



THE TEXAS A&M UNIVERSITY SYSTEM

Office of HUB & Procurement Programs

REQUEST FOR PROPOSAL
RFP NUMBER: RFP01 SBA-19-041
Employee Assistance Program Services

PROPOSAL MUST BE RECEIVED BEFORE:
2:00 P.M. Central Time (CDT) on April 3, 2019

EMAIL RFP RESPONSES TO:
SOPROCUREMENT@TAMUS.EDU
SUBJECT LINE: RFP01 SBA-19-041
Attn: Jeff Zimmermann

NOTE: PROPOSAL must be time stamped at **The Texas A&M University System Office** of Procurement and HUB Programs before the hour and date specified for receipt of proposal.

Pursuant to the Provisions of Texas Government Code Title 10, Chapter 2156.121-2156.127, sealed proposals will be received until the date and time established for receipt. 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 & HUB Programs
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.

TABLE OF CONTENTS

SECTION 1. INTRODUCTION3

SECTION 2. INSTRUCTION FOR RESPONDENTS7

SECTION 3. REQUIREMENTS & PROPOSAL11

SECTION 4. GENERAL TERMS AND CONDITIONS.....17

EXHIBIT A: EXECUTION OF OFFER23

EXHIBIT B: NON-COLLUSION AFFIDAVIT.....25

EXHIBIT C: COMPANY PROFILE26

EXHIBIT D: QUESTIONNAIRE.....27

EXHIBIT E: SUPPLEMENTAL FILES TO RFP INSTRUCTIONS32

EXHIBIT F: HIPPA BUSINESS ASSOCIATE AGREEMENT (DRAFT)33

SECTION 1 – INTRODUCTION

1.1 Introduction

The Texas A&M University System (“A&M System”) is soliciting proposals for a firm (“Respondent”) to provide an Employee Assistance Program (“EAP”) for the upcoming plan year, beginning September 1, 2019. The A&M System desires proposals that represent the best combination of quality and cost.

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 \$4.7 billion. Through a statewide network of 11 universities and seven state agencies, the A&M System educates more than 153,000 students and makes more than 22 million additional educational contacts through service and outreach programs each year. System-wide, research and development expenditures exceeded \$996 million in FY 2017 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.tamus.edu/about/>.

1.3 Plan Background

The A&M System offers an EAP to all benefit-eligible employees. Currently, these services are provided by Deer Oaks Employee Services, LLC. Services are offered to employees, dependents, and household members. Each may receive up to five counseling sessions per separate problem per year. In addition, Deer Oaks offers unlimited telephonic consultation with financial counselors, 30-minute consultations with attorneys, and assists with locating resources such as finding care for pets, personal care, travel, contractors, education, and managing day-to-day responsibilities. A&M System institutions and agencies, as the employer, have additional educational resources available to utilize on an annual basis.

The A&M System’s EAP plan year corresponds to the State of Texas and A&M System fiscal years which begin on September 1, and end on August 31.

1.4 Enrollment

The A&M System has a total of 29,248 benefit-eligible employees. Benefit-eligible employees and their dependents, as defined in *Section 3.4*, should be eligible for the Employee Assistance Program.

Along with the RFP instructions, there is an additional supplemental file that you must download. The file contains demographic information for all those who are benefit-eligible. Exhibit E to this RFP provides further information about the data found in the file.

1.5 Purpose

The purpose of this RFP is to solicit proposals for the Respondent to provide an EAP for the upcoming plan year, beginning September 1, 2019. Refer to Section 3 for the full services and proposal requirements.

The A&M System currently contracts with Deer Oaks EAP Services, LLC. Proposers may link to the System Benefits Administration (“SBA”) website at <https://www.tamus.edu/business/benefits-administration/employeeetiree-benefits/eap/> to review the details of the current Employee Assistance Program (EAP).

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 interested / prospective firms 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 participants.

The EAP plan for which an RFP is being solicited is available to all benefit-eligible employees at all System members and includes graduate student employees. Rather than each System Member soliciting RFP responses for the various benefit plans, the authority to plan, implement and control the A&M System’s benefit programs has been assigned to the Director of Benefits Administration (the Director). The Director and Assistant Director have responsibility for the design and development of System-wide health plans, and for the operation and administration of other employee benefit plans.

The System Office of 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.

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 8, 2019
Deadline to Submit Questions	March 20, 2019
Release of Addendum (if applicable)	March 25, 2019
Deadline for Receiving Proposals.....	April 3, 2019 by 2:00 PM CDT
Finalist notifications.....	April 18, 2019
Interview Top Proposal Teams (A&M System’s Option)	May 1, 2019
Anticipated Award Date.....	May 9, 2019

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 Schedule of Implementation

Within 3 weeks from notice of award	Selected Proposer will provide first draft of the Service Agreement, HIPAA Business Associate Agreement, and any other required legal documentation.
June 15, 2019	Information materials finalized
July 1 – July 31, 2019	Open Enrollment period for all A&M System employees and retirees for September 1, 2019 effective date
August 1, 2019	Service Agreement, HIPAA Business Associate Agreement, and any other required legal documentation completed and signed by both parties
September 1, 2019	Effective date of plan

1.9 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 Quality Level of Service.* This priority encompasses the quality of the level 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) *Level of 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 as it Relates to Total Costs.* Respondent must demonstrate its ability to deliver the required solution in a cost-effective and timely manner while not sacrificing the quality required by a Tier I research System.
- (d) *Financial Stability.* RESPONDENT must demonstrate its financial stability and capabilities in providing the required solution.

1.10 Period of Performance

An initial three-year period of performance under a contract pursuant to this RFP will commence on September 1, 2019. Fees, expense schedules, charges, and management arrangements must be guaranteed for the three-year period through August 31, 2022. 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, 2025. 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.

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 unless otherwise requested by the Respondent, in writing, at the time of submission, and agreed to, in writing, by 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.

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

All proposals must be received by the A&M System, no later than **2:00 p.m. CDT, April 3, 2019** electronically via email to soprocurement@tamus.edu with the subject line of "RFP01 SBA-19-

041 – EAP 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.

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

- ✓ Proposal (Section 3.7)
- ✓ Signed Execution of Offer (Exhibit A)
- ✓ Non-Collusion Affidavit (Exhibit B) signed and notarized
- ✓ HUB Subcontracting Plan (Section 3.8)

NOTE: The signature in the Execution of Offer within the electronic copy shall serve as the official signature of record.

Submittal Format: The submittal shall be saved as two separate files in Adobe Portable Document Format (PDF). The first file shall contain the Proposal (Section 3.7) and named "**company name – Proposal SBA-19-041**". The second file shall contain the Execution of Offer, Non-Collusion Affidavit, and the HUB Subcontracting Plan and name "**company name – Forms SBA-19-041**".

- The Proposal must include all items listed within Section 3.7 (*a. through m.*) and labeled as such with a divider page to include the underlined titles in *a. through m.*, 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.

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, should be presented in writing. **Deadline for submission of questions is March 20, 2019.** The A&M System will publish all questions with Oresponses according to the schedule in Section 1.5.

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).

<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 A&M System replied to inquiries which are made by

formal written addenda shall be binding. Oral and other interpretations or clarification will be without legal effect.

2.5 Selection Process

The evaluation of the proposals shall be based on the proposal that the A&M System deems to represent the **best value** to the A&M System. This may include the criteria listed below. 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
- Financial Strength and Stability
- Administrative Capability
- Past experience
- Customer/Member services
- 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, and ranked by the A&M System. The A&M System will rank 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 vendor 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 will 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 Proposers. The A&M System shall not disclose any information derived from the proposals submitted by competing Proposers 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 that describe administrative interactions between the A&M System and its EAP vendor, Respondents are advised of the administrative requirements listed in this section of the RFP. Respondents 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 the proposed all-inclusive administrative fee you provided in your RFP response (refer to *Exhibit D, question 5*).

- a. Management agreements which formalize the A&M System's relationship with the selected Proposer.
- b. Benefit contracts, affirmed by the A&M System as to form and content and approved by the Texas Board of Insurance in accordance with state and federal statutes, and technical and legal assistance in the administration thereof.
- c. Communication materials necessary for the proper administration of the program are subject to editing of format, content and final approval by the A&M System.
- d. Representation at open enrollment meetings across the state during the month of July. (Refer to *Section 3.5 and Exhibit D, Question 30* of the RFP)
- e. Quarterly and annual management reports, including but not limited to, utilization and member satisfaction information as agreed to by the A&M System and the Respondent.
- f. Ad hoc utilization reports or analyses as requested by the A&M System and which do not represent extraordinary data processing effort by the claim administrator.
- g. If Respondent requires eligibility files, file will be transmitted monthly, via secure FTP.

3.2 Current Funding

The A&M System will provide funding for the Employee Assistance Program. 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 31.

3.3 Contract Documents

Within three weeks from notice of award of the contract, the Proposer will provide a first draft of the Service Agreement, HIPAA Business Associate Agreement, and any other required legal documentation to System Benefits Administration in electronic format (preferably MS WORD) for review and edits. **Completion of these documents is not required as part of the RFP response.** Final documents must be completed and signed by both parties no later than August 1, 2019.

- HIPAA Business Associate Agreement – In the interest of safeguarding our employees' protected health information, the A&M System will require the execution of a HIPAA Business Associate Agreement documenting the selected Proposer's compliance with both the privacy

and security rules as set forth by the Health Insurance Portability and Accountability Act. The Business Associate Agreement is attached as *Exhibit F* for your reference.

3.4 Eligibility

Employees and dependents of the A&M System will be covered as of the effective date decided upon within the contract. New employees, hired after that effective date, will be eligible on their first day of employment.

The A&M System manages the enrollment process and will provide the selected Proposer with a weekly full file of all FSA participants. The file is a full file delivered through SFTP with PGP encryption to the selected Proposer's website. The file is a consolidated enrollment file that includes all participants electing to have an FSA account from all A&M System members. The System member for each participant is indicated on the file.

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 used by the Proposer, it is understood that the A&M System's determination will prevail.

Currently an employee is eligible for benefits if he/she is eligible to participate in the Teacher Retirement System of Texas (TRS) or Optional Retirement Program (ORP), and meets one of the following criteria:

- Employees Working at least 20 hours a week and having an appointment that is expected to continue for a term of at least 4 ½ months,
- Graduate student employees enrolled in graduate-level classes as a condition of employment, working at least 20 hours a week and having an appointment that is expected to continue for a term of at least 4 ½ months (although not TRS or ORP eligible)

Dependents eligible for coverage include:

- the employee's spouse
- the employee's unmarried children younger than age 26, regardless of where they live or whether they are enrolled in school; or disabled dependent children regardless of age
- grandchildren residing with the employee

3.5 Communications

The A&M System will conduct an open enrollment period for its eligible employees and retirees during the month of July, for the plan year beginning the following September 1. Between twenty and twenty-five voluntary open enrollment meetings are held at System Member locations across the state and the selected Proposer will be required to have personnel available at all meetings, if requested to do so by the System Member. When you downloaded the RFP, you should have also downloaded a supplemental file listed in *Exhibit E* named *Sample Open Enrollment Calendar* which contains a copy of the July 2018 open enrollment meeting calendar for your reference. If you failed to download the file, you can do so by returning to the ESBD.

Any communication materials produced by the selected Respondent must be reviewed by SBA prior to release.

All costs associated with creating and distributing communication materials must be included in the proposed administrative fees.

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

3.6 Qualifications of Respondents

All entities responding to this RFP must certify (*see Section 3.7i.*) that they are licensed to do business in the state of Texas and permitted to contract with the State or any of its subdivisions. The organization must also certify in *Section i.* that it is in good standing with the Texas Department of Insurance (TDI) and disclose any actions that are pending or in process with TDI.

3.7 Proposal

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 Proposer'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 group 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):
 - National/Governmental Accounts, Director
 - Account Manager
 - Account Representative
- 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 Proposer's response to this requirement officially authorizes the A&M System to contact these organizations to discuss the services and other considerations which the Proposer has provided to such organizations and authorizes the organizations to provide such information to the A&M System and Proposer 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 licensed in the state of Texas for which it is submitting proposals and is legally able to contract with the State or any of its subdivisions.
- Certify that the organization is in good stead with the Texas Department of Insurance (TDI) and disclose any actions that are pending or in process with TDI.
- 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 enrollment of any employee 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 – This section should include the completed 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 discouraged. The Proposer 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 plan design please 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”.

3.8 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.

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.

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. The applicable **HUB goal** to utilize for this RFP is **11%** for “all other services”.

Respondents shall complete the HSP form attached or as found on the following site;

<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.

If the Respondent is completing as **self-performing**, a statement, which attests that the respondent shall perform the subcontracting opportunities identified by the agency, with its own employees and resources, is required. The sections in the HSP form to be completed for self-performing are Section 1, 2a (check No), 3 with your statement included in the open text field, and 4.

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 kwilliams@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 contract 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 this contract, 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 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 Respondent 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 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 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.

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 Proposer. The A&M System will not pay commissions in the event that the Proposer 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 this RFP, as well as any other disclosure of information required by applicable Texas law.
- (b) Upon an A&M System written request, Respondent will provide specified public information exchanged or created under this RFP that is not otherwise excepted from disclosure under chapter 552, *Texas Government Code*, to A&M System in a non-proprietary format acceptable to A&M System. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which A&M System has a right of access.
- (c) Respondent acknowledges that A&M System may be required to post a copy of the fully executed Agreement(s) as a result of this RFP on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

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' 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.

<u>Coverage</u>	<u>Limit</u>
A. <u>Worker's Compensation</u>	
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: zimmermann@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 this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

4.24 PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

By submitting a proposal, the Respondent certifies it does not and will not, during the performance of any resultant contract, boycott Israel. PROVIDER acknowledges any resultant may be terminated if this certification is or becomes inaccurate.

4.25 CERTIFICATION REGARDING BUSINESS WITH CERTAIN COUNTRIES AND ORGANIZATIONS

Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, PROVIDER certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. PROVIDER acknowledges any resultant agreement may be terminated if this certification is or becomes inaccurate.

4.26 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-19-041

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.

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 _____, 2019.

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 at a minimum one of 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 3.7j* 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. Provide all exhibits requested in the Questionnaire at the end of the Questionnaire.
- D. Proposed administrative fees must be guaranteed for the initial three-year term through August 31, 2022.
- E. Please base quantitative responses on the 12 months ending August 31, 2018, 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. The EAP plan currently operates as a fiscal year plan and the intention is for the plan to remain as such.

Company Information

1. Is your company licensed and regulated by the Texas Department of Health and Texas Department of Insurance?
2. Where will the account representative be located? Will this individual have responsibility for other clients? If yes, how many?
3. Would your employees use a secure e-mail system to communicate with us and, if so, what system do you use?

Financial Guidelines

4. Please note: The Texas A&M System requires that there be **no** minimum participation requirements for the group as a whole or in any specific location. Please indicate your willingness to meet this requirement.
5. Please indicate the administrative fee as a monthly per participant amount for a minimum of five clinical counseling sessions per incident. Additionally, please provide any value added programs available as well as any associated costs. **Proposed fees must be guaranteed for the initial three-year term, through August 31, 2022.**

***Monthly administrative cost should include cost for any eligible dependents.**

6. The A&M System will self-bill monthly. Remittance will be made by the end of the month after the month for which premium is due. Please indicate your willingness to meet this requirement.
7. Indicate what the average rate increase for your book of business has been for each of the last four years.
8. Does your company provide a student assistance program for counseling services? If so, what is the structure and cost per eligible student per month? *This service, if utilized, would be chosen by each system member institution separately and would not be contracted by SBA or the System Offices.*

Referral Processing

9. Provide the hours of access to a counselor for referrals/treatment. (Telephone and in-person consultation) Is this different for emergencies?
10. Are members required to follow a pre-authorization process? Please describe the procedure employees and dependents must follow to access your network. Is the process different for a manager? Is it different for an emergency/crisis situation?
11. Are all calls answered by a crisis intervention specialist?
12. How are calls prioritized for appointment scheduling/referrals? (i.e. Same day appointments for acute emergencies, 24 hours for other emergencies, 72 hours for general care)
13. What is the process you have in place in the event of a catastrophic event or employee death, including response time for on-site assistance?
14. For the office that would process A&M System referrals, please provide:
 - a. the number of clients for whom you process referrals
 - b. the number of covered employees for whom you process referrals
 - c. the number of individuals at your company who handle referrals
15. What additional responsibilities do referral processors have (e.g., telephone inquiries, correspondence, filing, opening mail, etc.)?

Network Issues

16. Please provide the number of clients and total lives currently accessing similar benefits and/or enrolled in your network programs, within the state of Texas and nationally.
17. Please provide information regarding the number of network providers for 2017 and 2018 for your entire network and for each city (*Bryan/College Station, Commerce, Corpus Christi, Kingsville, Amarillo, Canyon, Houston, Stephenville, Prairie View, Dallas/Fort Worth, Galveston, Laredo, Texarkana, Temple/Killeen, San Antonio*) in which an A&M System Member is located.
18. In areas of Texas where site based clinical services are not available, what is the scope of telephonic counseling?

19. What are your minimum educational, licensure, and experience requirements for your counselors?
20. What was the turnover of providers in your network in 2016, 2017 and 2018? Please differentiate between voluntary and involuntary turnover and list the reasons for each type of turnover.
21. What is your provider retention rate and/or network turnover for calendar years 2017 and 2018?
22. Please describe your financial arrangements with the providers.
23. Briefly describe your approach to expanding your networks and, if there is a plan currently in place to expand, please describe it. Include in your response an indication of whether your approach is market or client-driven.
24. Comparing the demographics file (Exhibit E) against your current network, what percentage of the A&M System's population will your network cover at this time, assuming an employee has access to a network provider within (25) miles of their office or home residence?
25. Do you offer virtual counseling sessions with licensed providers? If so, how is this accomplished?
26. Do you have an app available for personal devices, such as a smart phone or tablet? If so, what capabilities are available?

Communication

27. Please enumerate the types of employee communications available and provide a sample of each (brochure, postcards, email, etc.).
28. Please provide the URL (address) for your website. If you provide an online provider directory, how often is the directory updated? If you have the ability to provide access to your website using a dummy/test account please provide the appropriate userid and password to be used.
29. Will a dedicated toll-free phone number be assigned for the A&M System?
30. As mentioned in Section 3.5, the A&M System will conduct an open enrollment period for employees and retirees during the month of July, for the plan year beginning the following September 1. Between twenty and twenty-five voluntary open enrollment meetings are held at System Member locations across the state and the selected Proposer will be required to have personnel available to make presentations at all meetings, if requested to do so by the System Member. When you downloaded the RFP, you should have also downloaded a supplemental file listed in *Exhibit E* named *Sample Open Enrollment Calendar* which contains a copy of the July 2018 open enrollment meeting calendar for your reference. If you failed to download the file, you can do so by returning to the ESBD. Please indicate your willingness to meet this requirement.

Eligibility Reporting

31. The "honor system", meaning eligibility is met once a person identifies themselves as a Texas A&M System member, is the preferred method of eligibility; however, if required by the proposer,

the System Offices can provide eligibility information on a monthly basis via secure FTP from our server to the carrier's server. You will have a central point of contact in Benefits Administration and a technical contact. Please indicate your preference.

32. If an eligibility file is required, what is the turnaround time in loading eligibility information received from the employer? What has your actual performance been for the last six months? The A&M System has recently implemented Workday as its new Human Capital Management System. Benefits were included in this implementation. Does your organization currently have a relationship with Workday? Do you have an existing Cloud Connect for Benefits (CCB) integration with Workday?
33. The A&M System will require the selected proposer(s) to use a unique identifying number rather than a Social Security Number for all participants on all documents. The A&M System has assigned each employee and dependent a unique identifier. Please indicate your ability to comply.

Management Reporting

34. Please describe your data analysis and reporting capabilities. Do you have customized reporting capabilities? Is there an additional cost involved with customized reporting?
35. Please provide a list and brief explanation of your standard reports including frequency of production and availability following the close of the reporting period. Are reports available electronically? Are they available through an employer portal? (The A&M System expects the standard report package to be provided at no additional cost.)
36. What additional ad hoc reports are available and at what cost?

Customer Service

37. How would you monitor and control the level of service provided to A&M System employees?
38. Do you provide any automated customer service via voice response for routine questions?
39. How are patterns of customer service inquiries monitored and used to improve referral processing activities?
40. Please identify the number of bilingual customer service personnel that will be assigned to the A&M System account. Identify languages spoken.
41. Does your organization conduct member and/or provider satisfaction surveys? Please provide a copy of the survey questionnaire and the results of the most recent surveys.
42. Do you offer any wellness services? If so, what type and at what additional cost?
43. Do you offer educational/training services for employees and/or managers? If so, what type and at what additional cost?
44. Describe your company's disaster recovery and contingency plans. Have you ever tested or actually implemented these plans?

Performance Guarantees

45. Are you willing to put some amount of fees at risk, and how much, for:

- Timely completion of business associate agreement, group policy, riders, and any other required legal documentation.
- Accessible network of providers in all regions that elect to participate in the coverage.
- Response time for: referral authorization, appointment scheduling, CISD (Critical Incident Stress Management) Services

What methodology and standards would you propose for calculating and reporting these?

EXHIBIT E – SUPPLEMENTAL FILES TO RFP INSTRUCTIONS

You should have downloaded the following files along with the RFP instructions. If you failed to download these files, you can do so by returning to the Electronic State Business Daily where you downloaded the RFP.

1) Demographic File

Demographic Information:

The zipped Excel file below provides demographic information based on the **home** zip code and the employee age.

Field	Valid Values
Home Zip Code	Participant's Zip Code
Age	Participant's Age
Employee Status	A – Active, L – Leave of Absence
Male Participants	Numerical Count
Female Participants	Numerical Count

The zipped Excel file below provides demographic information based on the **work** zip code and the employee age.

Field	Valid Values
Work Zip Code	Participant's Zip Code
Age	Participant's Age
Employee Status	A – Active, L – Leave of Absence
Male Participants	Numerical Count
Female Participants	Numerical Count

All Benefit Eligible Employees Demographics

This file contains demographic information for ALL benefit-eligible employees.

IMPORTANT:

In order to arrive at the appropriate number of participants (employees), you will need to sum the "Male Participants" and "Female Participants" columns and add them together. You CANNOT just count the number of lines in the file since many lines include multiple individuals.

2) Sample Open Enrollment Calendar

The PDF file *Sample Open Enrollment Calendar* is a copy of the open enrollment meeting calendar from July 2018 and is provided to give you an idea of the number and location of meetings that you would attend.

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

This agreement is between **THE TEXAS A&M UNIVERSITY SYSTEM**, and XXXXX. In consideration of the mutual benefits to be derived by both parties and in accordance with applicable state and federal laws, the parties hereto agree as follows.

- I) Definitions: Terms used, but not otherwise defined, in this Agreement shall have the same meanings as those terms in the Privacy Rule.
- A. Business Associate. “Business Associate” shall mean **XXXXX**.
 - B. Covered Entity. “Covered Entity” shall mean **THE TEXAS A&M UNIVERSITY SYSTEM**.
 - C. Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
 - D. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
 - E. Protected Health Information. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR §164.501, limited to information created or received by Business Associate from or on behalf of Covered Entity.
 - F. Required by Law. “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR §164.501.
 - G. Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- II) Obligations and Activities of Business Associate
- A. Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
 - B. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided by this Agreement.
 - C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
 - D. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

- E. Business Associate will report to Covered Entity, the discovery of any “Breach” of “Unsecured Protected Health Information” as these terms are defined by HITECH. Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting the Covered Entity’s obligation under HITECH and any other security breach notification laws. Any such report shall include the identification (if known) of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach as required by law.
- F. Business Associate agrees to provide the services described in subsections a through i below as required by the HITECH Act, DHHS regulation and DHHS guidance.
- a. Investigate any unauthorized access, use, or disclosure of member protected health information (PHI).
 - b. Determine whether there is a significant risk of financial, reputational or other harm to any member as provided for in the HITECH Act.
 - c. Determine whether the incident falls under any of the HITECH Act Security Breach notification exceptions.
 - d. Document and retain each HITECH Security Breach risk assessment and exception analyses, and make this information available to members upon request.
 - e. Provide Covered Entity with written notification that describes the HITECH Security Breach incident in detail including a list of the impacted members and/or a copy of a member notification.
 - f. Notify each member impacted by the HITECH Security Breach by first class mail within the applicable statutory notification period, and provide toll-free numbers to the impacted members in order to handle any member questions regarding the incident. The notification will include the following:
 1. A brief description of the incident, including the date of the Security Breach and the date it was discovered;
 2. A description of the types of PHI involved in the Security Breach (i.e., name, birth date, home address, account number, Social Security Number, etc.)
 3. The steps that individuals might take to protect themselves from potential harm
 4. A brief description of what is being done to mitigate the harm and to avoid further incidents.
 - g. Provide a substitute notice, as described in the HITECH Act, to impacted members if there is insufficient mailing address information
 - h. Maintain a log and submit to DHHS an annual report of Security Breaches that impact fewer than 500 members Notify DHHS immediately, in the event the Security Breach impacts more than 500 individuals.
 - i. Notify media when required under the HITECH ACT and alert Covered Entity if any such notifications are needed.
- G. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- H. Business Associate agrees to provide access, at the request of Covered Entity and in a time and manner to be mutually agreed upon by the parties, to Protected Health Information in a

Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524.

- I. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual in the time and manner mutually agreed to by the parties. When Covered Entity grants an individual's request for amendment, Covered Entity shall provide the granted amendment to Business Associate.
- J. Business Associate agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity, or to the Secretary, in the time and manner mutually agreed to by the parties for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- K. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.
- L. Business Associate agrees to provide to Covered Entity or an Individual in the time and manner mutually agreed to by the parties information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.
- M. When Business Associate conducts Standard Transactions on behalf of Covered Entity, Business Associate will comply with the HIPAA requirements for Standard Transactions and Data Code Sets.

III) Permitted Uses and Disclosures by Business Associate

A. General Use and Disclosure Conditions

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in agreements or arrangements between the parties, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity, or Business Associate's independent duties under the Privacy Rule.

B. Specific Use and Disclosure Provisions

- a. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- b. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business

Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- c. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).
- d. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

IV) Obligations of Covered Entity

- A. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- B. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- C. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.
- D. Covered Entity acknowledges that an Individual may request a restriction on the Use or Disclosure of Protected Health Information in accordance with 45 CFR §164.522 and agrees that if such restriction would affect Business Associate's Use or Disclosure of Protected Health Information, Covered Entity will exercise its discretion and shall deny the Individual's request. Prior to responding to an Individual's request Covered Entity shall ask Business Associate if the proposed restriction will affect its functions, activities, or services under the Agreement.
- E. If Covered Entity or Business Associate receives a request from an Individual for confidential communication of Protected Health Information by alternative means or at alternative locations in accordance with 45 CFR §164.522(b), Covered Entity prior to responding to such a request shall ask Business Associate for information on the feasibility of implementing or accommodating the request and on whether there may be an additional cost. Covered Entity shall promptly notify Business Administrator of its decision on the request for confidential communication of Protected Health Information.
- F. If or when Covered Entity transmits information electronically to Business Associate or Covered Entity's Business Associates, Covered Entity shall comply with HIPAA requirements for Standard Transactions and Data Code sets.

V) Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

VI) Term and Termination

A. Term. This Agreement shall be effective as of _____, 2017 and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the provisions in this Section.

B. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

- a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
- b. Immediately terminate this Agreement if Business Associate had breached a material term of this Agreement and cure is not possible; or
- c. If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

C. Effect of Termination

- a. Except as provided in paragraph b of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- b. If returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible, and Business Associate shall extend the protections of this Agreement to such Protected Health Information, limiting further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

VII) Miscellaneous

A. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

- B. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- C. Survival. The respective rights and obligations of Business Associate under Section VI.C of this Agreement shall survive the termination of this Agreement.
- D. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- E. Execution and modification. This Agreement is binding only when signed by both parties. Any modifications or amendment must be in writing and signed by both parties.
- F. Assignment. This Agreement, with the rights and privileges it creates, is assignable only with the written consent of both parties.
- G. Force majeure. Each party shall be excused from any breach of this Agreement which is proximately caused by government regulation, war, strike, act of God, or other similar circumstance normally deemed outside the control of well-managed businesses.
- H. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all other written and oral agreements between the parties with respect to such. It is acknowledged that other contracts may be executed. Such other agreements are not intended to change or alter this Agreement unless expressly stated in writing.
- I. Governing Law. This Agreement is construed under the laws of Texas. Venue is in Brazos County, Texas.
- J. Independent Business Associate Status. This Agreement will not be construed as creating an employer/employee relationship between Covered Entity and Business Associate.
- K. Headings. Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.
- L. Provisions. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- M. Notice. Any notices required by this Agreement shall be delivered to the following addresses:

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

VIII) Mandatory Dispute Resolution

- A. To the extent Chapter 2260, Texas Government Code, as it may be amended from time to time ("Chapter 2260") is applicable to this Agreement, and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by Covered Entity and Business Associate in attempts to resolve any claim for breach of contract made by Business Associate:
1. Business Associate's claim for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business shall be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Business Associate must submit written notice as required by subchapter B of Chapter 2260, to Covered Entity in accordance with the notice provisions in this Agreement. Business Associate's notice shall specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that Covered Entity allegedly breached, the amount of damages Business Associate seeks, and the method used to calculate the damages. Compliance by Business Associate with subchapter B of Chapter 2260 is a required prerequisite to Business Associate's filing of a contested case proceeding under subchapter C of Chapter 2260. The Executive Vice Chancellor and Chief Financial Officer, or such other officer of Covered Entity as may be designated from time to time by Covered Entity by written notice thereof to Business Associate in accordance with the notice provisions in this Agreement, shall examine Business Associate's claim and any counterclaim and negotiate with Business Associate in an effort to resolve such claims.
 2. If the parties are unable to resolve their disputes under subparagraph (1) of this Section, the contested case process provided in subchapter C of Chapter 2260 is Business Associate's sole and exclusive process for seeking a remedy for any and all of Business Associate's claims for breach of this Agreement by Covered Entity.
- B. Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. The parties specifically agree (i) neither the execution of this Agreement by Covered Entity nor any other conduct, action or inaction or any representative of Covered Entity relating to this Agreement constitutes or is intended to constitute a waiver of Covered Entity's or the State of Texas' sovereign immunity to suit, and (ii) Covered Entity has not waived its right to seek redress in the courts.
- C. The submission, processing and resolution of Business Associate's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.
- D. Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitutes grounds for the suspension of performance by Business Associate in whole or in part. Covered Entity and Business Associate agree that any period set forth in this Agreement for notice and cure of defaults are not waived.

- E. The designated individual responsible on behalf of Covered Entity for examining any claim or counterclaim and conducting any negotiations related thereto as required under §2260.052 shall be the Executive Vice Chancellor and Chief Financial Officer.

The Texas A&M University System

Business Associate/Selected Proposer

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

The Texas A&M University System
HIPAA Business Associate Agreement – (DRAFT, DO NOT EXECUTE)

Security Rule

ADDENDUM

In addition to the Privacy Rule that safeguards protected health information (PHI), the Health Insurance Portability and Accountability Act of 1996 also established the Security Rule which focuses specifically on electronic information. The Security Rule, effective April 20, 2005, requires that covered entities and their business associates develop and implement administrative, technical, and physical safeguards to protect participants’ health information when it is maintained or transmitted electronically.

By signing below, the Covered Entity and its Business Associate agree to:

- Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic PHI that it creates, receives, maintains or transmits on behalf of the covered entity as required by the Security Rule;
- Ensure that its agents (including subcontractors) who receive Electronic PHI agree to implement reasonable and appropriate safeguards to protect such information; and
- Report any security incident involving our data of which it becomes aware to Ms. Ellen Gerescher, Employee Benefits Manager.

If the Covered Entity determines that the Business Associate has violated a material term of the Agreement, the Covered Entity may terminate the Agreement.

The Texas A&M University System

Selected Proposer

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____