity described herein. Each Respondent also certifies that it understands that all costs relating to preparing and responding to this RFP will be the sole responsibility of the Respondent.

Respondent is to independently investigate and verify, at its own discretion, all information acquired from the A&M System or from any other source which is relied on by Respondent in the preparation of its proposal.

1.6 Benefit Philosophy

The A&M System's benefit programs are viewed as an important part of the total compensation package. It is expected that the benefits offered will attract new employees, promote the retention of career employees and reward retired employees for their service. Therefore, superior quality and responsiveness to participants' needs are essential.

The A&M System is committed to providing eligible employees, retired employees and their dependents access to group benefit plans of the highest quality at the lowest possible cost to the A&M System and to its employees. The manner in which the programs are funded demands strict containment of costs in order to maximize benefits for the beneficiaries. Funding is derived from the statutory contribution of the state of Texas, personal payments by participants (payroll deduction or accounts receivable), and plan reserves.

The self-insured A&M Care health plan and prescription drug plan are available to all benefit-eligible employees, retirees, and their dependents at all System Members. The authority to plan, implement and control the A&M System's benefit programs has been assigned to the Director of System Benefits Administration. The Associate Directors, reporting to the Director, have the responsibility to assist with the design and development of System wide health plans, and for the operation and administration of other employee benefit plans.

The System Benefits Administration (SBA) staff monitors plan experience, negotiates carrier contracts, and maintains official records, and ensures quality, efficiency, and statutory compliance in the benefit plans. SBA also maintains, reports, and analyzes claims and financial data related to the plans. It is the responsibility of each System Member to inform employees and retirees of their insurance eligibility, advise them about options and perform enrollment and counseling functions. These activities are usually performed in the Human Resource and/or Payroll departments of each System Member.

The A&M Care plans are not ERISA. However, for the most part, we do comply with ERISA.

One tool to provide the A&M System administration with a continuous evaluation of benefit plans is the System Employee Benefits Advisory Committee (SEBAC). SEBAC consists of representatives from each System Member, retired employee representatives, and ex-officio members. Meetings

are held several times per plan year between September and May to update participants on new developments and provide a forum for public comment. The conclusions of the committee are forwarded as recommendations to the Director for consideration or action.

1.7 RFP Calendar Of Events

Issue RFP	March 4, 2021
Deadline to Submit Questions	March 12, 2021
Release of Addendum (if applicable)	March 16, 2021
Deadline for Receiving Proposals.....	March 29, 2021 by 2:00 PM CDT
Finalist(s) notification (if necessary)	by April 7, 2021
Interview Top Proposal Teams (A&M System's Option)	April 12, 2021
Anticipated Award Date.....	April 16, 2021

The A&M System will make every effort to adhere to the above schedule. The schedule, however, is subject to change. This may be in the event that further clarification of responses or terms of contract are in the best interest of the A&M System and/or in the event the A&M System requires more time to assure that the selection of the Respondent is in accordance with its policies, rules and regulations, as well as actual timing needs.

1.8 Priorities/Expectations

Respondents should note the following priorities/expectations with regard to the possibility of the A&M System establishing a contractual relationship with any Respondent:

- (a) *Ensuring a High Quality of Service.* This priority encompasses the quality of service that can be provided to the A&M System in a timely, cost effective manner. The A&M System is seeking a Respondent that will ensure the provision of such quality in its delivery of service through proven techniques and established metrics.
- (b) *Past Experience and Expertise.* Respondent must demonstrate its capabilities in providing the utmost level of experience and expertise to ensure a successful project as determined by the A&M System.
- (c) *Delivery Efficiency and Total Costs.* Respondent must demonstrate its ability to deliver the required services in a cost-effective and timely manner while not sacrificing the quality required by the A&M System.
- (d) *Financial Stability.* Respondent must demonstrate its financial stability and capabilities in providing the required services.

1.9 Period of Performance

An initial period of performance under a contract pursuant to this RFP will commence on May 1, 2021 and extend through August 31, 2024. Fees, expense schedules, charges, and management arrangements must be guaranteed for the initial period through August 31, 2024. Assuming satisfactory performance and terms and fees are mutually agreed upon in writing prior to the expiration of the agreement, an affirmative renewal for up to three years may be allowed. In the event of successive affirmative renewal(s), the maximum period of performance pursuant to this RFP ends August 31, 2026. Any renewal must be agreed to in writing by both parties.

SECTION 2 - INSTRUCTION FOR RESPONDENTS

2.1 General Information

This RFP outlines the services and proposal requirements in Section 3. Proposals are to be in accordance with the outline and specifications contained herein, are to remain in effect a minimum of 180 days from the date of submission, and may be subject to further extensions as negotiated. A statement to this effect should be contained in the Respondent's cover letter.

Each proposal shall be prepared simply and economically, providing a straightforward and concise description of the Respondent's ability to meet the requirements of this RFP. Emphasis shall be on completeness, clarity of content and responsiveness to the offer requirements.

This RFP contains specific requests for information. Respondents are encouraged to examine all sections of this RFP carefully, in that the degree of interrelationship between sections is critical. In responding to this RFP, Respondents are encouraged to provide any additional information they believe relevant.

Clause headings appearing in this RFP have been inserted for convenience and ready reference. They do not purport to define, limit or extend the scope or intent of the respective clauses. Whenever the terms "must", "shall", "will", "is required", or "are required" are used in the RFP, the subject being referred to is to be a required feature of this RFP and critical to the resulting submittal.

In those cases where mandatory requirements are stated, material failure to meet those requirements could result in disqualification of the Respondent's response. Any deviation or exception from RFP specifications must be clearly identified by the Respondent in its submittal.

Expenses for developing and presenting proposals shall be the entire responsibility of the Respondent and shall not be chargeable to the A&M System. All supporting documentation submitted with this submittal will become the property of the A&M System.

By submitting a proposal, Respondent agrees that Respondent and Respondent's employees and agents are independent vendors and have no employer-employee relationship with the A&M System. The A&M System shall not be responsible for the Federal Insurance Contribution Act payments, federal or state unemployment taxes, income tax withholding, Workers' Compensation Insurance payments, or any other insurance payments, nor will the A&M System furnish any medical or retirement benefits or any paid vacation or sick leave.

The A&M System reserves the right to alter the specifications of its benefit programs and subsequently negotiate with the selected Respondent as needed to comply with any required changes.

In the event the selected organization fails to perform any of its duties or obligations as provided by the contract which will include the RFP and the Respondent's response to the RFP, the A&M System without limiting any other rights or remedies it may have by law, equity or under contract, shall have the right to terminate the contract immediately. The selected organization understands and acknowledges that, notwithstanding any termination of the contract, certain obligations shall survive the termination of the contract.

In addition to and without restricting or waiving any other legal, contractual or equitable remedies otherwise available to the A&M System, the A&M System may terminate the contract without cause by giving the selected organization ninety (90) days written notice.

In the event of a change in condition which may affect the second opinion medical review services for which proposals are solicited, the A&M System will expect a good-faith effort from any Respondent selected, to absorb additional liabilities during the term of the contract without requiring rate increases until the next following renewal date. Such changes in condition include, but are not limited to, the following:

- Rules of the Texas Department of Insurance.
- Opinions of the Attorney General of the state of Texas.
- Federal and State statutes, court decisions and regulations from agencies and departments that may affect employment and benefit programs.

2.2 Examination of the Request for Proposal

Before submitting, each Respondent will be held to have examined the A&M System requirements outlined in this RFP, and satisfied itself as to the existing conditions under which it will be obligated to perform in accordance with specifications of this RFP.

No claim for additional compensation will be allowed due to unfamiliarity with the specifications and/or existing conditions. It shall be understood that the Respondent has full knowledge of all the existing and/or revised conditions and accepts them "as is."

2.3 Proposal Submission Instructions

Submission Requirements

All proposals must be received by the A&M System, no later than **2:00:00 p.m. CDT, March 29, 2021** electronically via email to soprocurement@tamus.edu with the subject line of **"RFP01 SBA-21-097 – Medical Review Services"**. The sent time indicated within the A&M System email server shall be used for the receipt and acceptance of the response. **Late proposals will not be considered under any circumstances.**

Proposal Components

The following components are to be returned as part of your proposal response. **Failure to include these documents will be basis for response disqualification.**

I. Proposal (Section 3.8)

II. Forms

- ✓ Signed Execution of Offer (Exhibit A)
- ✓ Non-Collusion Affidavit (Exhibit B) signed and notarized
- ✓ HUB Subcontracting Plan (Section 3.9)

Submittal Format

The submittal shall be saved as two separate files in Adobe Portable Document Format (PDF) unless specified otherwise for items within Section 3.8. The first file shall contain the Proposal (Section 3.8) and named **"company name – Proposal SBA-21-097"**. The second file shall contain the Execution of Offer, Non-Collusion Affidavit, and the HUB Subcontracting Plan and named

“company name – Forms SBA-21-097”. All files provided in response to Section 3.8 should be provided in the specified format (excel, text file, etc.). Deviations from the specified formats in this section are not permitted.

- The Proposal must include all items listed within Section 3.8 (*a. through l.*) and labeled as such with a divider page to include the underlined titles in *a. through l.*, i.e. “a. Contact Information”.
- Information or exhibits you wish to provide that are not specifically requested in *Items a. through Section l.* should be included at the end of the proposal behind a divider page entitled “m. Supplemental Information”.

Respondents are instructed to respond using the Proposal format included in this RFP in order to expedite analysis and comparison of proposals received. Failure to use the stated format or failure to provide complete responses, may, at the A&M System’s option, disqualify the Respondent.

Note: Additional information regarding the Execution of Offer and Non-Collusion Affidavit.

Execution of Offer: The signature in the Execution of Offer within the electronic copy shall serve as the official signature of record. Signature can be done electronically with DocuSign, Adobe or another similar tool.

Non-Collusion Affidavit: The Respondent signature on this document may be done electronically with DocuSign, Adobe or another similar tool. While the document must also be notarized, this may be done at a later date due to the COVID-19 pandemic. An agreement may not be executed with the awarded Respondent until this document is fully signed and notarized.

2.4 **Inquiries and Interpretations**

All technical questions concerning this RFP are to be directed, in writing, to Jeff Zimmermann at soprocurement@tamus.edu. Respondent may not contact other individuals at the A&M System to discuss any aspect of this RFP, unless expressly authorized by the A&M System Procurement & HUB Program office to do so. Questions regarding the RFP, including questions for more data or information beyond that included in this RFP and attachment, shall also be presented in writing as stated above. **Deadline for submission of questions is March 12, 2021.** The A&M System will publish all questions with responses according to the schedule in Section 1.7.

Responses to inquiries which directly affect an interpretation or change to this RFP will be issued in writing by addendum/amendment and posted to the Electronic State Business Daily (ESBD) at the following site.

<http://www.txsmartbuy.com/sp> (Input Agency Number “710” and select “Posted” for the Status)

All such addenda/amendments issued by the A&M System prior to the time that proposals are received shall be considered part of the RFP, and the Respondent shall consider and acknowledge receipt of such in their proposal. Only those inquiries replied to by formal written amendment/addendum shall be binding. Oral and other interpretations or clarification will be without legal effect. It is the responsibility of the interested vendors to regularly check the ESBD for any possible amendment/addendum to this RFP.

In the event an amendment/addendum is posted to the ESBD, Respondents are requested to acknowledge receipt of such amendment/addendum in the Addenda Acknowledgment section of the Execution of Offer (*Exhibit A*).

2.5 Selection Process

Proposals submitted in response to this RFP shall be evaluated on the basis of the criteria listed below with the selection being the proposal that the A&M System deems to represent the **best value** to the A&M System. The list of criteria is not exhaustive and is not listed in order of importance. While the criteria shall provide the basis for an objective evaluation of each proposal, the experience and judgment of the SBA staff and the evaluation committee shall also be important in the selection process.

- Compliance with the requirements listed in the RFP
- Physician Network
- Financial Strength and Stability
- Customer/Member services
- Past experience
- Costs
- Organizational flexibility
- References
- Finalist presentations
- Site visits

The A&M System is not required to select the lowest priced proposal, but will take into consideration other factors such as those enumerated above.

The RFP provides the information necessary to prepare and submit proposals for consideration by the A&M System. All properly submitted proposals will be reviewed, evaluated, scored and/or ranked by the A&M System. The A&M System may compile a final ranking of the Respondents in the order that they provide the overall “best value” to the A&M System based on an evaluation of the responses to the RFP. The A&M System may interview one or more of the top ranked Respondents as part of the evaluation process.

After proposal tabulation and such investigation of Respondents as the A&M System deems appropriate, an award may be made to the Respondent whose proposal it judges to represent the best value to the A&M System. Final determination for award of the contract will be made on the overall best value to the A&M System. The A&M System reserves the right to reject any or all proposals.

The selection of the successful proposal may be made by the A&M System on the basis of the proposals initially submitted, without discussion, clarification, or modification. In the alternative, selection of the successful proposal may be made by the A&M System on the basis of negotiation with any of the Respondents. The A&M System shall not disclose any information derived from the proposals submitted by competing Respondents in conducting such discussions.

All proposals must be complete and convey all of the information requested to be considered responsive. If a proposal fails to conform to the essential requirements of the RFP, the A&M System alone will determine whether the variance is significant enough to consider the proposal susceptible to being made acceptable, and therefore a candidate for further consideration, or not susceptible and therefore not considered for award.

A&M System may perform reference checks and seek further information, as needed from all Respondents whose proposals A&M System, at its discretion, considers viable, based on the initial

evaluation and scoring. The Respondent's response to this requirement officially authorizes A&M System to contact these organizations to discuss the services and other considerations which the Respondent has provided to such organizations and authorizes the organizations to provide such information to A&M System and Respondent shall and hereby does release and hold harmless A&M System, the state of Texas, and the organization of any and all liability whatsoever, in connection with providing and receiving all such information. Any negative responses received from reference checks may be grounds for disqualification of the proposal.

The A&M System may cancel this RFP or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous. The selection of the successful proposal may be made by the A&M System on the basis of the proposals initially submitted, without discussion, clarification, or modification. In the alternative, selection of the successful proposal may be made by the A&M System on the basis of negotiation with any of the Respondents. The A&M System shall not disclose any information derived from the proposals submitted by competing Respondents in conducting such discussions.

By submitting its proposal in response to this RFP, Respondent accepts the evaluation process and acknowledges and accepts that determination of the "best value" firm will require subjective judgments by the A&M System.

SECTION 3 – REQUIREMENTS & PROPOSAL

3.1 Required Services

Notwithstanding other sections of this RFP which describe administrative interactions, Respondents are advised of the administrative requirements listed in this section of the RFP. The selected Respondent will become responsible for these items and services to the A&M System upon the award of any contract. **Any cost associated with these items and services must be included in your proposal.**

- a. Communication materials necessary for the proper administration of the program subject to editing of format, content and final approval by the A&M System.
- b. Monthly, quarterly, and annual management reports, as agreed to by the A&M System and the Respondent.
- c. Assisting eligible members with receiving a review of proposed medical services.
- d. Process eligibility information via secure FTP.

3.2 Current Funding

The A&M System will provide funding for the Second opinion medical review services. The A&M System's plan year corresponds to the State and A&M System fiscal years, which begin on September 1, and ends on August 31st.

3.3 Annual Experience Accounting

Within 90 days after the end of each Contract Year, the Proposer shall provide the A&M System with a complete accounting of the utilization, savings, and cost associated with the Contract.

In addition, the Proposer shall provide the A&M System with any other experience data and accounting information that the System may reasonably require.

3.4 Contract Documents

Within three weeks from notice of award of this RFP, the awarded Respondent will provide a first draft of a services agreement ("Agreement") between both parties, HIPAA Business Associate Agreement (draft provided in Exhibit E), and any other required legal documentation to the appropriate A&M System Benefits Administration point of contact in electronic format (preferably MS WORD) for review and edits. **Submission and completion of these documents is not required as part of the RFP response.**

3.5 Eligibility

The A&M System will, in all cases, determine eligibility for coverage and effective dates of coverage in accordance with its rules and procedures. If these rules and procedures differ from those normally utilized by the Proposer, it is understood that the A&M System's determination will prevail.

3.6 Communications and Enrollment

The A&M System will conduct an annual enrollment period for its eligible employees during the month of July, for the plan year beginning the following September 1. Between twenty and twenty-five voluntary annual enrollment meetings are held across the state during the month of

July and the selected Respondent will be required to have personnel available to make presentations at some meetings. During this enrollment period, the successful bidder for the second opinion medical review services may wish to send promotional material, **approved in advance** by System Benefits Administration staff, to employees. The **approved in advance** requirement includes general material as well as any solicitation material developed specifically for A&M System employees.

As new communication materials are developed during the plan year, a request to send these materials to the employees must be submitted in writing to Benefits Administration staff along with copies of the proposed materials.

The A&M System will make personnel available during normal business hours to respond to inquiries regarding the status or eligibility of a participant.

3.7 Qualifications of Respondents

All entities must be able to demonstrate sufficient financial stature and operational capacity to accommodate the needs of the A&M System. To affirm financial capability, the Respondent must submit all documentation as requested in the Company Profile to be included in the RFP response (see Section 3.8d).

All entities responding to this RFP must certify (see Section 3.8i.) that they are licensed to do business in the state of Texas and permitted to contract with the State or any of its subdivisions.

3.8 Proposal

Respondents are instructed to respond using the proposal format included in this RFP in order to expedite analysis and comparison of proposals received. Failure to use the stated format or failure to provide complete responses, may, at the A&M System's option, disqualify the proposer.

A complete proposal shall consist of the following items:

- a. Cover Letter – This letter shall summarize interest and ability to provide the scope of this RFP, include a statement to the validity of the proposal, and provide a contact name for this RFP response, including title, address, telephone number, facsimile, and email address.
- b. Execution of Offer – The Execution of Offer provided in Exhibit A must be signed by Respondent's company official duly authorized and having the authority to legally bind and commit the proposing organization.
- c. Non-Collusion Affidavit - The Non-Collusion Affidavit provided in Exhibit B must be signed and notarized.
- d. Company Profile – Complete the Company Profile as provided in Exhibit C.
- e. Organizational Chart – Provide an organizational chart identifying the chain of authority through the company's CEO for this account. Include names, addresses, titles, email addresses and telephone numbers for each individual.
- f. Staffing – Describe the staff involved in the management of this account. Include names, titles, addresses, email addresses, and brief biographies of the following individuals or their organizational equivalents who will be assigned to the A&M System account(s):
 - Account executive

- Reporting/Analytics Representative
 - Communications manager
- g. Installation Team Staffing - Describe the installation team and provide the names, titles addresses, email addresses, and brief biographies of any individuals who are not included in *Section f.* above.
- h. References
- Provide the name, address, email address, and telephone number of the primary contact at two public entities or corporations and two major universities of similar size and with decentralized administration that are current clients of your company.
 - Provide two references, including the name, address, email address, and telephone number for the individual who will have primary responsibility for the A&M System account.
 - Provide the name, address, email address, and telephone number of the primary contact at two large accounts that have cancelled their coverage with your organization within the past year.

The A&M System may perform reference checks and seek further information, as needed from all Respondents whose proposals the System, at its discretion, considers viable, based on the initial evaluation and scoring. The Respondent's response to this requirement officially authorizes the A&M System to contact these organizations to discuss the services and other considerations which the Respondent has provided to such organizations and authorizes the organizations to provide such information to the A&M System and Respondent shall and hereby does release and hold harmless the A&M System, the state of Texas, and the organization of any and all liability whatsoever, in connection with providing and receiving all such information. Any negative responses received from reference checks may be grounds for disqualification of the proposal.

- i. Certification
- Certify that the proposing organization is legally able to contract with the State or any of its subdivisions.
 - Certify that no commissions, broker or finders fees are included in the quoted fees/premiums or will be paid to any individual, agency or company, if your company is selected to provide coverage for the A&M System.
 - Certify that use of the services being solicited in this RFP by any employee, retired employee, or dependent of the A&M System will not be limited or discouraged by "quota" or other restriction.
 - Certify against discriminatory selection or segregation of the total group of eligible employees of the A&M System by excluding, or seeking to exclude, or otherwise discriminating against any of the following classes:
 - Women: Title VII of the Civil Rights Act of 1964, as amended; Executive Order 11246 of 1965, as amended
 - Pregnant Women: Pregnancy Discrimination Act of 1978, PL95-555
 - Racial Minorities: Title VII of the Civil Rights Act of 1964, as amended
 - Aged and Retired: Age Discrimination in Employment Act of 1967, as amended; Tax Equity and Fiscal Responsibility Act of 1983 (TEFRA); Deficit Reduction Act of 1984 (DEFRA); Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA)

- Disabled Individuals and those with catastrophic and terminal diseases: Sections 503 and 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990
- j. Questionnaire – Complete the Questionnaire found in *Exhibit D*.
- k. Confidential and Proprietary Information – In order to protect and prevent inadvertent access to confidential information submitted in the response, the Respondent is to provide a schedule of all pages that the Respondent in good faith, and with legally sufficient due diligence, considers to contain any confidential and/or proprietary information.

Information in any tangible form which is submitted by Respondents will be treated as confidential until such time as a contract is executed. After that time, the A&M System is required to provide access to certain records in accordance with the provisions of Chapter 552, Tex. Government Code, now known as the Texas Public Information Act (TPIA), formerly known as the Open Records Act. By submitting a response, the Respondent acknowledges and agrees that the A&M System shall have no liability to the Respondent or to any other person or entity for disclosing information in accordance with the TPIA. The A&M System shall not have any obligation or duty to advocate the confidentiality of the Respondent's material to the Texas Attorney General or to any other person or entity. The Respondent further understands and agrees that upon the A&M System's receipt of a TPIA request for a copy of the Respondent contract, including the response and any exhibits to the contract and response, the only documents that the A&M System shall treat as the Respondent's confidential and proprietary information shall be the documents the Respondent identifies as required above. It is the Respondent's sole obligation to advocate in good faith the confidential or proprietary nature of any information it provides in its response, and the Respondent understands that the Texas Attorney General may nonetheless determine that all or part of the claimed confidential or proprietary information shall be publicly disclosed.
- l. Deviations – In an effort to compare “apples to apples”, deviations to the RFP and the current plan design are strongly discouraged. The Respondent shall enumerate and provide a detailed description of any deviations to provisions contained in the RFP. If your organization is unable to perform any of the required administrative services or unable to administer any portion of the current services provide details.
- m. Supplemental Information – Information or exhibits provided that are not specifically requested in *Sections a. through l.* above should be included at the end of the proposal behind a divider page entitled “m. Supplemental Information”.

3.9 HUB Subcontracting Plan

It is the policy of the state of Texas and the A&M System to encourage the use of Historically Underutilized Businesses (HUBs) in our prime contracts, subcontractors, and purchasing transactions. The goal of the HUB program is to promote equal access and equal opportunity in A&M System contracting and purchasing.

Subcontracting opportunities are possible for this RFP and therefore a HUB Subcontracting Plan (HSP) is **required**. Failure to submit a comprehensive, acceptable HSP will be considered a material failure to comply with the requirements of the RFP and will result in rejection of the submittal. The HUB Subcontracting Plan shall be submitted **with** the RFP response by the date

and time specified.

Based on the scope of this RFP, Respondents must determine if they can perform the entire scope with their own resources or if it will be necessary to subcontract any portion of the scope. Subcontracting opportunities are defined as those opportunities contracted with a vendor to provide services, supply commodities, or contribute toward completing work for a governmental entity.

The HUB participation goal for this RFP is 11% for Other Services and every effort should be made to achieve this level of participation through subcontracting opportunities, mentor protégé relationships, or other relationships with the objective of increasing HUB utilization. Maximizing HUB participation is of the utmost importance to The Texas A&M University System.

Complete the HSP as found at <https://www.tamus.edu/business/hub-procurement/hub-programs-3/system-offices-hub-program/> and submit it with the RFP response. If there are pre-existing agreements in place with companies who will be hired as subcontractors, the Respondent will show those vendors as subcontractors on the HSP and provide an explanation as to why solicitations were not done, e.g. contractual requirements. If no pre-existing agreements with companies who will be hired as subcontractors exist, then the Respondent will be expected to make a good faith effort according to the HSP instructions. Don't forget to include any backup documentation and sign the HSP form.

For information regarding the HUB Subcontracting Plan requirements, please contact Keith Williams from the A&M System's HUB Program at (979) 458-3265 or soprocurement@tamus.edu for assistance in determining available HUB subcontractors and proper completion of the HSP. Respondents have the opportunity to submit a draft of the HSP prior to submittal of their response to the RFP for review by Mr. Williams.

SECTION 4 - GENERAL TERMS AND CONDITIONS

4.1 TERMS AND CONDITIONS

The A&M System reserves the right to accept, reject, modify, and/or negotiate any and all proposals received in conjunction with this RFP. It reserves the right to waive any defect or informality in the proposals on the basis of what it considers to be in its best interests. Any submittal which the A&M System determines to be incomplete, conditional, obscure, or which has irregularities of any kind, may be rejected. The A&M System reserves the right to award to the firm, or firms, which in our sole judgment, will best serve our long-term interest.

This RFP in no manner obligates the A&M System to the eventual purchase of any products or services described, implied, or which may be proposed, until confirmed by written agreement, and may be terminated by the A&M System without penalty or obligation at any time prior to the signing of an agreement.

4.2 GOVERNING LAW

The validity of any resultant agreement and all matters pertaining to any resultant agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.

4.3 NON-DISCRIMINATION

The parties agree that in the performance of any resultant agreement they shall not discriminate in any manner on the basis of race, color, national origin, age, religion, sex, genetic information, veteran status, sexual orientation, gender identity, or disability protected by law. Such action shall include, but is not limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation. By submitting a submittal, Respondents certify that they will conform to the provisions of the federal Civil Rights Act of 1964, as amended.

4.4 IMMIGRATION REFORM AND CONTROL ACT OF 1986

By submitting a proposal, the Respondent certifies it does not and will not, during the performance of any resultant agreement act, employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986, as amended.

4.5 DEBARMENT STATUS

By submitting a statement of qualification, Respondent certifies it is not currently debarred from submitting proposals on contracts nor is it an agent of any person or entity that is currently debarred from submitting bids on contracts.

4.6 INDEMNIFICATION AND HOLD HARMLESS

The Respondent shall defend, indemnify and hold harmless the A&M System, its officers, employees and agents, against any and all liability of whatever nature which may arise directly or indirectly by reason of the Respondent's performance under the resultant agreement.

4.7 RESPONDENT LIABILITY

The Respondent will be liable for any associated costs of repairs for damage to buildings or other A&M System property caused by the negligence of the Respondent's employees.

4.8 CIVIL RIGHTS REQUIREMENTS

All Respondents must comply with applicable civil rights laws.

4.9 ENTIRE AGREEMENT

The resultant agreement, when fully executed, shall supersede any and all prior and existing agreements, either oral or in writing, and will contain all the covenants and agreements between the parties with respect to the subject matter of the agreement. Any amendment or modification to the agreement must be in writing and signed by the parties hereto.

4.10 TERMINATION

In the event the successful Respondent fails to perform any of its duties or obligations as provided by any resultant agreement, which will include the RFP and the Respondent's response to the RFP, the A&M System without limiting any other rights or remedies it may have by law, equity or under contract, shall have the right to terminate the resultant agreement immediately. The Respondent understands and acknowledges that, notwithstanding any termination of the resultant agreement, certain obligations shall survive the termination of the resultant agreement.

In addition to and without restricting or waiving any other legal, contractual or equitable remedies otherwise available to the A&M System, the A&M System may terminate the resultant agreement without cause by giving the Respondent ninety (90) days written notice.

In the event of a change in condition which may affect the Employee Assistance Program services for which proposals are solicited, the A&M System will expect a good-faith effort from any Respondent selected to absorb additional liabilities during the term of the resultant agreement without requiring rate increases until the next following renewal date. Such changes in condition include, but are not limited to, the following:

- Rules of the Texas Department of Insurance.
- Opinions of the Attorney General of the State of Texas.
- Federal and State statutes, court decisions and regulations from agencies and departments that may affect employment and benefit programs.

4.11 SEVERABILITY

It is understood and agreed that if any part, term, or provision of the resultant agreement is by the courts held to be illegal or in conflict with any law of the State of Texas, the validity of the remaining portions or provisions shall be construed and enforced as if the agreement did not contain the particular part, term, or provision held to be invalid.

4.12 PUBLICITY

Respondents must refrain from giving any reference to this project, whether in the form of press releases, brochures, photographic coverage, or verbal announcements, without specific written approval from the A&M System.

Information provided to Respondent by the A&M System, including but not limited to information from the members, officers, agents, or employees of the A&M System or any of its members, and information provided to Respondent by members of the public or any other third party shall belong to the A&M System.

4.13 INDEPENDENT CONTRACTOR

The successful Respondent agrees that in all respects its relationship with the A&M System will be that of an independent contractor, and that it will not act or represent that it is acting as an agent of the A&M System or incur any obligation on the part of the A&M System without written authority of the A&M System. As an independent contractor, Respondent will be solely responsible for determining the means and methods for performing the services described. Respondent shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to, those of the A&M System relative to conduct on its premises.

4.14 AGENT OF RECORD

The A&M System will not designate an Agent of Record or any other such commissioned representative. All requests for the A&M System to provide such a designation will be rejected. The A&M System will communicate and negotiate only with principals of the Respondent. The A&M System will not pay commissions in the event that the Respondent chooses to name an agent of record and such an agent will not be recognized by the A&M System. In addition, no commission, broker or finders fees may be paid by the A&M System. You must certify in *Section i.* that you will abide by these stipulations.

4.15 PUBLIC INFORMATION ACT

- (a) Respondent acknowledges that A&M System is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to any resultant agreement, as well as any other disclosure of information required by applicable Texas law.
- (b) Upon A&M System's written request, Respondent will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of A&M System.
- (c) Respondent acknowledges that A&M System may be required to post a copy of the fully executed agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.
- (d) The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to any resultant agreement and the Respondent agrees that any resultant agreement can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

4.16 OWNERSHIP OF DOCUMENTS

Upon completion or termination of any resultant agreement, all documents prepared by the Respondent for the benefit of the A&M System shall become the property of the A&M System. At the A&M System's option, such documents will be delivered to the System Procurement Office. The A&M System acknowledges that the documents are prepared only for the contracted services specified. Prior to completion of the contracted services, the A&M System shall have a recognized proprietary interest in the work product of the Respondent.

4.17 SOLICITING

Information provided to the Respondent, including lists of covered employees or other employee data may not be used to solicit any other insurance coverage, annuity product, or any other product, unless specifically approved in advance by the A&M System.

4.18 INSURANCE

The Respondent shall obtain and maintain, for the duration of the resultant agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to the A&M System. By requiring such minimum insurance, the A&M System shall not be deemed or construed to have assessed the risk that may be applicable to the Respondent. Respondent shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Respondent is not relieved of any liability or other obligations assumed pursuant to the agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to the A&M System at least ten days before the effective date of the cancellation.

Coverage

Limit

A. Worker's Compensation

Statutory Benefits (Coverage A)

Statutory

Employers Liability (Coverage B)

\$1,000,000 Each Accident

\$1,000,000 Disease/Employee

\$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for the A&M System. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted

B. Automobile Liability

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;

C. Commercial General Liability

Each Occurrence Limit

\$1,000,000

General Aggregate Limit

\$2,000,000

Products / Completed Operations

\$1,000,000

Personal / Advertising Injury

\$1,000,000

Damage to rented Premises

\$300,000

Medical Payments

\$5,000

The required commercial general liability policy will be issued on a form that insures Respondent or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of the agreement.

- D. Respondent will deliver to the A&M System: Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of the agreement and prior to the performance of any services by Respondent under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

All insurance policies, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System and The Texas A&M University System as Additional Insureds up to the actual liability limits of the policies maintained by Respondent. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System and The Texas A&M University System. No policy will be canceled without unconditional written notice to the A&M System at least ten days before the effective date of the cancellation. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to the A&M System ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Section.

Any deductible or self-insured retention must be declared to and approved by the A&M System prior to the performance of any services by Respondent under the agreement. Respondent is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by the agreement will be mailed, faxed, or emailed to the following the A&M System contact:

The Texas A&M University System
Attn: Jeff Zimmermann
301 Tarrow Street, Rm 361
College Station, TX 77840
Facsimile Number: (979) 458-6101
Email Address: jzimmermann@tamus.edu

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by the A&M System in writing.

4.19 **PREMIUM TAXES**

The A&M System is exempt from the payment of premium taxes under Chapter 1601, *Texas Insurance Code*. No provision for the payment of premium taxes will be included in the calculation of premium rates.

4.20 DISPUTE RESOLUTION

The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the A&M System and Respondent to attempt to resolve any claim for breach of contract made by Respondent that cannot be resolved in the ordinary course of business. Respondent shall submit written notice of a claim of breach of contract under this Chapter to the Deputy Chancellor and Chief Financial Officer for the A&M System, who shall examine Respondent's claim and any counterclaim and negotiate with Respondent in an effort to resolve the claim.

4.21 VENUE

Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against the A&M System shall be in the county in which the primary office of the chief executive officer of the A&M System is located. At the date of this RFP, such county is Brazos County, Texas.

4.22 STATE AUDITOR'S OFFICE

Respondent understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. Respondent agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Respondent will include this provision in all contracts with permitted subcontractors.

4.23 CONFLICT OF INTEREST

Respondent and each person signing on behalf of Respondent certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of any resultant agreement, or in the services to which the resultant agreement relates, or in any of the profits, real or potential, thereof.

4.24 NOT ELIGIBLE FOR REHIRE

Respondent is responsible to ensure that employees participating in work for any A&M System member have not been designated by the A&M System as Not Eligible for Rehire as defined in System policy [32.02, Section 4](#). Non-conformance to this requirement may be grounds for termination of any resultant agreement.

4.25 PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

To the extent that Texas Government Code, Chapter 2271 applies to the resultant agreement, Respondent certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of the resultant agreement. PROVIDER acknowledges the resultant agreement may be terminated and payment withheld if this certification is inaccurate

4.26 CERTIFICATION REGARDING BUSINESS WITH CERTAIN COUNTRIES AND ORGANIZATIONS

Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Respondent certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Respondent

acknowledges this Purchase Order may be terminated if this certification is or becomes inaccurate.

4.27 PROHIBITION ON CONTRACTS RELATED TO PERSONS INVOLVED IN HUMAN TRAFFICKING

Under Section 2155.0061, Government Code, Respondent certifies that the individual or business entity named in this RFP is not ineligible to receive the specified agreement and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

4.28 RECORDS RETENTION

Respondent will preserve all contracting information, as defined under Texas Government Code, Section 552.003 (7), related to the Agreement for the duration of the Agreement and for seven years after the conclusion of the Agreement.

4.29 NON-WAIVER: Respondent expressly acknowledges that A&M System is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by A&M System of its right to claim such exemptions, privileges, and immunities as may be provided by law.

4.30 Respondent shall neither assign its rights nor delegate its duties under the resultant agreement without the prior written consent of the A&M System.

EXHIBIT A
EXECUTION OF OFFER

RFP01 SBA-21-097

DATE:

In compliance with this RFP, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted.

A.1 Respondent Affirmation

NOTE TO RESPONDENTS: SUBMIT ENTIRE SECTION WITH RESPONSE.

This execution of offer must be completed, signed, and returned with the respondent's qualifications. Failure to complete, sign and return this execution of offer with the qualifications may result in rejection of the qualifications.

Signing a false statement may void the submitted qualifications or any agreements or other contractual arrangements, which may result from the submission of respondent's qualifications. A false certification shall be deemed a material breach of contract and, at the A&M System's option, may result in termination of any resulting contract or purchase order.

Addenda Acknowledgment

Receipt is hereby acknowledged of the following addenda to this RFP by entering yes or no in space provided and indicating date acquired. Enter "0" if none received.

No. 1 _____ Date _____	No. 3 _____ Date _____
No. 2 _____ Date _____	No. 4 _____ Date _____

A.2 Signature

By signing below, the Respondent hereby certifies as follows, and acknowledges that such certifications will be included in any resulting contract:

- (i) the Response and all statements and information prepared and submitted in response to this RFP are current, complete, true and correct;
- (ii) it has not given, nor intends 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 the submitted response or any subsequent proposal. Failure to sign below, or signing a false statement, may void the response or any resulting contracts at the A&M System' option, and the Respondent may be removed from all future proposal lists at this state agency;
- (iii) the individual signing this document and the documents made part of the RFP is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract which may result from the submission of the Response;
- (iv) no relationship, whether as a relative, business associate, by capital funding agreement or by any other such kinship exists between Respondent and an employee of the A&M System;
- (v) Respondent has not been an employee of the A&M System within the immediate twelve (12) months prior to the RFP response;
- (vi) no compensation has been received for participation in the preparation of this RFP (ref. Section 2155.004 Texas Government Code);

- (vii) all services to be provided in response to this RFP will meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health law (Public Law 91-596) and its regulations in effect as of the date of this solicitation;
- (viii) Respondent complies with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action;
- (ix) to the best of its knowledge, no member of the Board of Regents of The Texas A&M University System, or the Executive Officers of the Texas A&M University System or its member institutions or agencies, has a financial interest, directly or indirectly, in the scope of this RFP;
- (x) if the Respondent is subject to the Texas franchise tax, it is not currently delinquent in the payment of any franchise tax due under Chapter 171, Texas Tax Code, or is exempt from the payment of such taxes. A false certification may result in the Respondent's disqualification;
- (xi) under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate; and,
- (xii) under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- (xiii) the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this bid and resultant agreement and the Respondent agrees that the resultant agreement can be terminated if the PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.

Respondent shall provide Federal EIN/Tax ID, full firm name, address and other information as requested in the spaces below. Failure to manually sign or with electronic signature (such as DocuSign or Adobe Sign) below will disqualify the proposal response. The person signing the submittal should show title or authority to bind his/her firm in contract.

Federal EIN/TAX ID: _____

Vendor/Company Name: _____

Authorized Signature (INK or electronic signature): _____

Name: _____

Title: _____

Street: _____

City/State/Zip: _____

Telephone No.: _____

Fax No.: _____

E-mail: _____

<p>* By signing this RFP, Respondent certifies that if a Texas address is shown as the address of the respondent, respondent qualifies as a Texas Resident Bidder as defined in Texas Government Code, § 2252.001(4).</p>

EXHIBIT B
NON-COLLUSION AFFIDAVIT

The undersigned, duly authorized to represent the persons, firms and corporations joining and participating in the submission of the foregoing Proposal (such persons, firms and corporations hereinafter being referred to as the "Respondent"), being duly sworn, on his or her oath, states that to the best of his or her belief and knowledge no person, firm or corporation, nor any person duly representing the same joining and participating in the submission of the foregoing Proposal, has directly or indirectly entered into any agreement or arrangement with any other Respondents, or with any official of the A&M System or any employee thereof, or any person, firm or corporation under contract with the A&M System whereby the Respondent, in order to induce acceptance of the foregoing Proposal by said the A&M System, has paid or is to pay to any other Respondent or to any of the aforementioned persons anything of value whatever, and that the Respondent has not, directly or indirectly entered into any arrangement or agreement with any other Respondent or Respondents which tends to or does lessen or destroy free competition in the letting of the contract sought for by the foregoing Proposal.

The Respondent hereby certifies that neither it, its officers, partners, owners, providers, representatives, employees and parties in interest, including the affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Respondent, potential Respondent, firm or person, in connection with this solicitation, to submit a collusive or sham bid, to refrain from bidding, to manipulate or ascertain the price(s) of other Respondents or potential Respondents, or to obtain through any unlawful act an advantage over other Respondents or the A&M System.

The prices submitted herein have been arrived at in an entirely independent and lawful manner by the Respondent without consultation with other Respondents or potential Respondents or foreknowledge of the prices to be submitted in response to this solicitation by other Respondents or potential Respondents on the part of the Respondent, its officers, partners, owners, providers, representatives, employees or parties in interest, including the affiant.

CONFLICT OF INTEREST

The undersigned Respondent and each person signing on behalf of the Respondent certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of the A&M System, nor any officer, employee, or person, whose salary is payable in whole or in part by the A&M System, has a direct or indirect financial interest in the award of this Proposal, or in the services to which this Proposal relates, or in any of the profits, real or potential, thereof, except as noted otherwise herein.

Signature _____

Company Name _____

Date _____

Subscribed and sworn to before me this

_____ day of _____, 2021.

Notary Public in and for the County of _____, State of

_____. My commission expires: _____

THE EXECUTION OF OFFER AND NON-COLLUSION AFFIDAVIT MUST BE COMPLETED, SIGNED, AND RETURNED WITH RESPONDENT'S SUBMISSION. FAILURE TO SIGN AND RETURN THESE DOCUMENTS WILL RESULT IN THE REJECTION OF YOUR SUBMISSION.

EXHIBIT C – COMPANY PROFILE

- a. Please provide the following:
- Legal Name
 - DBA Name
 - Number of Years in Business
 - Type of Operation (i.e., Individual, Partnership, Corporation)
 - Number of Employees
 - Annual Revenues
- b. Provide a general overview of the company, including where the company is headquartered, if it has a major base of operation in Texas, and if it has operated under other names.
- c. Include a narrative history of the firm and its background in providing employee group benefits. Explain the added value or service that your organization provides that distinguishes it from all others.
- d. **Financial Stability.** Respondent shall provide the following to verify financial stability:
- A copy of your company's audited financial statements for the past two (2) years; or
 - A financial rating of your company and any documentation (such as a Dunn and Bradstreet Analysis) which indicates the financial stability of your company.
- e. Describe your company's disaster recovery and contingency plans. Have you ever tested or actually implemented these plans?
- f. Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.
- g. Provide details of all past or pending litigation or claims filed against your company that would negatively impact your company's performance under an agreement with the A&M System.
- h. Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity. If yes, specify date(s), details, circumstances, and prospects for resolution.

EXHIBIT D – QUESTIONNAIRE

Complete the attached questionnaire as instructed and include it in *Section j* of your RFP response.

General Instructions

- A. When responding, please restate the question and provide your answer immediately thereafter.
- B. Do not change the format of the Questionnaire. Do not change the numbering system within the Questionnaire. Do not leave any question blank. Do not change any questions. Do not provide an answer such as “it is in another exhibit” or “can be found under another question.”
- C. Exhibits requested in the Questionnaire Section should be provided under Section j. of your response (see Section 3.8j.).
- D. Fees, expense schedules, charges, and management arrangements must be guaranteed for the initial three-year period through April 30, 2024.
- E. Please base quantitative responses on the 12 months ending December 31, 2020, or the most recent 12-month period available, unless otherwise specified.
- F. The A&M System operates on a fiscal year beginning September 1 and ending August 31.

Background Information

- 1. Please provide the URL (address) for your web site.
- 2. Would your employees use a secure e-mail system to communicate with us and, if so, what system do you use? Would you be able to establish a secure TLS channel between our organizations?
- 3. Is your plan for-profit or not-for-profit? If not-for-profit, under which IRS code do you operate?
- 4. Is your company or any part of your company in the process of being sold, merged or disbanded?
- 5. Does your company carry an Errors & Omissions policy? Please attach a copy of the face sheet.
 - a) If yes, who is the carrier and what is the expiration date of the policy?
 - b) What are the policy limits and deductible?
 - c) Is the contract a claims-made policy?
- 6. Do you carry a comprehensive general liability policy? Please attach a copy of the policy face sheet.
 - a) If yes, who is the carrier and what is the expiration date?
 - b) What are the policy limits and deductible?
- 7. Does your company carry a fidelity bond? Please attach a copy of the policy face sheet.

- a) If yes, who is the underwriter?
 - b) What is the expiration date of the policy?
 - c) What are the limits and coverage for the policy?
 - d) What is the deductible?
 - e) What are the co-annual aggregate funds held for all clients?
8. Please verify the A&M System's contractual right to audit your company.
 9. In case of audit, verify you will provide access to all financial records, contracts, medical records, and other information associated with the services you or your subcontractors provide.
 10. Verify that all audits will be conducted in accordance with auditing standards.
 11. What is the primary goal of your program?
 12. Describe the value proposition of your service(s).
 13. Provide a short summary of your case review process, step by step, from collecting information on a new case, to case closure. Please include average timeframes for each step of the process, including the average number of days from initial contact to completion of a case.
 14. What is your speed of service delivery, from the time the consult is requested to the time the review of proposed medical services is delivered?
 15. List and explain methods you provide for consult delivery such as written, phone, or video.
 16. What information is provided to the specialist before or during their review?
 17. Do members speak directly to the specialist providing the review of proposed medical services?
 18. How do you credential your physicians and ensure a quality physician pool?
 19. Under what conditions would you deny services? Provide a list of non-covered diagnoses/treatments.
 20. Briefly describe any concierge services you provide, such as medical records retrieval, recommendations and appointments with in-network physicians or facilitating physician-to-physician consultation. Please indicate any additional charges for these services, if applicable.
 21. Across your book of business, what is the average, highest and lowest annual utilization measured in terms of reviews for proposed medical services provided with a full case review divided by total employees eligible for the services?
 22. How often does your intervention result in a change of diagnosis? A change in treatment plan? Physician-to-physician discussion?
 23. Our current vendor, 2nd MD, provides a proactive outreach program that aims to engage members who are on the path to a high-cost or high-impact medical event before it happens by consulting with an expert who specializes in their condition. Do you have a program that

provides proactive outreach to a targeted population?

24. Are you able and willing to accept a weekly file from the A&M System medical provider, currently Blue Cross and Blue Shield of Texas (BCBSTX), in order to provide such an outreach service?
25. How do you measure member satisfaction and what was your satisfaction rating in 2019 and 2020?
26. Describe your approach to integrating with other healthcare services and providers.
27. Does your company have a Corporate Social and Environmental Responsibility Program? If yes, please describe it.

Eligibility

28. Describe your proposed process for determining A&M System participants who will have access to your services. Include in the description whether or not you expect to receive electronic eligibility files and how often. If you anticipate receiving electronic eligibility files, provide a response to questions 28 through 30 below.
29. The System Office currently provides eligibility information for all System Members (System Member identification is not required) on a weekly basis in the most current HIPAA 834 format via secure FTP from our server to the carrier's server. We send weekly full files. You will have a central point of contact in SBA and a technical contact. We expect to have a discrepancy report emailed to the SBA eligibility contact for review and assistance in resolving outstanding issues within a few days of your receipt of an eligibility file.
30. Does your system accept future start and termination dates for participants?
31. What is your turnaround time goal for loading eligibility information received from the employer? What has your actual performance been for the last six months?
32. The A&M System has assigned each employee and dependent a unique identifier (a 9-digit number with the 4th and 5th digits equal to 0.) The A&M System has the capability to pass both the SSN and the unique identifier on the eligibility file. Please confirm your ability to use our unique identifier.

Marketing and Communications

33. What communications resources and support do you provide to clients to help increase member awareness and understanding of your programs? Please indicate any additional charges, if applicable. Please attach examples.
34. What level of customization of engagement materials is allowed? Please indicate any additional charges.
35. How many touch points can a participant expect to have from each communication channel annually? Please indicate any additional costs.
 - a) Email

- b) Mailing (*Prefer at least 2*)
- c) Phone
- d) Digital Media
- e) Other/Comments

Implementation and Administration

- 36. How long does your implementation process take?
- 37. Do you provide resources to assist with implementation? Please be specific regarding individual and time commitment.
- 38. Describe your indicators of a successful implementation?
- 39. How often will you need an eligibility feed and in what format?
- 40. The A&M System currently uses Workday as our Human Capital Management (HDM) system. Please indicate if you have other clients that use Workday and if you have experience with Workday clients. Do you have an existing Cloud Connect for Benefits (CCB) integration with Workday? Do you use weekly full files for your eligibility transfers?
- 41. Please explain your billing procedures and attach a sample billing.
- 42. How much lead-time would you need to implement the program from the time you are selected? Provide a detailed timetable for implementation.

Cost Savings, Pricing and Plan Options

- 43. What are the anticipated cost savings from your programs, if any?
- 44. How do you measure cost savings and ROI?
- 45. List any performance guarantees you are willing to provide and what percentage of your fees you will put at risk with each guarantee.
- 46. Please indicate the fees you propose and the services to be provided for those fees. In order for us to correctly interpret your fee quote, please use the following guidelines listed below.
Assumptions:
 - a. For the sake of simplicity, assume an enrollment of 30,000 will be eligible to use the service. Covered spouses, partners, and children will be eligible for a total membership of approximately 55,000.
 - b. The first plan year will be effective with the execution of the contract through August 31, 2021.
 - c. Subsequent plan years will renew on a fiscal year basis, September 1 through August 31st.
- 47. Provide a list and a description of any fees not included in your base proposed price, including but not limited to, any communication fees, set-up fees, and any “one-time only” fees.
- 48. List all services/enhancements available at an additional fee.

EXHIBIT E – HIPAA BUSINESS ASSOCIATE AGREEMENT – (DRAFT, DO NOT EXECUTE)

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this “Agreement”) between The Texas A&M University System (“A&M System”), an agency of the State of Texas, on behalf of the A&M Care Plan (“**Covered Entity**”) and (“**Business Associate**”), shall be effective (the “**Effective Date**”). All terms used in this Agreement and not defined herein which are defined under Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (“HIPAA”), including 45 C.F.R. Parts 160 and 164 (“Privacy Rule”), shall have the meanings set forth in the applicable definition under HIPAA.

Covered Entity and Business Associate have entered into, are entering into, or may subsequently enter into, agreements or other documented arrangements (collectively, the “Business Arrangements”) pursuant to which Business Associate may provide products and/or services for Covered Entity that require Business Associate to access, create, maintain, and use health information that is protected by state and/or federal law.

Pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the U.S. Department of Health & Human Services (“HHS”) promulgated the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Standards”), at 45 C.F.R. Parts 160 and 164, requiring certain individuals and entities subject to the Privacy Standards (each a “Covered Entity”, or collectively, “Covered Entities”) to protect the privacy of certain individually identifiable health information (“Protected Health Information” or “PHI”).

Pursuant to HIPAA, HHS issued the Security Standards (the “Security Standards”), at 45 C.F.R. Parts 160, 162 and 164, for the protection of electronic protected health information (“EPI”).

In order to protect the privacy and security of PHI, including EPHI, created or maintained by or on behalf of the Covered Entity, the Privacy Standards and Security Standards require a Covered Entity to enter into a “business associate agreement” with certain individuals and entities providing services for or on behalf of the Covered Entity if such services require the use or disclosure of PHI or EPHI.

On February 17, 2009, the federal Health Information Technology for Economic and Clinical Health Act was signed into law (the “HITECH Act”), and the HITECH Act imposes certain privacy and security obligations on Covered Entities in addition to the obligations created by the Privacy Standards and Security Standards.

The HITECH Act revises many of the requirements of the Privacy Standards and Security Standards concerning the confidentiality of PHI and EPHI, including extending certain HIPAA and HITECH Act requirements directly to Business Associates.

The HITECH Act requires that certain of its provisions be included in business associate agreements, and that certain requirements of the Privacy Standards be imposed contractually upon Covered Entities as well as Business Associates.

The Texas Legislature has adopted certain privacy and security requirements that are more restrictive than those required by HIPAA and HITECH, and such requirements are applicable to Business Associates as “Covered Entities” as defined by Texas law; and because Business Associate and Covered Entity desire to enter into this Business Associate Agreement, in consideration of the mutual promises set forth in this Agreement and the applicable Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

I. Definitions

- a. Except as otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the

meanings set forth in HIPAA.

- b. **“Business Associate”** shall have the same meaning to the term “Associate” under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.
- c. **“Breach”** shall mean the acquisition, access, use or disclosure of Protected Health Information in a manner not permitted by the HIPAA Privacy Rule that compromises the security or privacy of the Protected Health Information as defined, and subject to the exceptions set forth, in 45 CFR § 164.402.
- d. **“Covered Entity”** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.
- e. **“Data Aggregation Services”** shall mean the combining of PHI or EPHI by Business Associate with the PHI or EPHI received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of, payment to, and treatment of patients by the respective covered entities.
- f. **“Electronic Protected Health Information”** shall mean Protected Health Information that is transmitted or maintained in Electronic Media.
- g. **“HIPAA”** shall mean the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended and supplemented by the HITECH Act and its implementing regulations, as each is amended from time to time.
- h. **“HIPAA Breach Notification Rule”** shall mean the federal breach notification regulations, as amended from time to time, issued under HIPAA and set forth in 45 CFR Part 164 (Subpart D).
- i. **“HIPAA Privacy Rule”** shall mean the federal privacy regulations, as amended from time to time, issued under HIPAA and set forth in 45 CFR Parts 160 and 164 (Subparts A & E).
- j. **“HIPAA Security Rule”** shall mean the federal security regulations, as amended from time to time, issued under HIPAA and set forth in 45 CFR Parts 160 and 164 (Subparts A & C).
- k. **“HITECH Act”** shall mean Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American recovery and Reinvestment Act of 2009, 42 U.S.C. §§ 17921-17954, and all its implementing regulations, when and as each is effective and compliance is required.
- l. **“Protected Health Information of PHI”** shall mean Protected Health Information, as defined in 45 CFR § 160.103, and is limited to the Protected Health Information received, maintained, created or transmitted on behalf of, Covered Entity by Business Associate in performance of the Underlying Services.
- m. **“Underlying Services”** shall mean, to the extent and only to the extent they involve the creation, maintenance, use, disclosure or transmission of Protected Health Information, the services performed by Business Associate for Covered Entity pursuant to the Underlying Services Agreement.
- n. **“Underlying Services Agreement”** shall mean the written agreement(s) (other than this Agreement) by and between the parties as amended as set forth in the attached schedule by and between the parties pursuant to which Business Associate access to, receives, maintains, creates or transmits PHI for or on behalf of Covered Entity in connection with the provision of the services described in that agreement(s) by Business

Associate to Covered Entity or in performance of Business Associate's obligations under such agreement(s).

II. Business Associate Obligations.

Business Associate may receive from Covered Entity, or create or receive or maintain on behalf of Covered Entity, health information that is protected under applicable state and/or federal law, including without limitation, PHI and EPHI. All references to PHI herein shall be construed to include EPHI. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the Privacy Standards, Security Standards the HITECH Act, or Texas law, including without limitation the provisions of Texas Health and Safety Code Chapters 181 and 182 as amended by HB 300 (82nd Legislature), effective September 1, 2012, in each case including any implementing regulations as applicable (collectively referred to hereinafter as the "Confidentiality Requirements") if the PHI were used or disclosed by Covered Entity in the same manner.

III. Use of Protected Health Information

Except as otherwise required by law, Business Associate shall use PHI in compliance with 45 C.F.R. § 164.504(e). Furthermore, Business Associate shall use PHI (i) solely for Covered Entity's benefit and only for the purpose of performing services for Covered Entity as such services are defined in Business Arrangements, (ii) for Data Aggregation Services (as herein defined), and (iii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. For avoidance of doubt, under no circumstances may Business Associate sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, as amended by HB 300 (82nd Legislature), effective September 1, 2012, nor shall Business Associate use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code Section 181.152, or attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity. To the extent not otherwise prohibited in the Business Arrangements or by applicable law, use, creation and disclosure of de-identified health information, as that term is defined in 45 CFR § 164.514, by Business Associate is permitted.

IV. Disclosure of Protected Health Information

Subject to any limitations in this Agreement, Business Associate may disclose PHI to any third party persons or entities as necessary to perform its obligations under the Business Arrangement and as permitted or required by applicable federal or state law. Business Associate recognizes that under the HIPAA/HITECH Omnibus Final Rule, Business Associates may not disclose PHI in a way that would be prohibited if Covered Entity made such a disclosure. Any disclosures made by Business Associate will comply with minimum necessary requirements under the Privacy Rule and related regulations.

Business Associate shall not, and shall provide that its directors, officers, employees, subcontractors, and agents, do not disclose PHI to any other person (other than members of their respective workforce), unless disclosure is required by law or authorized by the person whose PHI is to be disclosed. Any such disclosure other than as specifically permitted in the immediately preceding sentences shall be made only if such discloser has previously signed a written agreement that:

- a.) Binds the discloser to the provisions of this Agreement pertaining to PHI, for the express benefit of Covered Entity, Business Associate and, if discloser is other than Business Associate, the discloser;
- b.) Contains reasonable assurances from discloser that the PHI will be held confidential as provided in this Agreement, and only disclosed as required by law for the purposes for which it was disclosed to discloser; and,
- c.) Obligates discloser to immediately notify Business Associate of any breaches of the confidentiality of the PHI, to the extent discloser has obtained knowledge of such breach.

Business Associate shall not disclose PHI to any member of its workforce and shall provide that its subcontractors and agents do not disclose PHI to any member of their respective workforces, unless Business Associate or such subcontractor or agent has advised such person of Business Associate's obligations under this Agreement, and of the consequences for such person and for Business Associate or such subcontractor or agent of violating them as memorialized in a business associate agreement pursuant to the HIPAA/HITECH Omnibus Final Rule. Business Associate shall take and shall provide that each of its subcontractors and agents take appropriate disciplinary action against any member of its respective workforce who uses or discloses PHI in contravention of this Agreement

In addition to Business Associate's obligations under Section IX, Business Associate agrees to mitigate, to the extent commercially practical, harmful effects that are known to Business Associate and is the result of a use or disclosure of PHI by Business Associate or Recipients in violation of this Agreement.

V. Access to and Amendment of Protected Health Information

Business Associate shall (i) provide access to, and permit inspection and copying of, PHI by Covered Entity; and (ii) amend PHI maintained by Business Associate as requested by Covered Entity. Any such amendments shall be made in such a way as to record the time and date of the change, if feasible, and in accordance with any subsequent requirements promulgated by the Texas Medical Board with respect to amendment of electronic medical records by HIEs. Business Associate shall respond to any request from Covered Entity for access by an individual within seven (7) days of such request and shall make any amendment requested by Covered Entity within twenty (20) days of the later of (a) such request by Covered Entity or (b) the date as of which Covered Entity has provided Business Associate with all information necessary to make such amendment. Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or the fee approved by the Texas Medical Board for the production of non-electronic media copies). Business Associate shall notify Covered Entity within five (5) days of receipt of any request for access or amendment by an individual. Covered Entity shall determine whether to grant or deny any access or amendment requested by the individual. Business Associate shall have a process in place for requests for amendments and for appending such requests and statements in response to denials of such requests to the Designated Record Set, as requested by Covered Entity.

VI. Accounting of Disclosures

Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual in accordance with 45 CFR § 164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision.

VII. Records and Audits

Business Associate shall make available to the United States Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's compliance with the Confidentiality Requirements or the requirements of any other health oversight agency, in a time and manner designated by the Secretary.

VIII. Implementation of Security Standards; Notice of Security Incidents

Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate acknowledges that the HITECH Act requires Business Associate to comply with 45 C.F.R. §§164.308, 164.310, 164.312 and 164.316 as if Business Associate were a Covered Entity, and Business Associate agrees to comply with these provisions of the Security Standards and all additional security provisions of the HITECH Act.

Furthermore, to the extent feasible, Business Associate will use commercially reasonable efforts to secure PHI through technology safeguards that render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with HHS Guidance published at 74 Federal Register 19006 (April 17, 2009), or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology (“NIST”) concerning the protection of identifiable data such as PHI. Lastly, Business Associate will promptly report to Covered Entity any successful Security Incident of which it becomes aware. At the request of Covered Entity, Business Associate shall identify: the date of the Security Incident, the scope of the Security Incident, the Business Associate’s response to the Security Incident and the identification of the party responsible for causing the Security Incident, if known.

IX. Data Breach Notification and Mitigation

HIPAA Data Breach Notification and Mitigation. Business Associate agrees to implement reasonable systems for the discovery and prompt reporting to Covered Entity of any “breach” of “unsecured PHI” as those terms are defined by 45 C.F.R. §164.402. Specifically, a breach is an unauthorized acquisition, access, use or disclosure of unsecured PHI, including ePHI, which compromises the security or privacy of the PHI/ePHI. A breach is presumed to have occurred unless there is a low probability that the PHI has been compromised based on a risk assessment of at least the factors listed in 45 C.F.R. § 164.402(2)(i)-(iv) (hereinafter a “HIPAA Breach”). The parties acknowledge and agree that 45 C.F.R. § 164.404 governs the determination of the date of discovery of a HIPAA Breach. In addition to the foregoing and notwithstanding anything to the contrary herein, Business Associate will also comply with applicable state law, including without limitation, Section 521 Texas Business and Commerce Code, as amended by HB 300 (82nd Legislature), or such other laws or regulations as may later be amended or adopted. In the event of any conflict between this section, the Confidentiality Requirements, Section 521 of the Texas Business and Commerce Code, and any other later amended or adopted laws or regulations, the most stringent requirements shall govern.

Discovery of Breach. Business Associate will, following the discovery of a HIPAA Breach, notify Covered Entity without unreasonable delay and in no event later than the earlier of the maximum of time allowable under applicable law or three (3) business days after Business Associate discovers such HIPAA Breach, unless Business Associate is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Business Associate will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Business Associate.

Reporting a Breach. Without unreasonable delay and no later than the earlier of the maximum of time allowable under applicable law or five (5) business days following a HIPAA Breach, Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. § 164.400 et seq. Specifically, if the following information is known to (or can be reasonably obtained by) the Business Associate, Business Associate will provide Covered Entity with:

- a.) contact information for individuals who were or who may have been impacted by the HIPAA Breach (e.g., first and last name, mailing address, street address, phone number, email address);
- b.) a brief description of the circumstances of the HIPAA Breach, including the date of the HIPAA Breach and date of discovery;
- c.) a description of the types of unsecured PHI involved in the HIPAA Breach (e.g., names, social security number, date of birth, addressees, account numbers of any type, disability codes, diagnostic and/or billing codes and similar information);
- d.) a brief description of what the Business Associate has done or is doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and,

- e.) appoint a liaison and provide contact information for same so that Covered Entity may ask questions or learn additional information concerning the HIPAA Breach.

Following a HIPAA Breach, Business Associate will have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the HIPAA Breach, including but not limited to the information described above.

X. Termination

This Agreement shall commence on the Effective Date.

Upon the termination of the applicable Business Arrangement, either Party may terminate this Agreement by providing written notice to the other Party.

Upon termination of this Agreement for any reason, Business Associate agrees:

- a.) to return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise through the performance of services for Covered Entity, that is in the possession or control of Business Associate or its agents. Business Associate agrees that all paper, film, or other hard copy media shall be shredded or destroyed such that it may not be reconstructed, and EPHI shall be purged or destroyed concurrent with NIST Guidelines for media sanitization at <http://www.csrc.nist.gov/>; or,
- b.) in the case of PHI which is not feasible to “return or destroy,” to extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI.

XI. Miscellaneous

Notice. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; (iii) overnight delivery service with proof of delivery; or (iv) facsimile with return facsimile acknowledging receipt. Notices shall be sent to the addresses below. Neither party shall refuse delivery of any notice hereunder.

Covered Entity:
Ms. Ellen Gerescher
Employee Benefits Manager
Moore/Connally Building
301 Tarrow, 5th Floor
College Station, TX 77840

Business Associate:
Name
Title
Address Line 1
Address Line 2
Address Line 3

Waiver. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

Assignment. Neither Party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

Severability. Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

Entire Agreement. This Agreement constitutes the complete agreement between Business Associate and Covered

Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party; provided, however, that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that the Covered Entity believes in good faith will adversely impact the use or disclosure of PHI under this Agreement, Covered Entity may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to Business Associate which shall be effective thirty (30) days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the state of Texas. Venue for any dispute relating to this Agreement shall be in Brazos County, Texas.

Nature of Agreement: Independent Contractor. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the parties or any of their affiliates, or (ii) a relationship of employer and employee between the parties. Business Associate is an independent contractor, and not an agent of Covered Entity. This Agreement does not express or imply any commitment to purchase or sell goods or services.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

COVERED ENTITY:

BUSINESS ASSOCIATE:

DRAFT – DO NOT EXECUTE