

**THE UNIVERSITY OF TEXAS SYSTEM  
REQUEST FOR PROPOSALS  
FOR  
A THIRD PARTY ADMINISTRATOR FOR THE UT FLEX  
HEALTH CARE FLEXIBLE SPENDING ACCOUNT AND  
DEPENDENT DAY CARE FLEXIBLE SPENDING ACCOUNT  
PLANS FOR THE  
EMPLOYEES  
OF  
THE UNIVERSITY OF TEXAS SYSTEM**



**to be effective  
September 1, 2016**

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# 1.0 INTRODUCTION AND OVERVIEW

## 1.1 DESCRIPTION OF THE UNIVERSITY OF TEXAS SYSTEM

The Texas Constitution of 1876 provided that “the Legislature shall, as soon as practical, establish, organize and provide for maintenance, support and direction of a university of the first class, to be located by vote of the people of this State, and styled ‘The University of Texas.’” In 1881, the 17th Texas Legislature passed an act to establish The University of Texas. Later that year, voters determined that the Main System was to be located in Austin and the Medical School was to be located in Galveston.

Today, The University of Texas System (System) includes eight (8) academic institutions in Arlington, Austin, Dallas, El Paso, Odessa (Permian Basin), Rio Grande Valley (Brownsville and Edinburg), San Antonio and Tyler, plus eight (8) health institutions in Austin, Dallas, Galveston, Harlingen, Houston (2), San Antonio and Tyler. In addition, the main System Administration office is located in Austin; however, many of the operations of System Administration are decentralized and therefore located in numerous areas of Texas as well as in Washington, D.C. Many of the UT institutions have their own payroll systems.

The System has approximately 93,000 benefits-eligible employees who are eligible to participate in the Flexible Spending Account program. The System has almost 23,500 benefits-eligible retired employees who are not eligible to participate in the Flexible Spending Account program.

The following table\* shows the name, location and the approximate number of benefits-eligible employees and retirees associated with each institution in the System as of October 2015:

**The University of Texas System  
October 2015**

Location	Institutions	Benefits-Eligible Employees
Austin	The University of Texas at Austin	17,352
	The University of Texas System Administration	751
Rio Grande Valley (Brownsville, Edinburg)	The University of Texas Rio Grande Valley	2,857
Dallas	The University of Texas at Arlington	3,397
	The University of Texas at Dallas	3,394
	The University of Texas Southwestern Medical Center at Dallas	13,530
El Paso	The University of Texas at El Paso	2,426
Galveston	The University of Texas Medical Branch at Galveston	11,401
Houston	The University of Texas Health Science Center at Houston	7,008
	The University of Texas M.D. Anderson Cancer Center	19,932
Odessa	The University of Texas of the Permian Basin	461
San Antonio	The University of Texas at San Antonio	3,312
	The University of Texas Health Science Center at San Antonio	5,165
Tyler	The University of Texas at Tyler	901
	The University of Texas Health Science Center at Tyler	1,143
<b>TOTAL</b>		<b>93,030</b>

## 1.2 OBJECTIVES OF THIS REQUEST FOR PROPOSAL (RFP)

Section 1601.054 of the Texas Insurance Code requires the System to submit for competitive bidding at least once every six years for each of its group insurance plan arrangements. As described in this Request for Proposal (RFP), the System is soliciting proposals from qualified and appropriately licensed vendors to provide third party administrative services for the System's Health Care Flexible Spending Account and the Dependent Daycare Flexible Spending Account Plans (FSA Plans).

The contract for these services will be for the three-year period beginning September 1, 2016 through August 31, 2019, with the opportunity at System's sole option to renew for an additional three year period, subject to terms and conditions acceptable to the System.

All qualified vendors, including the current contracting vendor, are invited to submit a proposal. It is the System's intention to select one vendor to administer the FSA Plans and to have a signed contract in place and begin implementation planning by **September 1, 2016**.

The vendor proposal must demonstrate a commitment to work closely with the System to ensure a seamless transition into the new plan year, particularly in the event the current plan provider is not selected for the new contract period.

Responding vendors should present their proposals for the FSA Plans, as described in this RFP, in Section 14 of this RFP.

## 1.3 CURRENT SYSTEM ENROLLMENT

Summaries of current plan enrollment are provided to illustrate the number of potential plan participants eligible for the System FSA Plans. These plan statistics including enrollment, demographic data, and plan utilization data are available in Appendix C of this RFP.

### **ENROLLMENT SUMMARY OF ALL CURRENT SYSTEM BENEFIT PLANS**

The System currently has about 116,500 employees and retired employees plus approximately 111,000 dependents participating in its Uniform Group Insurance Program (known as UT Benefits). In addition, there are approximately 1,000 COBRA participants continuing coverage in various health plans within the program. The System offers a self-funded preferred provider (PPO) health plan (UT SELECT) for all eligible program participants. Approximately 115,000 employees, retired employees, and COBRA subscribers along with more than 85,000 dependents were covered by UT SELECT during

October 2015. UT SELECT medical benefits are currently administered by Blue Cross and Blue Shield of Texas, and prescription benefits are currently administered by Express Scripts. The System's "Living Well" program is a comprehensive health and wellness initiative available to all UT SELECT participants and is integrated with both the medical and prescription plans and some voluntary plans such as the dental plan and vision plan.

The System also currently offers the following optional coverages as part of the UT System uniform group employee insurance program: two self-funded dental PPO plans (UT SELECT Dental) currently administered by Delta Dental, a dental health maintenance organization currently offered by Delta Dental, voluntary group term life and accidental death and dismemberment insurance coverage currently issued by Dearborn National, dependent group term life and accidental death and dismemberment coverage currently issued by Dearborn National, medical and dependent care flexible spending accounts currently administered by PayFlex, and short and long term disability coverage currently issued by Dearborn National, and two vision care plans currently issued by Superior Vision. Participation in these optional coverages is voluntary, and generally the premiums are paid solely by the participating employees and retired employees.

The System's Office of Employee Benefits (OEB), located in Austin, Texas, has oversight over all fully and self-funded benefit plans provided by the System through its uniform group insurance program. A primary objective of the UT Benefits Program is to maximize the benefits and services that eligible System employees, retired employees and their covered dependents receive for each dollar spent on insurance benefits. The duties of OEB are described elsewhere in this RFP.

### **SUMMARY OF CURRENT HEALTH CARE FLEXIBLE SPENDING ACCOUNT AND DEPENDENT DAY CARE FLEXIBLE SPENDING ACCOUNT PLANS**

The current FSA Plans have an enrollment in the UT System group insurance program of approximately 21, 594 employees.

## **1.4 SUMMARY OF SERVICES TO BE PROVIDED**

The System desires that the selected vendor will provide third party administrative services for the UT Flex FSA Plans offered by System to System employees. It is the intent of the System to select one vendor to administer both the Health Care Flexible Spending Account and the Dependent Daycare Flexible Spending Account Plans (FSA Plans) through a single contract for the three (3) year period beginning September 1, 2016, with an option to renew

for an additional three year period. Responding vendors should submit only one set of administrative fees for each RFP response. (See Section 14 of this RFP).

The current administrative services for the FSA Plans that PayFlex provides on behalf of System are described in Appendix A of this RFP.

System does not guarantee that any of the submitted proposals will be accepted.

## **2.0 GENERAL INFORMATION AND REQUIREMENTS**

### **2.1 CONFLICT OF INTEREST**

No member of the System Board of Regents or System employees (including the Chancellor, Executive Vice Chancellor for Business Affairs, Assistant Vice Chancellor for Employee Benefits and Services, and Office of Employee Benefits management) may have any direct interest in the awarding of the Contract or any indirect conflict of interest involving the vendor, including but not limited to any financial interest.

### **2.2 NON-RESPONSIVE PROPOSALS**

The System will not accept for consideration any proposal that does not comply with the criteria set forth herein. Failure to address any of the RFP requirements may result in rejection of a proposal.

### **2.3 REPRESENTATIONS BINDING**

Representations made within the proposal will be binding on the vendor. The System will not be bound to act by any other previous communication of any type or non-conforming proposals submitted by a vendor.

### **2.4 NONDISCRIMINATORY PRACTICE**

A vendor shall not discriminate against eligible System employees by excluding, seeking to exclude, or otherwise imposing restrictions on services or benefits on the basis of gender, race, national origin, religion, age, sexual orientation, veteran status, disability, or pregnancy.

### **2.5 BINDING ARBITRATION CLAUSE EXCLUSION**

Each proposal must specify that the vendor will not impose a binding arbitration requirement upon a plan participant. Any proposal containing a requirement that plan participants must agree to engage in binding arbitration will not be accepted by the System.

### **2.6 MODIFICATION PROHIBITED**

No proposal may be changed, amended, or modified after submission to the System except to correct an inadvertent error.

### **2.7 EXEMPTION FROM STATE TAXES**

Coverages provided by the System are exempt from state premium and maintenance taxes.

## 2.8 VENDOR INITIATED CHANGES

The vendor must notify the System in writing prior to making any significant changes in operating policies or business practices, including material changes to its third party agreements which could impact the UT Flex plan, key personnel on the designated System Account Team, or in any other aspect of the vendor's operations that could affect the FSA Plans. The System reserves the exclusive right to determine if such potential changes may be applied to the System, and if so, when they shall be applied.

## 2.9 MEMBER IDENTIFICATION AND CONFIDENTIALITY OF SSNS

The primary reference ID used to identify plan subscribers and their dependents (collectively referred to herein as "participants") is a unique 8-character alphanumeric Benefits ID (BID) that is issued by the System. The vendor must be able to identify a participant and/or the participant's coverage using the BID. The BID shall be the preferred identifier for any telephone communication, unencrypted electronic communication, and in printed reports when referencing specific participants.

Vendors must be able to comply with all federal and Texas state legislation, as well as System policy, applicable to the protection and use of Social Security numbers, including limitations placed on the use of Social Security numbers to access information about their individual HCFA and DDCFA accounts and plan documents. The vendor must be able to coordinate with the System to fully comply with all applicable laws and System Policies relating to the security, protection and use of plan participants' Social Security numbers. All sensitive System data, including Social Security numbers, must be encrypted when transmitted over the internet.

## 2.10 CONTINUATION OF COVERAGE (COBRA)

As specified by Title XXII of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the System will at the time of initial enrollment notify employees, spouses and qualified dependent children of their option to continue their group health coverage following certain qualifying events. The System institutions will also send COBRA application forms to each individual who, because of a qualifying event, becomes eligible for continuation of coverage. If such an individual chooses to continue coverage, it is the individual's responsibility to complete the COBRA application form and send it directly to System. The vendor may be required to accept enrollment data for COBRA participants.

Administrative fees for COBRA Flex services will be 102% of the active employee monthly UT Flex payroll deduction.

Note: With respect to COBRA administration, the Office of Employee Benefits reserves the option to turn over the COBRA administration of the FSA Plans to the vendor at a future date if deemed necessary. System recognizes the very limited to low COBRA enrollment in FSA Plans.

## **2.11 COMPLIANCE WITH LEGAL REQUIREMENTS AND FUTURE CHANGES**

All proposals must comply with all currently applicable laws and regulations.

The requirements of applicable laws and regulations, as well as future program appropriations made by the Texas Legislature, are subject to change and such changes may affect overall plan design and/or administrative responsibilities. The System requires a good faith effort on the part of the vendor to comply with any additional responsibilities imposed by changes in state or federal laws or regulations, or by future court or administrative rulings, without requiring mid-year administrative fee increases.

Vendors must agree to collaborate with the System to effect necessary changes and to execute any agreements that may be required as a result. Should a mandated change materially affect the vendor's obligations under the Contract, the System reserves the right to negotiate with the vendor regarding any administrative fee adjustment that may be appropriate under the circumstances, as provided in the Contract.

## **2.12 SYSTEM'S HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PROGRAM**

The System is committed to providing full and equal opportunity for all businesses to provide goods and services needed in support of the System's missions. The System's Historically Underutilized Business (HUB) Program formalizes the System's commitment to carry out this effort. The HUB program ensures compliance with state HUB laws and serves to educate both the university and business communities about the benefits of using HUB vendors. In all contracts entered into for professional services, contracting services, and/or commodities with an expected value of \$100,000 or more, the purchase solicitation must indicate whether the System has determined that subcontracting opportunities are probable in connection with the contract. If so, a HUB Subcontracting Plan is a required element of the vendor response to this RFP.

### **2.12.1 SUBCONTRACTING OPPORTUNITIES DETERMINATION**

System has reviewed this RFP in accordance with Title 34, Texas Administrative Code, Section 20.13 (a), and has determined that subcontracting opportunities

are probable under this RFP. As identified by the System Office of HUB Development, the HUB Goal for this RFP is 26% percent.

For specific questions regarding the HSP, please submit questions through the RFP website and questions will be directed to the UT System Office of HUB Development.

### **2.12.2 HUB SUBCONTRACTING PLAN (HSP) REQUIRED FOR CONSIDERATION**

A HUB Subcontracting Plan (“HSP”) is required as part of vendor’s proposal. The HSP will be developed and administered in accordance with System’s Policy on Utilization of Historically Underutilized Businesses attached as an Appendix and incorporated for all purposes. The RFP No. for this HSP is 720–2015–UTFLX.

**Each vendor must complete and return an HSP in accordance with the terms and conditions of this RFP for each proposal submitted, including System’s Policy on Utilization of Historically Underutilized Businesses. Vendors that fail to do so will have their proposals considered non-responsive to this RFP in accordance with Section 2161.252, Texas Government Code.**

The Contractor will not be permitted to change its HSP unless: (1) the Contractor completes a newly modified version of the HSP in accordance with the terms of System’s Policy on Utilization of Historically Underutilized Businesses that sets forth all changes requested by the Contractor, (2) the Contractor provides System with such a modified version of the HSP, (3) System approves the modified HSP in writing, and (4) all agreements or contractual arrangements resulting from this RFP are amended in writing by System and the Contractor to conform to the modified HSP.

### **2.12.3 GOOD FAITH EFFORT REQUIRED**

All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (each a “HUB”) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP the Contractor subcontracts any of the services to be provided, then the Contractor must make a good faith effort to utilize HUBs

certified by the Procurement and Support Services Division of the Texas Comptroller of Public Accounts. Proposals that fail to comply with the requirements contained in this section will constitute a material failure to comply with advertised specifications and will be rejected by System as non-responsive.

Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP. Proposing vendor acknowledges that, if selected by System, its obligation to make a good faith effort to utilize HUBs when subcontracting any of the Program will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of the Program by the vendor is subject to review by System to ensure compliance with the HUB program.

#### **2.12.4 MANDATORY REQUIREMENTS FOR HSP SUBMISSION**

For each proposal, the vendor must submit to the System three (3) original copies of the HSP along with, but packaged separately from, each complete proposal. The three (3) originals of the HSP must be submitted under separate cover in a clearly marked envelope (the "HSP Envelope") that is attached to the outside of the box containing the other proposal materials submitted by the vendor or must otherwise be provided contemporaneously with the other proposal materials. The top outside surface of the HSP Envelope when attached to the exterior of the packaging for the vendor's other proposal materials must clearly show:

- 1) the RFP title (as noted on the cover page) and the Submittal Deadline, both marked in the lower left hand corner of the front of the envelope,
- 2) the name and return address of the proposing vendor, and,
- 3) the phrase "HUB Subcontracting Plan."

It is the vendor's sole responsibility to ensure that the HSP arrives concurrently with the other proposal materials as specified above. System will open a vendor's HSP Envelope prior to opening the proposal submitted by the vendor, in order to ensure that the vendor has submitted the number of completed and signed originals of the vendor's HUB Subcontracting Plan ("HSP") that are required.

A vendor's failure to submit the required number of completed and signed originals of the HSP will result in rejection of the proposal as non-responsive due to material failure to comply with advertised specifications; without exception, any such proposal will be returned to the vendor unopened.

**Note:** The requirements regarding submission of the HSP outlined above are separate from and do not affect a vendor's obligation to provide the specified number of copies of the complete proposal as specified elsewhere within this RFP.

### 2.13 USE OF SUBCONTRACTORS

Any planned or proposed use of subcontractors by the vendor must be clearly disclosed and documented in the submitted proposal and agreed to by the System. The vendor shall be completely responsible for all services performed and for the fulfillment of its obligations under the Contract, even if such services are delegated to a subcontractor. Any proposal to utilize subcontracting must be addressed in the vendor's Subcontracting HUB Plan, as described in a separate section.

### 2.14 HIPAA AND OTHER PRIVACY AND SECURITY COMPLIANCE REQUIREMENTS

The System's Health Care Flexible Spending Account Plan is subject to HIPAA and the administrator for the plan will be required to comply with all applicable provisions of the Health Insurance Portability and Accountability Act, codified at 42 USC § 1320d through d-8 (HIPAA), and any regulations, rules, and mandates pertaining to the HIPAA privacy and security rules, as well as with any applicable state medical privacy requirements. The plan offered must also comply with the System's privacy and applicable information technology security policies. In response to the related interrogatories included in Section 13.0 of this RFP, the vendor must describe in detail its HIPAA Privacy and Security programs as well as its information security program. The vendor will be required to sign System's HIPAA Business Associate as part of the Contract.

### 2.15 TERM OF ACCEPTANCE

It is the intent of the System, at this time, to enter into a three-year contract for administration of the Health Care Flexible Spending Account and the Dependent Daycare Flexible Spending Account Plans beginning September 1, 2016. At the System's option, this

Contract may be renewed for an additional three-year period beginning September 1, 2019, subject to terms and conditions acceptable to the System.

## **2.16 RESERVATION OF RIGHTS**

### **ADDITIONAL INFORMATION FROM RESPONDING VENDORS**

System reserves the right to request additional documentation and responding vendor agrees to provide the information requested.

#### **2.16.1 VALIDATION OF PROPOSAL MATERIALS**

The System reserves the right to audit/validate all materials and responses submitted with the vendor's proposal.

#### **2.16.2 REJECTION OF PROPOSALS**

The System retains the right to reject any and/or all proposals submitted and/or to call for new proposals.

#### **2.16.3 VENDOR NEGOTIATIONS**

The System reserves the right to enter into discussions and negotiations with one or more vendors selected at its discretion to determine the best and final terms. The System is not under obligation to hold these discussions or negotiations with each vendor that submits a proposal.

#### **2.16.4 REVISION OF PROVISIONS**

The System specifically reserves the right to revise any or all RFP or Contract provisions set forth at any time prior to the System's execution of a Contract.

#### **2.16.5 EXECUTION OF CONTRACT**

The System is under no legal obligation to execute a Contract on the basis of this RFP or upon receipt of a proposal.

## **2.17 REFERENCES**

Each vendor must provide a list of current major customers as requested in this RFP. These customers may be contacted by the System to provide information regarding the vendor's overall record of service in providing the program for their employees.

The provision of references by the vendor shall constitute verification that the System has the vendor's permission to contact these organizations and obtain any required information without obtaining further permission from the vendor.

## **2.18 MATERIALS**

A copy of materials to be used by the vendor in administering the FSA Plans must be provided as requested in the section of this RFP dealing with communications requirements. The System retains the right to review and approve all such materials prior to distribution. The vendor is required to submit proposed marketing and other informational materials in the specified format and according to deadlines set by the System. The cost for preparation of such materials for the term of the Contract should be accounted for in the proposed administration fees quoted by the responding vendor.

## **2.19 NO COMPENSATION FOR EXPENSES**

Vendors shall submit proposals at their own expense. No compensation will be provided to vendors for expenses incurred for proposal preparation or demonstrations, unless otherwise expressly stated in writing by the System.

## **2.20 RETENTION OF PROPOSALS**

Proposals and all materials submitted in response to this RFP become the sole property of the System and will not be returned to the vendors. During the evaluation process, the System shall make reasonable efforts as allowed by law to maintain proposals in confidence, and shall release proposals only to personnel involved with the evaluation of the proposals and implementation of the Contract unless otherwise required by law. Further information dealing with the confidential status and potential disclosure of proposal contents is addressed below in a separate section.

## **2.21 CONFIDENTIAL STATUS AND DISCLOSURE OF PROPOSAL CONTENTS**

As a state institution of higher education, the System is subject to the Texas Public Information Act ("the Act"), Chapter 552 of the Texas Government Code, and has no authority to enter into a confidentiality agreement in contravention of the Act. In response to any public information requests under the Act that are submitted during the RFP process, the System shall deem and argue to the State Attorney General that during the bidding process all proposals submitted in response to the RFP are confidential under the Act. However, once the RFP process has concluded, this exception will no longer apply.

Vendors should be aware that the Texas Attorney General may determine that full or partial disclosure is required for information deemed to be confidential or proprietary by a vendor. It is the sole obligation of a vendor to advocate for the confidential or proprietary nature of any information provided in or along with its proposal. The System shall not advocate for the confidentiality of the vendor's material to the Texas Attorney General or to any other person or entity. Upon receipt of any public information request involving a submitted proposal after the conclusion of the RFP process, the System shall, pursuant to the Act, make a good faith effort to notify the vendor of the request.

For any such request, the vendor will be responsible for submitting written justification to the State Attorney General detailing why particular information should be withheld, such as the exception applicable to certain commercial information. In order to ensure its ability to claim exemption from the release of information contained in a submitted proposal, a vendor should clearly designate within its proposal and accompanying materials any information that it believes to be exempt from disclosure and provide legal justification for each instance.

Additionally, vendors should be aware that, pursuant to the Act, upon request from a member of the Legislature and where needed for legislative purposes, the System may be required to release a vendor's entire proposal, including information designated by the vendor to be confidential or proprietary. By submitting a proposal, a vendor acknowledges its understanding and agreement that System shall have no liability to the vendor or to any other person or entity for any disclosure of information made in accordance with the Act.

This section applies regardless of whether a contract is awarded as the result of this RFP.

## **2.22 NEWS RELEASES**

Written approval by the System will be required prior to the issuance of any news release or other public communication regarding any Contract awarded to a vendor.

## **2.23 USE OF SYSTEM INFORMATION FOR SOLICITATION IS PROHIBITED**

The vendor must explicitly agree never to use any information received from any source about System employees for any marketing purpose or to solicit business of any other type. This agreement extends to all forms of discussions, advertisement, distribution, or other marketing by the vendor (or a parent or subsidiary) for coverage, products, or materials other than those explicitly relating to the vendor's participation in the System FSA Plans, including the provision of such items to lists of System employees obtained from other vendors contracting with System. This prohibition is also applicable to any use of the vendor's

System-specific website. This prohibition continues subsequent to termination of the Contract.

## 2.24 AGENT OF RECORD

The System will not designate an Agent of Record or any other such company employee or commissioned representative to act on behalf of either the System or the vendor. Requests for the System to provide such designation shall be rejected. Vendors are specifically instructed to submit proposals directly to the System as specified herein in separate sections detailing HUB Subcontracting Plan submission requirements and overall proposal submission requirements. Proposals submitted through a third party agent will not be accepted.

## 2.25 DEFINITIONS

For purposes of this RFP and any responses provided, the terms “employee”, “dependent”, “optional coverage”, “retired employee”, and “The University of Texas System (“System”)), shall have the same meaning as set forth in Chapter 1601 of the Texas Insurance Code. A copy of the Chapter 1601 is included as an Appendix of this RFP. System reserves the right to define any other terms used in this RFP

## 2.26 RESPONSES, ORDERING OF CONTENTS, DEVIATIONS

Proposals must concisely describe the vendor’s ability to meet the requirements of the RFP. Emphasis should be on providing complete, clear responses that demonstrate an understanding of the requirements and of the System’s needs. The content of all responses submitted must be ordered to correspond with the specifications as they appear in this RFP.

Unless a deviation is specifically noted in a response, it will be assumed that the vendor agrees to meet all specifications exactly as set forth in this RFP. Proposals containing deviations, items not called for herein, or irregularities of any kind are subject to disqualification at the System’s option.

Information about proposed unique or value-added benefits and programs that would enhance or supplement the current benefit offering specified within this RFP are welcome when presented in conjunction with confirmation that the vendor agrees to the requirements as presented in this RFP.

**Important: Responding vendors must Acknowledge and Confirm each enumerated section of this RFP and/or clearly state any deviations to the specific section(s). Your RFP responses will be incorporated into the Contract.**

## 2.27 CERTIFICATION

By completing and submitting the signed Signature Page included in Section 15.0 of this RFP with the original copy of vendor's complete proposal as specified, an authorized vendor officer certifies that the proposal complies with the RFP specifications and that the appropriate vendor staff have reviewed and confirmed their applicable sections based on their expertise.

## 2.28 SUBMISSION OF PROPOSALS

Only proposals submitted in compliance with the following requirements will be accepted by System:

- 1) This RFP is available on the System's RFP website in both PDF and Word format. Vendors must use the Word version of the RFP to complete and include the following items with your submission:
- 2) Detailed responses to each interrogatory;
  - a) Proposed administrative fees; and
  - b) The signature page, verifying the vendor's ability to meet all requirements.
- 3) One (1) original proposal signed with blue ink and clearly marked "Original", and ten (10) identical copies of the proposal must be received by the System on or before **3:00 p.m. Central Time on Friday, February 5, 2016**. The original and copies of the proposal should be delivered to:

Laura C. Chambers, Director  
Office of Employee Benefits  
The University of Texas System  
210 West 6th Street, Room B.140E  
Austin, Texas 78701

- 4) Vendors must submit three (3) complete electronic versions of the proposal on separate discs or USB drives, using either Microsoft Office or PDF format for all included documents. The discs or drives must be clearly labeled with the vendor name and the title of this RFP. All materials included in the printed binders *must* be included with the electronic versions, including exhibits and the separate HUB Subcontracting Plan submission.
- 5) All materials, other than the HUB Subcontracting Plan ("HSP"), must be submitted in sealed envelope(s), box(es), or container(s). **The HSP must be affixed to the outside of the main proposal packaging so that it arrives along**

**with the other proposal materials, but is separately accessible.** Proposals without a correctly completed HSP will be returned, unopened. Proposal packaging must clearly indicate the submittal deadline, the vendor's name, and the vendor's return address on the exterior.

- 6) Proposals must be valid for one hundred twenty (120) days following the proposal receipt date.
- 7) The proposed administrative fees must be firm and guaranteed for at least three (3) years beginning September 1, 2016 through August 31, 2019.
- 8) A Table of Contents with sufficient detail (including page numbers) to facilitate easy reference to all sections of the proposal, as well as to separate attachments, must be included. Any supplemental items not requested in the RFP should be clearly identified as such in the Table of Contents and must be provided in a separate section(s) of the proposal from required items.
- 9) Under no circumstances will proposals received after the submission deadline be considered. Properly marked late proposals will be returned unopened at the vendor's expense. Unmarked late proposals will be held at the System Office of Employee Benefits for 30 days and then discarded.
- 10) Proposals transmitted electronically, or by any means other than as specified in this section, will not be considered.

## 2.29 ADDENDA TO RFP, INQUIRIES REGARDING SPECIFICATIONS

Questions and comments regarding the RFP should be submitted as soon as possible and must be sent via email using the link on System's RFP website (<http://utdirect.utexas.edu/rfp/>) that has been established for this purpose.

Any response to an inquiry that alters an interpretation of, or requires a change to, this RFP will be posted as addenda on the RFP website. All vendors will be responsible for regularly checking this website for RFP addenda and other announcements. All addenda issued by the System prior to receipt of a proposal shall be considered part of the RFP. All vendors are required to acknowledge all of the addenda issued on the space provided on the Signature Page of this proposal.

To ensure that all replies can be provided to all prospective vendors prior to the deadline for submission of proposals, questions received after **5:00 p.m. Central Time on Wednesday, January 13, 2016** will not be considered or responded to by the System.

## 2.30 TELECONFERENCE FOR INTERESTED VENDORS

To provide representatives of interested vendors an opportunity to pose questions regarding the specifications and selection process, a teleconference for prospective respondents is scheduled to be held on **Wednesday, January 6, 2015 from 10:00 a.m. – 11:00 a.m., Central Time**. If you are interested in participating in this event, please register online at <http://utdirect.utexas.edu/rfp>.

Questions and comments should be submitted via the RFP website as described above and should be sent as much in advance of the teleconference as possible to allow time for the System to gather information as needed and to prepare complete responses prior to the teleconference. Following the teleconference, any remaining questions and comments must also be submitted via the RFP website.

Details regarding the teleconference will be provided in advance to those vendors that register to participate.

## 2.31 FINALIST INTERVIEW

Following the System's initial review of the RFP Proposals, if a vendor is selected as a finalist in the vendor selection process, the System may, at its sole option, request that personnel from the vendor, at the vendor's expense, attend a meeting at a System-designated location to clarify responses and to answer questions regarding the vendor's Proposal. If the System deems necessary, a site visit to the vendor may be conducted during the RFP review period at the System's expense.

### 3.0 IMPLEMENTATION TIMELINE

The dates below apply to key milestones during the implementation phase for the FSA Plans. Vendors will be required to meet the deadline listed below for submission of proposals. The vendor will be required to meet all deadlines as shown throughout the implementation process.

Post RFP Notice on Texas Marketplace Site	10/30/2015
Request for Proposal (RFP) Issued	12/15/2015
Prospective Vendor Teleconference	01/06/2016, 10:00a.m., CT
Last date to submit written questions to the System	01/13/2016 5:00 PM CT
Vendor Proposals Due to the System	02/05/2016 by 3:00 PM CT
Office of Employee Benefits and Vendor Implementation Team Planning Meeting – conference call	03/02/2016
Drafts of Annual Enrollment materials due to the System	3/21/2016
Contracts Finalized and Signed	05/02/2016
Drafts of new employee communication materials to the System	05/02/2016
Testing of automated transmission of claims data processing system and electronic Fee Billing Invoice	06/01/2016
System-specific vendor website available for testing	06/01/2016
Benefits & Human Resource Conference(BHRC) in Austin, TX	06/08-10/2016
Distribution deadline of Annual Enrollment materials to institutions	06/15/2016
Setup of enrollment/contribution FTP procedures and authorizations	06/15/2016
System-specific vendor website ready for use	06/22/2016
Begin testing transmission of test enrollment/contribution data	07/06/2016
Annual Enrollment Period (employee meetings)	07/15-31/2016
New Employee materials due to the Institution Benefit Offices	08/03/2016
Begin Testing of Electronic Fee Billing Invoice	08/03/2016
Testing of eligibility error dataset transmission from vendor	08/08/2016
Testing/training of emergency enrollment update/review processes	08/08/2016
Eligibility, accounting, and data management systems testing completed	08/11/2016
The first date for enrollment data to be transferred to the vendor	08/11/2016

Banking arrangements completed	09/01/2016
Plan Year 2015-2016 begins (Effective date of coverage)	09/01/2016
Production of automated transmission of claims data processing system and electronic Fee Billing Invoice	10/11/2016

## 4.0 THE CONTRACT AND OTHER LEGAL REQUIREMENTS

The Contract shall be in the format specified by the System. The Contract will incorporate this RFP, the vendor's proposal thereto, and any other information the responding vendor may be required to provide. Until a Contract has been executed and signed, the RFP and the vendor proposal will be binding. A Sample Contract is included as an Appendix to this RFP. Vendor responses containing proposed changes to the Sample Contract will not be considered.

**Important:** The vendor should not attempt to modify or sign the Sample Contract. The actual Contract will be prepared by the System Office of General Counsel and signed by the vendor prior to September 1, 2016.

### 4.1 INTRODUCTION

No Contract will be executed until the System has accepted a vendor's proposal and has notified the vendor of its approval. The Contract will be for a three-year term beginning on September 1, 2016 and will extend through August 31, 2019, to be renewed at the System's option for an additional three-year period unless terminated as provided herein or in the Contract. If the current vendor submits a proposal and is not selected, the current vendor shall continue to perform in good faith all obligations under its existing contract with the System.

The System and the contracting vendor shall agree and acknowledge, as applicable, that the benefits and services to be provided under the Contract will be provided from September 1, 2016 through August 31, 2019. However, the System and the contracting vendor shall also agree and acknowledge that there are duties and obligations specified by the RFP to be performed prior to September 1, 2016 and following August 31, 2019, and the Contract will specify that the parties agree to perform all such duties and obligations, and that all applicable damage provisions shall be in effect as to these duties and obligations.

The Contract shall comprise the complete and exclusive statement of each agreement between the System and the contracting vendor and supersede all prior or contemporaneous agreements, negotiations, course of prior dealings, and oral representations relating to the subject matter hereof.

The System has specific contracting requirements that cannot be waived or altered. All vendors should carefully review the Sample Contract included in Appendix F to this RFP, including but not limited to the provisions on Indemnification, Auditing, and the EIR Warranty. The vendor should include in their written submission all alternate requirements, terms, or conditions they

wish to have considered. However, the vendor should not assume that an opportunity exists to add such matters through the contract negotiation as a part of the RFP process. Unacceptable terms and conditions added by the vendor may result in the rejection of the vendor's proposal, despite other factors to be evaluated. In addition, the vendor should not strike-through or otherwise alter anything in the Sample Contract. Submission of an altered Sample Contract as part of a response may result in rejection of the vendor's proposal, despite other factors to be evaluated.

In the event that a contracting vendor fails or refuses to perform any of its duties or obligations as provided by the Contract, the System, without limiting any other rights or remedies it may have by law, equity or under contract, will have the right to terminate the Contract immediately. Notwithstanding such termination, certain obligations of the vendor shall survive the termination of the Contract.

At any time during the term of a Contract and for a period of four (4) years thereafter, the System or a duly authorized audit representative of the System, or the State of Texas, at its expense and at reasonable times, reserves the right to audit the contracting vendor's records and books relevant to all services provided under the Contract. In the event such an audit reveals any errors/overpayments by the System, the contracting vendor will be required to refund the full amount of such overpayments within thirty (30) days of such audit findings, or the System may, at its option, reserve the right to deduct such amounts from any payments due the vendor.

The contracting vendor must agree not to publicize the Contract or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of the System's employees or retirees or use the System's name in connection with any sales promotion or publicity event without the prior express written approval of the System.

Duties assigned to the vendor under the Contract may not be assigned or delegated to a third party.

## 4.2 FAILURE TO COMPLY

Failure to comply with the procedures required by the RFP or any other applicable guidelines shall be cause for immediate suspension or cancellation of the Contract. A suspended or canceled vendor that provides coverage or services will not be permitted to accept new enrollees, but must continue to provide services for those employees whose effective date was prior to the date of suspension or cancellation. Any suspension will remain in effect until System is satisfied that circumstances resulting in suspension have been corrected. Upon the

loss of the contracting vendor of any licensure or certification required by Texas law to provide a service required under the Contract, or the filing of a petition for bankruptcy, or upon judgment of bankruptcy or insolvency by or against the contracting vendor, the System may terminate the Contract for cause without notice.

#### **4.3 NOT AN ERISA PLAN**

As a governmental entity, the System is not subject to the provisions of the Employee Retirement and Income Security Act (ERISA).

#### **4.4 COMPLIANCE WITH TEXAS DEPARTMENT OF INSURANCE RULES**

Pursuant to Chapter 1601 of the Texas Insurance Code (Code), System is exempt from many of the provisions of the Code and regulations promulgated by the Texas Department of Insurance (TDI). However, nothing in any agreement between the System and a contracting vendor shall be construed to require or permit any action that is prohibited by, or in conflict with, an applicable provision of the Code or an applicable TDI rule or regulation.

#### **4.5 VENDOR ID NUMBERS**

A vendor must obtain a Vendor Identification Number issued by the Comptroller of Public Accounts of the State of Texas. The vendor will be required to complete and submit a Payee Identification Form in order to receive payment.

#### **4.6 AUTHORIZED SIGNATURES**

The Chief Executive Officer, General Counsel, or an authorized officer of the responding vendor must sign the Contract. The proposal must state the name and office of the individual who will sign the Contract on behalf of the vendor and include documentation verifying that the individual has the authority to do so.

#### **4.7 RELATIONSHIP OF PROPOSAL TO CONTRACT**

Any contract resulting from the selection of a vendor by the System shall incorporate by reference the applicable portions of the Policy to be issued by the vendor to System, the RFP including Appendices, the vendor's response thereto, and any other information the vendor may be required to provide.

## **5.0 FINANCIAL REQUIREMENTS**

Upon the loss by a contracting vendor of any licensure or certification required by Texas law to provide a service required under the Contract, or the filing of a petition for bankruptcy, or upon a judgment of bankruptcy or insolvency by or against the contracting vendor, the System may terminate the Contract for cause without notice. This section survives the termination of the Contract.

### **5.1 VENDOR FINANCIAL STRENGTH**

To be eligible for consideration, the vendor must have a net worth of at least \$10 million as demonstrated by an audited financial statement as of the close of the vendor's most recent fiscal year. To affirm financial capability, the vendor must submit the vendor's most recent audited financial report.

### **5.2 FUNDING FOR UT FLEX DISBURSEMENTS**

#### **5.2.1 BANKING ARRANGEMENTS**

The System will establish an account in Texas at a financial institution of choice for the purpose of maintaining participant contributions and for the funding of claim disbursements. The System will fund this account adequately for transactions initiated on its behalf by the vendor. The System will be responsible for all banking fees associated with the creation and maintenance of this account. Authorized signature on the account will be restricted to System employees and a facsimile will be provided to the vendor for purposes of issuing printed checks.

#### **5.2.2 UT FLEX CLAIMS PROCESSING**

Claim disbursements (including COBRA claims processing) by direct deposit and by check are required of the vendor. The debit card option for the HCFSAs, as outlined in RFP Section 6.7.15 is also required of the vendor. OEB requires the vendor to provide a UT FLEX claims data file on a weekly basis which supports the disbursement activity reported to the financial institution as outlined in Section 8.4 Claims Processing and Administration.

### **5.3 ANNUAL ACCOUNTING OF PARTICIPANT ACTIVITY**

Within 60 days of the end of the run-out period for each plan year, the vendor will provide the System with an accounting by participant showing the annual election, total contributions, total claims disbursed, and a balance. The vendor will be required to assist the System in the resolution of any discrepancies that may arise in the review of the annual accounting for each plan year.

#### **5.4 AUDIT OF VENDOR**

The System reserves the option to conduct an audit of the vendor's administration of the UT FLEX Plan. The System shall determine the scope of the audit and the vendor must be prepared to support the activities of the selected auditor.

#### **5.5 ADMINISTRATIVE FEE REMITTED BY THE SYSTEM TO VENDOR**

Each month, the administrative fee will be determined by multiplying the number of participants by the administrative fee. The System will remit the administrative fee to the vendor within sixty (60) days from the beginning of the coverage period. The System encourages the vendor to resolve any Administrative Fee discrepancy within 30 days following the receipt of payment. RFP Section 9.8 provides further explanation of the factors used in calculating the Administrative Fee remitted on a monthly basis.

#### **5.6 VENDOR'S ADMINISTRATIVE FEE PROPOSAL**

The administrative fee quoted in RFP Section 14.0 should be inclusive of all expenses involved in the administration of UT FLEX. The administrative fee quotations should include all vendor expenses and profit margins. It should be adequate to cover all expenses incurred during the period of the contract and during any run-off period following the termination of the contract. No additional fees will be paid to the vendor after termination of the contract. The following list contains examples of expenses to include in the administrative fee:

- a) Assistance with creating communications to System HR/Benefits offices and UT FLEX Participants
- b) Contracting for the issuance and processing of debit card transactions
- c) Assistance writing the Summary Plan Description
- d) Travel cost to attend June Benefits Training Workshops, on-site training for component institutions, and Annual Enrollment meetings at component institutions
- e) Claims processing, adjudication, and substantiation
- f) Communication to participants if more information is needed to properly reimburse claims

- g) Recovery of over-payments and other errors
- h) General administration
- i) Legal and other technical assistance
- j) Information technology requirements including any necessary "Web site accessibility remediation"
- k) The System-specific web site and online claims
- l) Status for participants
- m) Reporting

## **5.7 DETERMINATION OF RENEWAL ADMINISTRATIVE FEES**

The vendor is required to guarantee its administrative fees for the thirty-six (36) month contract period from September 1, 2016 through August 31, 2019.

The vendor will be required to commit to good faith discussions with the System prior to February 1, 2019 (approximately 210 days before the end of the contract period), to determine rates for the succeeding contract period. If an agreement on rates cannot be reached prior to the 210-day period before the end of a plan year, the System reserves the right to submit the plan for competitive bidding.

The System reserves the right to cancel the contract at the end of the 36-month contract period if, in its judgment, the administrative fees proposed by the vendor for the following 36 months are excessive.

## **5.8 ACTUARIAL/FINANCIAL CONTACT**

Responding vendors must provide the name, mailing address, e-mail address, telephone number, and fax number of the actuarial/financial personnel responsible for the preparation of the FSA Plans vendor's administrative fees. The named person should be capable of responding to inquiries concerning the administrative fees and must cooperate with requests for information made by the System or its consulting actuaries.

## 6.0 BENEFITS AND PROGRAM REQUIREMENTS

### 6.1 THE PLAN YEAR AND PERIOD OF COVERAGE

The plan year begins September 1st of each year, and ends the following August 31st. These dates correspond to the fiscal year of the System and the State of Texas. The UT FLEX plan document allows a participant to submit claims through November 30 after the end of each plan year on August 31. Participants in the HCFSAs are allowed a grace period of an additional 75 days after August 31 (ending November 15) to expend any remaining HCFSAs balance from the previous plan year's HCFSAs election. The current vendor will administer the claims filed for the current year (FY 2015/2016) through November 30, 2016.

The period of coverage is the period of time during which a participant was enrolled in UT FLEX and making contributions to the UT FLEX program.

### 6.2 THE THREE PARTS OF UT FLEX

The System currently provides flexible spending accounts (UT FLEX) to eligible employees as authorized by Chapter 1601.152 of the Texas Insurance Code. This FLEX plan became effective in 1988. The current UT FLEX plan booklet can be found in Appendix A and at <http://www.utsystem.edu/documents/docs/flexible-spending-accounts/ut-flex-benefits-guide>

The UT FLEX Program has the following parts:

- a) Insurance Premium Redirection Plan
- b) Health Care Flexible Spending Account (HCFSAs) Plan
- c) Dependent Day Care Flexible Spending Account (DDCFSA) Plan

The Insurance Premium Redirection Plan is self-administered by the System; the HCFSAs and DDCFSA plans are administered by a vendor.

### 6.3 INSURANCE PREMIUM REDIRECTION PLAN

The UT FLEX Premium Redirection Plan is handled internally through the payroll department at each System component institution. The System will continue this practice. Therefore, the responding vendor's proposal and administrative fee should not include administration of the Insurance Premium Redirection Plan. An employee who participates in the Employee Group Insurance Program is enrolled automatically in the Insurance Premium Redirection Plan.

## 6.4 HEALTH CARE FLEXIBLE SPENDING ACCOUNT PLAN

Eligible active employees may contribute to the Health Care Flexible Spending Account (HCFSA) plan. Retired employees may not participate. The participant may be reimbursed for any out-of-pocket expense listed as eligible in our UT Flex Plan Booklet and incurred by either the participant, spouse, or any other person claimed as the participant's dependent as defined by IRS Code Section 152 as modified by IRS Code Section 105(b). This account may be used to pay expenses with pre-tax dollars that health, vision, or dental insurance does not cover. Examples of reimbursable expenses include co-payments, hearing devices, health plan deductibles, and physical exams. Each HCFSA has a minimum employee contribution of \$15 per month and a maximum annual contribution of \$2,250\* per plan year.

\*Maximum annual contributions are subject to change pending changes in Federal law.

## 6.5 DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT PLAN

Eligible employees may contribute to a DDCFSA. This account can be used to pay for qualified care of dependents while the employee and his or her spouse is working or attending school full-time. The minimum monthly contribution is \$15 and the maximum annual contribution is \$5,000 for the plan year (or \$2,500 if married and filing separate federal income tax returns). Nine-month employees may deduct a maximum of \$5,000\* per year. A DDCFSA participant cannot exceed the calendar year maximums as established by the IRS.

For children under 13 years of age, or qualified disabled dependents regardless of age who are claimed as dependents for federal income tax purposes, DDCFSA claims must be substantiated with a written statement from a third party (typically the provider of care) indicating the dependent day care services have been incurred, the amount of the expense, and the name of the dependent. In addition, a written statement from the employee will be required indicating the dependent day care expenses have not been reimbursed or are not reimbursable from another source. The tax identification number or Social Security Number of the provider is also required for IRS reporting on Form 2441 to be included with the participant's personal income tax return. Cancelled checks are not sufficient proof of a day care expense.

The definition of an eligible dependent for a DDCFSA may not necessarily be the same as an eligible dependent for the program. An eligible dependent for purposes of claims to a DDCFSA must be claimed as a dependent as defined by IRS Code Section 129 and can be:

- a) the employee's dependent child who is under the age of 13;
- b) the employee's spouse who is physically or mentally incapable of caring for himself/herself;

- c) the employee’s dependent child of any age who is physically or mentally unable to care for himself/herself.

\*Maximum annual contributions are subject to change pending changes in Federal law.

## **6.6 UT FLEX PARTICIPATION DATA**

See Appendix C for historical plan data, including the number of employees participating in UT FLEX.

## **6.7 REQUIRED UT FLEX ADMINISTRATIVE SERVICES**

Vendor proposals provide administrative services for the UT FLEX FSA Plans that, at a minimum, are equivalent to the current plan and services. The UT FLEX FSA Plans are described in Appendix A. No deviations from the required administrative services will be allowed.

The following administrative services are required:

### **6.7.1 Automation of Services**

The responding vendor should describe how their organization currently automates the administration of FSAs. The responding vendor should also include detailed information on any processes that are “manual” and not automated.

### **6.7.2 Claim Forms**

Claims forms must be available on the vendor’s System-specific web site. Employees complete the claim form and submit by mail, fax, or upload directly to the UT FLEX FSA vendor.

### **6.7.3 Electronic Claims Submission**

The vendor must accept electronic claims submission via devices including but not limited to personal computers, smart phones, tablets.

### **6.7.4 Individual Participant Account Records**

The vendor must maintain individual participant account records on the vendor’s System-specific web site for participants to access information about their individual HCFA and DDCFA accounts which is to include annual elections, contributions, previous reimbursements, status of pended claims, debit card transactions and current balances. These accounts must be password-protected

on a secure (encrypted) server and must not require the participant to use a SSN to access account information. The user must initially be able to establish their online account utilizing their UT System Benefits ID (BID).

### **6.7.5 Account Balances and Claims Reimbursement**

A participant in an HCFSA may submit and be reimbursed for eligible claims up to the amount of the participant's annual election, even if contributions have not yet equaled the claim amount.

Participants in a DDCFSA cannot be reimbursed for any expenses exceeding the current account balance (i.e. DDCFSA Contributions minus claims paid). If a claim is submitted for more than the account balance, the participant will receive a check for the amount in the available account balance only. A check for the remainder will be sent after sufficient contributions are made to the account. Reimbursements can be issued only after services have been provided, not for services to be provided in the future.

### **6.7.6 Claims Adjudication and Processing**

The vendor must provide a step-by-step description of the claims adjudication and claims disbursement processes in the vendor's proposal. This description should include samples of all correspondence with System component institution benefits offices and with System participants. The vendor must describe in detail all parts of the claims process that are automated and describe all parts of the process that are not automated.

#### **6.7.6.1 Substantiation of Claims**

Within five (5) calendar days after receiving claims from participants, the vendor must communicate with participants regarding the appropriate claims substantiation needed to properly adjudicate claims. If any claim is not properly adjudicated, the vendor will take steps to recoup any funds paid in error.

#### **6.7.6.2 Daily Claims Processing**

On a daily basis, the vendor must process all claims received.

#### **6.7.6.3 Frequency of Check Issuance for Claims Reimbursement**

Reimbursement claim checks and direct deposit disbursements should be issued within three (3) business days and daily, if possible. The vendor is required to communicate to participants, within three (3) business days, the status of their claim reimbursement requests.

#### **6.7.6.4 Notification of Pending or Denied Claims**

If more information is needed, the vendor will notify the participant of within five (5) calendar days after receiving reimbursement request.

For any claim denied for reimbursement, the vendor must notify the participant within five (5) calendar days, and the vendor must provide a valid reason in writing for denying the claim reimbursement.

#### **6.7.6.5 Audit of Claims Adjudication and Reimbursement**

The responding vendor's proposal must provide a complete description of its internal processes for conducting audits for accuracy and validity of claims adjudication and reimbursement. The description should also include processes which account for the review of historical claims data in employee records in order to eliminate the need to repeatedly request substantiating documentation for recurring purchases (which do not match pre-programmed deductible and copayment amounts). The selected vendor should have a process to accept pre-programmed deductibles and co-payment amounts. The System maintains FLEX account balances for each participant and requires the responding vendor to resolve any discrepancies of participant account balances upon discovery.

#### **6.7.6.6 Recovery of Funds Paid in Error**

The vendor will be required to implement processes for recovery of any claims paid in error.

### 6.7.7 Training

The vendor must provide any necessary technical assistance and training to OEB staff, benefit offices at System institutions, and participants. This training includes information about UT FLEX administration, and any legislative and IRS rulings regarding FSA administration. The vendor is required to provide training to each System institution benefits office prior to May 5, 2016, and also to provide training at the annual Benefits Training Workshop in June.

### 6.7.8 Communication Materials

The selected vendor must work with the System to develop all communication materials, such as plan documents, enrollment information, claim forms, explanation of claim status, requests for receipts letters, etc. Section 10.0 of this RFP further describes this requirement.

### 6.7.9 System-Specific Web Site with Claims Information

The responding vendor must provide web-based, online, account reports for access by each participant. Each participant will use the online claims information to view account information such as monthly contributions, status of submitted reimbursements, records of previous reimbursements, and current balances. Section 10.0 of this RFP describes this requirement.

The responding vendor must also provide web-based, online access for authorized OEB staff to view all participant information. Participant information available for viewing includes but is not exclusive of:

- a) Participant biographical information (i.e. address, contact information, status)
- b) Participant accounts (current and prior year) including:
  - i. all information available to the participant
  - ii. black-out periods
  - iii. debit card activity including date started, date suspended, date terminated

The web-based platform must also allow request of on-demand reports including but not exclusive of:

- a) Claims payment activity in a given date range (may span plan years)
  - i. Date of claim
  - ii. Date of receipt of claim

- iii. Date of payment of claim
  - iv. Amount reimbursed for claim
  - v. Plan year that claim is posted to
- b) Election report
  - c) Outstanding checks report

The selected vendor should create a downloadable application as an option for participants to access the information above securely on various mobile devices including but not limited to personal computers, smart phones and tablets.

### 6.7.10 Reports

The vendor must provide certain reports as required by the System, such as:

- a) Annual Forfeiture Reporting by participant
- b) Reporting of unsubstantiated debit card transactions
- c) Reports which identify by medical, dental, vision, prescription drug, over-the-counter drugs, what comprises HCFSAs reimbursements.
- d) Reporting of online access by participants.

### 6.7.11 Claims Run-out

The Claims Run-out period is September 1<sup>st</sup> through November 30<sup>th</sup> following the end of each plan year. The current vendor will continue to process the DDCFSA claims incurred prior to August 31, 2016, and for HCFSAs claims through November 15, 2016 (Grace Period) for the Claims Run-Out period that ends November 30, 2016. The Claims Run-Out period for the last year of the current contract will begin on September 1, 2016. Administrative fees are not remitted for participants during this Claims Run-Out period.

The selected vendor should review all first level appeals and requests until forfeitures are released to System, which currently occurs around January 31. This includes appeals in cases where claims are received before or by the Claims Run-Out end date of November 30, but additional documents requested are not received until after November 30.

UT System retains the sole final discretion on adverse appeals. The selected vendor should be prepared to process any determinations the System deems reimbursable until forfeitures are released to the System.

### 6.7.12 Forfeitures

Eligible claims must be incurred during the plan year (September 1 through August 31 for DDCFSAs and September 1 through November 15 for HCFSA) and must be postmarked or received by the UT FLEX vendor no later than the following November 30, the last day of the run-out period. After all qualified claims have been processed, the vendor must report any amount remaining in the employee's UT FLEX reimbursement account(s) at the end of the plan year as forfeited by the employee. All written appeals for payment submitted after the Run-Out Period should be forwarded to the Office of Employee Benefits for review.

### 6.7.13 Participant Fees

Currently, participants in UT FLEX FSA plans are not charged a participation fee because forfeitures have been used to cover the cost of administration. The System anticipates a future need to charge a monthly fee to UT FLEX FSA Plan participants. Participants may be assessed one monthly fee through a payroll deduction during the period of coverage. This monthly fee would cover participation in one or both FSA plans, and would include a debit card fee intended for use with the HCFSA only.

Currently, all participants in UT Flex HCFSA receive the debit card with no charge. However, the decision may be made to assess a debit card fee in the contract period.

The debit card fee will be assessed as a part of the annual fee, prorated for mid-year enrollments. System requests that responding vendors submit a rate proposal that accounts for System requiring the debit card for each HCFSA account. The selected vendor must be capable of accommodating these participant fee assessments, if the System makes that decision in the future.

#### 6.7.14 Continuity of Administration

The selected vendor, if different from the current vendor, will be required to coordinate with the current vendor to ensure continuity of administration.

#### 6.7.15 Debit Card Feature for the HCFSA Plan

The debit card feature is offered only for the HCFSA plan. Currently, 100% of those enrolled in a HCFSA receive the debit card.

The responding vendor (and any subcontractor of the responding vendor) must have at least two (2) years of prior successful experience in debit card administration of HCFSA.

The System's medical and dental vendors are capable of providing data that confirms the payment of annual deductible, co-payment, and co-insurance amounts. These "auto adjudication files" are prepared for the express use in administering the UT FLEX HCFSA accounts. The System requires the vendor to auto adjudicate as many HCFSA eligible expenses as possible to reduce the requests for substantiation by the participant.

##### 6.7.15.1 Required Debit Card Services

The vendor must provide a complete description of its debit card program including the following topics:

- a) The vendor's compliance (and vendor sub-contractor's compliance) with current and future requirements of the Internal Revenue Code, as applicable;
- b) The vendor's collection of an annual fee at the beginning of the plan year for each HCFSA participant; or a prorated debit card fee upon enrollment in the HCFSA plan (if it is to be assessed);
- c) A completed description of the debit card process, in addition to providing a flow chart with at least the following information: measures taken to properly adjudicate eligible claims, information needed on receipts, methods and time frame for obtaining necessary information from participants, claims substantiation, auditing of claims reimbursements, accounting for payments made in error, and recoupment of payments made in error;

- d) The vendor's processes and safeguards for ensuring that only qualified expenses are approved and reimbursed (i.e. substantiation requirement);
- e) The vendor's processes for following up on claims substantiation for the participants' qualified expenses;
- f) The vendor's use of merchant codes, including a description of the number and types of merchant codes, how the merchant codes are used at the "point of sale," how merchant codes are used to validate claims, and a description of the processes for handling claims not validated in connection with merchant codes;
- g) Description of process to determine the availability of participant's account balance to authorize the transaction at "point of sale";
- h) Complete description of process at "point of sale" if claim not validated and not approved, including a flow chart of this process;
- i) Claims substantiation using "auto adjudication data" if the expense correlates to a copayment under the health plan option selected by the participant;
- j) Claims substantiation using the debit card if the expense originates at a provider of dental services or vision services;
- k) Claims substantiation using "auto adjudication data" if correlated to a recurring amount for a previously approved expense, such as a prescription refill at the same pharmacy;
- l) Description of methods for claims substantiation for a claim that does not correlate to a copayment under the plan or to a recurring reimbursement that was previously approved. For claims not correlated to a copayment, this must include a description of the process for obtaining necessary information to appropriately adjudicate and substantiate claim reimbursement;
- m) Description of the methods for obtaining participant certification stating that a health care expense has not been and will not be reimbursed under another plan.

- n) A description of how the appearance of the debit card would be customized for System participants
- o) A description of how the claims paid using the debit card will be reported to System.
- p) A description of the process for terminating a debit card. Vendor must allow a suspension of the card initially before actual termination. A description of how a suspended card may be reactivated.

#### **6.7.16 Transfer Data with Pharmacy Benefit Managers**

The vendor's proposal should include a description of the vendor's current ability, if any, to receive data from a Pharmacy Benefit Manager and a description of the methods for claims reimbursement using this data as well as the vendor's willingness, if necessary, to sign a confidentiality agreement with the Pharmacy Benefit Manager.

### **6.8 APPEALS PROCEDURE**

The responding vendor's appeals procedure must comply with all applicable statutes and regulations including, but not limited to, the rules and regulations of the Texas Department of Insurance. All vendors must include a description of its appeals process. Final approval of plan exceptions, adjustments, or special requests must be approved by the System. All written appeals for payment submitted after the Run-Out Period should be forwarded to the Office of Employee Benefits for determination.

# 7.0 ELIGIBILITY AND ENROLLMENT

## 7.1 INTRODUCTION

Chapter 1601 of the Texas Insurance Code (Appendix E) states the eligibility criteria and enrollment requirements for employees of The University of Texas System. All enrollment activities must be conducted in compliance with the policies of The University of Texas System Office of Employee Benefits (OEB).

Annual Enrollment occurs each plan year from July 15 through July 31. If an employee makes any enrollment changes during Annual Enrollment, the effective date of each change will be September 1<sup>st</sup> (the first day of the next plan year). Each UT FLEX participant must select this program each Annual Enrollment.

## 7.2 ELIGIBILITY

### 7.2.1 Employees

Chapter 1601.010 of the Texas Insurance Code states that an employee who is expected to work at least 20 hours per week for a term of at least four and one half months, or is appointed for at least 50% of a standard full-time appointment, is eligible for benefits. Graduate students are eligible, if, as a condition of employment, they are required to be taking classes as a graduate student and they work 20 hours/50%.

The participant completes a Salary Conversion Agreement for participation in UT FLEX.

Retired employees and non-employee UT group insurance plan members are not permitted to participate in the FSA Plans.

### 7.2.2 Nine-Month Appointments

Some System employees have nine-month appointments of employment. These employees have the option of receiving their pay throughout a nine-month period or a twelve-month period. The employees who receive their salary payments over the nine-month period will not contribute to their UT FLEX accounts for the three months they do not receive pay. Therefore, the vendor's systems capability to accommodate these differences is critical, particularly in the accounting for accruals and disbursements of each enrolled participant.

### 7.2.3 Eligibility and Payroll Systems

The System handles several individual payroll sources from the fourteen component institutions throughout Texas and System Administration. Deductions are sent to OEB by the institutions and then confirmed to the vendor using the Flex Contribution Dataset.

## 7.3 UT FLEX ENROLLMENT

Benefits-eligible employees may enroll in UT FLEX at the following times:

- a) During their initial 31 days of employment;
- b) Within 31 days of a qualified Change in Status event; or
- c) During the Annual Enrollment period.

Return-to-work retired employees are NOT eligible to participate in the UT FLEX program.

### 7.3.1 During First 31 Days of Employment

A new employee may enroll in FSA accounts during the first 31 days of employment. If enrollment takes place on the first day of employment, enrollment takes effect on that date. If enrollment occurs after the first day of employment but within 31 days, enrollment takes effect on the first day of the month following the employment date unless the employee specifically requests the coverage to take effect on their date of employment. Claims incurred prior to the beginning of the period of coverage are not eligible for reimbursement.

### 7.3.2 After 31st Day of Employment

If the employee does not enroll in a UT FLEX FSA account during the first 31 days of employment, the next opportunity to enroll will be during the next Annual Enrollment period or upon the occurrence of a qualifying consistent Change in Status event during the plan year.

### 7.3.3 Annual Enrollment Period

During each Annual Enrollment period, an employee has the opportunity to enroll in the UT FLEX FSA accounts. All employees currently enrolled in a UT FLEX account must re-enroll and re-designate the amount of withholding during each Annual Enrollment period in order to continue participation in UT FLEX. The effective date will be the following September 1.

## **7.4 CHANGE IN STATUS DURING PLAN YEAR**

A System employee enrolled in one of the UT FLEX FSA accounts who experiences a qualifying, consistent, Change in Status event during the plan year is eligible to revise or terminate the selected annual election amount. Requests to change UT FLEX elections following a change in status in mid-plan year are coordinated with the benefits office at each institution.

## **7.5 REQUEST TO CHANGE UT FLEX ELECTION DUE TO AN ADMINISTRATIVE ERROR**

In accordance with Section 125 of the Internal Revenue Code, the System may allow an employee to change a UT FLEX reimbursement account election during the plan year without a qualified Change in Status, only upon "clear and convincing evidence" that either the employee or a benefits representative made a clerical error during the election process.

### **7.5.1 Required Time Limit to Report Mistake**

An employee's request for a change in a UT FLEX election will only be considered upon the employee's submission of "clear and convincing evidence" of the mistake within 31 days of receipt of the first payroll check that contains the UT FLEX election.

### **7.5.2 Submit Request to Office of Employee Benefits**

The System institutions' benefits offices must forward all requests from employees to change their UT FLEX elections during the plan year to the U. T. System Office of Employee Benefits (OEB). Only OEB can approve such requests. OEB will review the request, and make the determination in accordance with IRS requirements. If approved, OEB will determine the effective date based on the specific circumstances. All OEB decisions are final.

## **7.6 TERMINATION OF UT FLEX ENROLLMENT**

An employee may terminate enrollment in a UT FLEX FSA account only under the following conditions:

### **7.6.1 End of the Plan Year: August 31**

An election of a UT FLEX reimbursement account is valid only through August 31, the last day of the plan year. An employee enrolled in an HCFSA and/or DDCFSA who does not complete an election to continue enrollment in the reimbursement account

during the next plan year will be terminated from UT FLEX enrollment effective August 31 of the current plan year. Claims must be filed on or before the date of November 30<sup>th</sup> following the end of the plan year in which the claim was incurred.

## 7.6.2 Leave Without Pay

An employee enrolled in an HCFSAs or DDCFSAs and placed in a Leave Without Pay (LWOP) status is subject to the following conditions:

### 7.6.2.1 Medical Expense Reimbursement Account

Employees on LWOP may continue contributing to an HCFSAs by writing a check each month directly to the U.T. employing institution. Flex payments made by an Employee on LWOP must be made on an after-tax basis.

If a person chooses to not contribute to their HCFSAs account during the LWOP period, the individual may elect to begin contributions again upon return to Active Employment within the same plan year. HCFSAs contributions will again be deducted on a pre-tax basis for the remainder of the plan year.

Changing from an Active Employment status to a benefits eligible Leave Without Pay (LWOP) status, or vice versa, is a qualified Change in Status event. An Employee may elect to increase or decrease the annual election amount within 31 days of either beginning LWOP or returning to Active Employment from LWOP status.

Important: The total contributions for the plan year (including before, during and after LWOP) must always be equal to the annual election amount at the end of the plan year. When returning from LWOP, the Employee cannot reduce the annual election to an amount that would be less than the amount of HCFSAs claims filed with the Plan Administrator.

An Employee who returns to Active Employment from LWOP in a different plan year may enroll in a HCFSAs within 31 days of returning to work.

### 7.6.2.2 Day Care Reimbursement Account

An Employee may not contribute to a DDCFSAs while on LWOP. However, as long as a positive balance exists in the DDCFSAs, an Employee may continue to submit claims and be reimbursed for eligible expenses incurred prior to the beginning date of LWOP. Contributions to the DCRA must resume at the previous election level when the Employee returns from LWOP status within the same plan year.

An Employee who returns to work from LWOP in a different plan year may enroll in a DDCFSA within 31 days of returning to work.

Important: The Employee's account should be audited by the institution Benefits Office to ensure that the maximum calendar year election of \$5,000 is not exceeded.

## 7.7 RETIREMENT, DIRECT TRANSFER OR TERMINATION OF EMPLOYMENT

Employees who retire or terminate employment during the plan year may receive HCFSA benefits for charges incurred during their period of eligibility to participate even though a claim had not been filed at the time of retirement or termination. The period of eligibility is defined as the period of time during which a participant was enrolled in UT FLEX as an active employee and making contributions to UT FLEX accounts. Claims must be filed by November 30, the deadline for submitting claims for incurred, eligible expenses.

An employee who terminates employment from one Institution and is hired as a direct transfer in another institution is required to continue the same Flex plan(s) originally enrolled in, for the rest of the plan year.

An employee who terminates employment with a remaining HCFSA balance may continue participation in the HCFSA through the remainder of the current plan year only if the employee continues in the Program under the Consolidated Omnibus Budget Reconciliation Act (COBRA). Any contributions made to an HCFSA as a COBRA participant must be submitted to the System on an after-tax basis along with a 2% COBRA administration fee.

An employee continuing to contribute to an HCFSA may be reimbursed for claims incurred after the employment termination date through the remainder of the plan year, or through the end of the month in which the contribution was made, whichever is earlier. An employee who does not elect to continue contributions after termination of employment can be reimbursed only for eligible claims incurred up to the last day of the month of termination.

**Example 1:** An employee has elected to participate in the HCFSA with an annual election of \$1,200. The employee contributes the monthly deduction of \$100 beginning September through the following June and then terminates employment. The employee does not elect to continue coverage under COBRA. The employee's coverage in the HCFSA will end as of June 30, and only claims incurred between September 1 and June 30 will be eligible for reimbursement.

**Example 2:** In Example 1, the employee made a total contribution of \$1,000 (\$100 X 10 months) before terminating employment. If the employee had incurred claims of only \$600 between September 1 and June 30, the employee must continue coverage as a COBRA participant in order to be able to be reimbursed the unused \$400. The July and August contributions, plus the 2% administrative fee, will be paid by the participant in after-tax dollars. The participant can file for reimbursement of any claims incurred through August 31, if the participant contributed during July and August.

An employee enrolled in a DDCFSA may be reimbursed for claims incurred after the employment termination date through the remainder of the plan year only. A DDCFSA is NOT eligible for continuation under COBRA.

## 7.8 DEATH OF EMPLOYEE

### 7.8.1 HCFSA

The family of an employee who dies during the plan year with a remaining HCFSA balance may continue making the monthly contributions on behalf of the deceased employee, on an after-tax basis, as a COBRA participant. The family member is responsible for obtaining the appropriate COBRA enrollment forms from the deceased employee's institution. After COBRA has been elected, contributions will be made directly by the family member to the System on a post-tax basis. The surviving family member will then be eligible to receive reimbursement for claims incurred before and after the death of the employee through the remainder of the plan year, or through the end of the month in which the contribution was made, whichever is earlier. If the family chooses not to contribute after the employee's death, reimbursement will be limited to eligible charges incurred prior to the employee's death, and filed by November 30, even if a balance remains in the HCFSA.

### 7.8.2 DDCFSA

The family of an employee who dies during the plan year may continue to submit claims for eligible expenses, as long as the expenses were incurred during the period of coverage, and filed by November 30. A DDCFSA is NOT eligible for continuation under COBRA.

## 7.9 OTHER CHANGE IN STATUS EVENTS

### 7.9.1 Additional Change in Status Events

The following additional Change in Status events also may result in the change or termination of a UT FLEX reimbursement account contribution election:

- a) Loss of dependent eligibility (e.g., divorce of spouse, death of spouse or child)
- b) Marriage of dependent child;
- c) Gain of coverage eligibility under other employer group plan;
- d) Receipt of a court order, decree or judgment;
- e) Gain eligibility for Medicare or Medicaid; or
- f) Significant change in cost.

Changes to an account based upon a Change in Status must be consistent with the type of status change. For example, if a dependent's coverage is cancelled, the change cannot result in an increase in the employee's contribution.

### 7.9.2 HEART Act

Effective September 1, 2010, UT FLEX plans will comply with the HEART ACT which allows employees who have been called to active duty to withdraw their unused account balances.

## 8.0 OPERATIONAL REQUIREMENTS

The vendor shall administer the FSA Plans in a manner consistent with all applicable laws and regulations, as well as with the requirements set forth in this RFP by the System. The vendor shall provide all services associated with the administration of the plan, including, but not limited to the items specified in the following sections. The vendor may recover the cost of the requirements described in this section only by making provision for such expenses in the proposed fees for administering the FSA Plans.

### 8.1 GENERAL REQUIREMENTS

- 1) The vendor shall provide general administrative support as required in the operation of the FSA Plans.
- 2) The vendor shall provide legal and technical assistance as it relates to the operation and administration of the FSA Plans.
- 3) The vendor shall provide appropriate materials and staffing for Annual Enrollment meetings and fairs.
- 4) The vendor shall provide appropriate examples of marketing campaigns and education materials to increase participation in the UT Flex plans. Except for materials provided during Annual Enrollment fairs, the System and its institutions will be responsible for the cost of providing the marketing materials to potential participants.

### 8.2 IMPLEMENTATION AND ACCOUNT TEAMS

If selected, the vendor must notify the System in writing of the names and roles of all members of its complete Implementation Team by no later than **Tuesday, March 1, 2016**. In addition, the vendor will be required to establish an Account Management Team that is acceptable to System and agree to make staffing adjustments to this team as required by System throughout the contract period. The vendor must ensure that the Account Management Team is established no later than **Tuesday, March 1, 2016** and that this team will be available to assist System as required every Monday through Friday from 8:00 a.m. until 5:00 p.m. Central Time (excluding national holidays).

The vendor's Implementation and Account Management Teams must each include a designated information technology contact with the technical knowledge and expertise to efficiently and effectively collaborate with System's information technology team regarding data transmission, data integrity, and timely processing of data. The designated information technology contact

should be appropriately positioned within the vendor's organization to allow for direct management of and possible changes to all technical issues related to the contract.

### 8.3 CUSTOMER AND ACCOUNT SERVICE

- 1) The vendor's Account Management Team must provide a minimum of one face-to-face meeting with the System per year to review the utilization and performance of the FSA Plans, including recommendations and updates regarding ongoing operational activities. The System may also require quarterly operational meetings (in-person or via telephone conference), as needed.
- 2) The vendor's customer service unit should be staffed and trained adequately to handle the plan's specific benefit questions, claims administration, resolution of complaints, and program or claim clarification. The vendor's customer service hours must include, at a minimum, Monday through Friday from 8:00 a.m. to 5:00 p.m. Central Time, with preferable extended hours as currently exists now.
- 3) The vendor shall designate vendor customer service representatives as contacts for System staff. The vendor warrants and represents that it will adequately train additional team members as needed to support the System's requirements. The vendor must accept verbal verification of a System participant's coverage by an authorized representative of the System or verify the participant's coverage through an online system and subsequently update coverage in the vendor's system prior to receipt of the System's weekly/monthly enrollment information.
- 4) The vendor shall dedicate additional staff members, as needed, to update System related records and accounts and to provide additional help for the vendor client service team during and following the System Annual Enrollment period including the 2016 Annual Enrollment period, which is prior to the September 1, 2016 contract effective date.
- 5) The vendor is required to notify the Director of the Office of Employee Benefits in writing prior to any anticipated major change to the organization that may likely impact the FSA Plans.
- 6) The vendor shall notify the System prior to implementing material changes in policies, business, and key personnel on the System account management team.
- 7) The vendor shall notify the System of the back-up personnel prior to any absences of the account management contact or technical support contact. If the absence is unplanned, notification of the back-up personnel must be made within 1 business day.
- 8) Customer Service call centers must be located within the United States, preferably within the state of Texas. The establishment of toll free lines (telephone and facsimile) is required and customer service staffing levels must be adequate at a minimum to maintain the following performance standards:

- a) Average abandonment rate of 5% or less; and,
- b) Average time to answer of 30 seconds or less.

## 8.4 CLAIMS PROCESSING AND ADMINISTRATION

- 1) The vendor shall process and administer all required System FSA Plans claims (if applicable to the plan type) incurred on or after September 1, 2016 and throughout the term of the Contract. General requirements for claims processing include the following:
  - a) Using System enrollment records, the vendor shall create and maintain enrollment records for all participants to be relied on for the processing of claims and other administrative functions for the UT Benefits FSA Plans. In the event of a conflict between enrollment data stored at System and information on file with the vendor, the System's information shall be considered authoritative;
  - b) The vendor shall review claims for eligibility based on coverage dates per individual. Vendor is responsible for handling coverage dates that may start and stop a few times during one fiscal year, only paying claims during an individual's employment. The vendor must be able to distinguish different coverage dates even for the two account types. These might not always be the same. Any ineligible claims inadvertently paid by the vendor shall be the sole responsibility of the vendor to recapture;
  - c) The vendor shall process claims submitted directly by FSA Plan participants. Each direct claim payment must include an Explanation of Benefits (EOB) for all applicable claims. The vendor must submit all claim forms and sample EOBs as an attachment to the Proposal for the System's review and approval;
  - d) The vendor shall investigate unusual or extraordinary charges to determine all relevant circumstances and report to the System its findings. In the event the vendor issues excess payments or payments for ineligible claims or participants, it will assume 100% liability for incorrect payments which result from policy or system errors attributable to the vendor in whole or in part, including payments made to a former FSA Plan participant reported by the System as no longer a plan participant, if the vendor receives such notification at least two (2) full business days prior to the date of such services;

- e) The vendor shall refrain from initiating litigation to recover such overpayment unless authorized by the System;
  - f) An average of 95% of System FSA Plans claims filed by participants must be processed within five (5) business days from date of receipt of complete information of submission to the vendor unless additional information and/or investigation is required.
- 2) The vendor shall maintain a complete and accurate claims reporting system and provide for the retention, maintenance, and storage of all payment records with provision for appropriate reporting to the System. The vendor shall maintain all such records throughout the term of the Contract and for at least three (3) years following the end of the Contract, and shall make such records accessible and available to the System for inspection and audit upon the System's request. In the event the vendor is scheduled to destroy payment records, the vendor must contact the System for approval prior to the destruction of the payment records. If the System approves destruction, verification of the destroyed records shall be required at the System's direction.

## 8.5 COST CONTAINMENT INITIATIVES

The vendor shall maintain effective automated systems to detect fraud and misuse of the program, overpayments, wrongful or incorrect payments, unusual or extraordinary charges and verification of enrollment. The vendor shall also conduct thorough, diligent, and timely investigations with regard to fraudulent or suspicious claims and report quarterly all such claims to the System. The vendor must include a written description of its comprehensive fraud detection plan with its response.

The vendor understands that System may develop further policies in connection with the detection and prevention of fraud or abuse of the FSA Plans. The vendor shall comply with all applicable laws regulations and shall also comply with all System policies, and the vendor is encouraged to develop additional safeguards as allowed by law.

The vendor must document that it has a written comprehensive plan in place sufficient to detect and notify System of any fraud, abuse, overpayments, wrongful or incorrect payments with respect to the System's FSA plans and to verify enrollment.

The vendor must, in addition to providing immediate notification to system as to incidents that may impact plan participants, report any fraud, abuse, overpayments, wrongful or incorrect

payments, as well as verification of enrollment, in the Quarterly Administrative Performance Requirements Report. The vendor shall also conduct investigations with regard to fraudulent or suspicious claims and report the information to the System. The System may develop further policies in connection with the detection and prevention of fraud or abuse. The vendor must comply with all such policies and is encouraged to develop additional safeguards. The vendor must report the total number of dollars recovered through fraud investigation activity and submit a written description of the vendor's comprehensive fraud detection plan, using its automated systems to detect and prevent fraud, abuse and other improprieties.

## **8.6 REPORTING AND INFORMATION SHARING**

Routine vendor reporting, including utilization and cost data, is required to support the System's ability to proactively monitor trends and to identify/address variances on targeted vendor performance guarantees and customer service standards. The timelines and formats for required reports shall be specified by the System. Additionally, the System may request customized reports on an ad hoc basis. Such reports must be provided in a timely manner at no additional cost to the System.

### **8.6.1 PERFORMANCE MONITORING**

Some report formats shall include a column indicating a performance standard for the item being reported, which shall be utilized by the System as a benchmark to monitor compliance and to analyze the reported statistics. See the Administrative Performance Report template included in Appendix E of this RFP for examples of this type of reporting.

### **8.6.2 FSA PLANS STATISTICS**

The vendor shall accumulate operations statistics and develop reports for the System FSA Plans, as is typically done in the normal course of business, on a semi-annual basis. The vendor shall provide copies of such reports upon request by the System along with results of any audits conducted in connection with the reports.

### **8.6.3 CONSULTING ACTUARY**

The System retains an independent consulting actuary on insurance matters. The consulting actuary assists and advises System staff on benefit plan design, proposal review, and premium rate analysis. System staff or the consulting actuary may, from time to time, request that the vendor provide additional information specific to the FSA plans.

The vendor must cooperate with and act in good faith in working with the consulting actuary and must be prepared to respond to these requests promptly.

## 9.0 TECHNICAL AND DATA EXCHANGE AND SECURITY REQUIREMENTS

Each System institution self-administers its eligibility. For payroll purposes, the System's fourteen (14) institutions utilize different payroll systems. Currently, System institutions transmit enrollment and contribution data to System, and System in turn transmits the appropriate data to the plan vendor.

Datasets are transmitted by institutions directly to the System as often as desired. Institutions can also make real-time updates to the System enrollment database and can transmit either a full replacement file or a partial replacement file as needed. Some institutions update their payroll files only shortly before payroll is processed; therefore, they transmit enrollment data to System only twice per month. However, other institutions update their data more often.

Due to the nature of the processes involved, there can often be a delay between the effective date of coverage and notification of enrollment to the vendor. To accommodate the variation in institutional enrollment administration and payroll systems and minimize delays and errors, the System has developed standardized methods for receiving and transmitting information between System, institutions, and vendors.

### 9.1 SECURE FILE TRANSFER PROTOCOL (SFTP) OVER THE INTERNET

System's security requirements mandate that SFTP be used to access all System servers. A vendor's ability to use SFTP over the Internet and to work with HIPAA-compliant ANSI X12 transaction sets will be important considerations in the System's evaluation of the proposals.

### 9.2 WEB AUTHENTICATION VIA SECURITY ASSERTION MARKUP LANGUAGE (SAML)

Security Assertion Markup Language (SAML) is an XML-based framework that forms the basis for the method of single-sign-on user authentication that System strongly prefers be used for a vendor's System-specific website. An alternative method of user authentication must also be provided for those participants, including many retired employees, who cannot or who choose not to authenticate via single-sign-on. Responses that indicate a vendor's willingness and ability to implement SAML-based authentication (v2.0) will be strongly preferred over those that do not.

When implementing SAML-based authentication for a vendor's System-specific website, each of the 14 System institutions will act as an Identity Provider (IdP) and determine whether the user

has authenticated properly using local credentials. If the user authenticates correctly, System will redirect the user's browser and pass a SAML assertion to the vendor site in question. The vendor site will accept the SAML assertion in order to grant access.

The vendor must either agree to use System's SAML Discovery Service or to host an alternative solution for IDP discovery on the vendor's System-specific website and subsequently accept the IDP's assertion that identifies the individual using the Benefits Identification (BID) number, which is included as an attribute in the SAML assertion. Each participant has a unique BID, and BIDs will be regularly communicated to the vendor via eligibility dataset.

Only user authentication will be handled via SAML. Authorization to access specific information, such as limiting the ability to view member-specific data to only the authenticated member, will still need to be handled by the vendor website.

It is System's strong preference that the vendor be capable of immediate implementation of SAML-based authentication (v2.0) at the start of the Contract period or that the vendor anticipates being able to implement within six months of the start of the Contract period. A vendor who is currently unable to implement SAML-based authentication (v2.0) should provide a statement of its ability to support authentication via proxy and should note in its response whether it anticipates being able to implement SAML-based authentication (v2.0) and, if so, when it anticipates being ready to do so.

## 9.3 ENROLLMENT AND CONTRIBUTION DATA

### 9.3.1 SYSTEM'S ENROLLMENT AND CONTRIBUTION DATABASE

Each institution's enrollment and contribution data is transmitted to the System and used to update an enrollment and contribution maintained by the System. This database provides the information for System to generate enrollment datasets specific to the Health Care Flexible Spending Account and the Dependent Daycare Flexible Spending Account Plans. The database maintained by the System is directly updated by enrollees during the Annual Enrollment period using the System's *My UT Benefits* online enrollment application. During the July 2015 Annual Enrollment, approximately 48% of all employees made election changes, and approximately 99% of those were made using the *My UT Benefits* online system on the Web. This enrollment process provides the advantage of having most new enrollment data available several weeks prior to September 1, the beginning of each new plan year.

### **9.3.2 ENROLLMENT DATASET EXCHANGE**

The vendor will be required to receive and process partial replacement enrollment datasets daily. The files are available to the vendor by 6:00 a.m. Central Time on the designated days of transmission. A partial replacement dataset includes only records for individuals who are new or who have had a change in coverage since the last dataset was generated. Each year during the second half of August and the majority of September, full enrollment datasets (for the upcoming fiscal year) are transmitted to the vendor due to updates related to Annual Enrollment and the start of the new plan year.

It is System's expectation that the vendor will immediately process enrollment datasets and that updated information will be loaded into the vendor's information system within 24 hours of receipt under normal circumstances. Within twenty-four hours, the vendor must positively confirm via email the receipt, processing, and successful load (or failure to load) of each enrollment dataset. Further, in the event that an enrollment dataset fails to load, the vendor should provide an explanation for the failure to load either within or as immediate follow-up to the initial notification. The vendor must work directly with System as needed to ensure that any dataset load issues are resolved as quickly as possible and updates are applied to the vendor's information system.

The required format for enrollment data being transferred to and from the System is provided in Appendix B1. Responses must confirm that the vendor agrees to use the System format, or, if unable to comply with the requirement, the response should include rationale for an alternate, applicable dataset layout.

### **9.3.3 RETROACTIVE ENROLLMENT ADJUSTMENTS**

The System requires contracting vendors to allow a retroactive window for enrollment changes to be made up to 90 days after the end of the coverage period affected. The adjustments that must be allowed include activation of enrollment, termination of enrollment, and other variations that may occur as a result of participant status changes.

## **9.4 REQUIREMENTS TO FACILITATE EMERGENCY UPDATES**

On occasion, System institutions may need to make emergency updates to the coverage of their plan participants. Emergency updates are updates to enrollment coverages on the vendor's

eligibility system made through a means other than the enrollment dataset. The System has implemented a “controlled emergency update email process” through which an institution Benefits or Human Resources representative can submit an emergency update request when needed.

The institutions are required to update the System enrollment database prior to sending an emergency update request to the plan vendor. The enrollment system verifies the coverage prior to sending an emergency update email which is always sent from a single, controlled email account.

Social Security numbers will never be transmitted on emergency update email messages. The vendor will either need to be able to add a new member to their enrollment system prior to receiving the Social Security number or be able to connect to a secured System website to retrieve complete update information. The link to the secure website will be included in all emergency update email messages.

The emergency update system can be configured to send the email update request to designated vendor staff members for handling. The email can be formatted to include the vendor's preferences for coding, and its structure does include some free-form text. The vendor may choose up to five (5) email addresses to receive emergency update emails. Confirmation of a completed update to the vendor's database is required within four (4) business hours of receipt of an emergency update email.

Preference will be given to responses indicating the willingness and ability to accept and process emergency updates via email as specified above. However, if a vendor is unable to receive and process emergency update emails, the vendor may, as a less preferred option, provide an SSO-access-controlled software interface through which the System can directly update the vendor's enrollment database. The preferred method for this option is an Internet interface accessible via a Web browser such as Firefox, Microsoft Internet Explorer, Google Chrome, or Apple Safari.

## 9.5 UT FLEX Contribution Data Transmission

The System requires the vendor to be able to receive a daily transmission of the detailed information supporting contributions received from the institutions. The dataset layout for the contribution information is the same as the enrollment format and can be found in Appendix B1. Responses must confirm that the vendor agrees to use the System format, or, if unable to

comply with the requirement, the response should include rationale for an alternate, applicable dataset layout.

It is System's expectation that the vendor will immediately process contribution datasets and that updated information will be loaded into the vendor's information system within 24 hours of receipt under normal circumstances. Within twenty-four hours, the vendor must positively confirm via email the receipt, processing, and successful load (or failure to load) of each contribution dataset. Further, in the event that a contribution dataset fails to load, the vendor should provide an explanation for the failure to load either within or as immediate follow-up to the initial notification. The vendor must work directly with System as needed to ensure that any dataset load issues are resolved as quickly as possible and updates are applied to the vendor's information system.

## 9.6 UT FLEX Claim Data Transmission

The System requires a daily transmission of the detailed information supporting claim disbursements initiated for settlement at the financial institution. In addition, the System requires a transmission of the detailed information supporting the settlement of debit card transactions at the financial institution. The dataset layout for the claim information can be found in Appendix B2.

## 9.7 DATA FORMAT FOR ADMINISTRATIVE FEES

The System will produce a "self-bill" by the fourteenth (14th) day of the month for the premium due for the prior month (billing month). Self-bills currently are created in a System-specific premium billing dataset format; however, for the purpose of this contract, self-bills may be generated in either an administrative fee billing format or in the HIPAA-compliant "Payroll Deducted and Other Group Premium Payment for Insurance Products Transaction Set (ASC X12N 820)" format.

The dataset will be transmitted via SFTP over the Internet to a secure FTP server. Upon placement of the dataset on the server, an automated email will be sent to the appropriate vendor contacts with notification of the dataset transmission and self-billing total. Each self-bill will reflect remittance detail for the current month.

Based on an eligibility snapshot taken from the System eligibility database on the first Sunday of each month, the System will prepare a report detailing the participation as support for the monthly payment of the administrative fees. The report will reference specific plan participants, their BIDs and affected coverage periods.

## 9.8 AD HOC REQUESTS AND ISSUE RESOLUTION

The vendor shall provide the System with priority positioning for delivery of ad hoc system service requests and issue resolutions. Through the designation of an appropriate technical contact as required for the Implementation and Account Management Teams, the vendor shall ensure that all System information systems requests and issues are given priority positioning and thoroughly analyzed to ensure speedy resolution. The vendor shall provide competent, focused attention to each information system request or issue presented by System.

It is the expectation that the vendor will make every effort to deliver a resolution within 30 days from receipt of the System's written notification of a request or issue related to the vendor's information systems. The System will be responsible for supplying detailed information reasonably necessary for the vendor to complete the requested services. If a 30-day resolution is not reasonable for a particular issue, the vendor must provide System with an implementation plan and timeline for resolution within five (5) days from receipt of notification.

An example of a requirement falling under this provision would include, but would not be limited to:

Modifications to benefits or enrollment processing requirements must be reviewed, responded to, and approved by the vendor within fifteen (15) days of such request by System. If the vendor requires adjustments prior to granting approval, the vendor shall immediately notify the System and set up weekly update meetings to be held until the System agrees that the modifications will meet the System's operating requirements. Once requested modifications have been mutually agreed upon, the vendor shall complete the enrollment or benefits project, including required testing within forty-five (45) days of Systems' approval.

## 9.9 SYSTEM DATA SECURITY REQUIREMENTS

For the purpose of this RFP, System data is defined as any and all information maintained, created or received by or on behalf of System.

Responding vendors must maintain a robust security program capable of protecting the integrity, confidentiality, appropriate accessibility, and security of System. Questions included in Section 13 of this RFP are designed to elicit specific information about the vendor's security program and must be thoroughly and accurately completed.

## 9.10 FUTURE SYSTEM DATA SECURITY REQUIREMENTS

Towards the end of the additional three year period, System intends to transition from the current processing environment. Further details, if they affect any technical or data exchanges with the vendor, will be made available as they are defined.

## 9.11 REPORTING AND INFORMATION SHARING

The System retains an independent consulting actuary on insurance matters. The consulting actuary assists and advises System staff on benefit plan design, proposal review, and administrative cost analysis. System staff or the consulting actuary may, from time to time, request that the vendor provide additional information specific to the FSA plans. The vendor must cooperate with and act in good faith in working with the consulting actuary and must be prepared to respond to these requests promptly. Regarding actuarial requests, or for other FSA plan purposes, the System may request on an ad hoc basis that the vendor prepare customized reports. Such reports must be provided in a timely manner at no additional cost to the System.

The vendor should be able to periodically provide the utilization and cost information to the System.

Additionally, routine vendor reporting is required to support the System's ability to proactively monitor trends and to identify/address variances on targeted vendor Performance Guarantees and customer service standards. The reporting timelines and formats shall be specified by the System. Some formats shall include a column indicating a performance standard for the item being reported, which shall be utilized by the System as a benchmark to monitor compliance and to analyze the reported statistics. See Appendix E for further details.

## 10.0 COMMUNICATION REQUIREMENTS

The selected vendor will be required to design and create communications with information regarding the FSA plan design approved by System. All plan communications should be designed to educate both potential enrollees and current participants and must be approved by System prior to dissemination. Communications regarding the UT FSA plans must be clear and concise, using terminology familiar to participants as specified by System.

The selected vendor will be required to develop FSA plans communications for written, electronic, and verbal dissemination to accommodate the varying needs of potential participants. However, System prefers that electronic communication be used whenever reasonably possible. Printed materials must always be made available electronically. Communication materials must meet ADA requirements for accessibility.

The vendor may recover the costs of the services described in this section only by making provision for such costs in the calculation of the proposed administrative fees.

### 10.1 GENERAL INFORMATION

Communication materials to be developed by the selected vendor may include, but are not limited to:

- 1) Participant brochures and information for inclusion in benefits books and newsletters;
- 2) A customized, System-specific FSA plan website;
- 3) Presentations to UT institution Benefits Staff and participants;
- 4) Scripted responses to be used by customer service representatives;
- 5) Advertising materials in association with System FSA plan enrollment;
- 6) Materials to be used in campaigns to raise awareness and participation in the FSA plans;
- 7) Claim forms;
- 8) News releases, including contract signing announcement;
- 9) Participant welcome packet; and
- 10) Token giveaways for enrollment fairs and events.

Communication materials designed for System FSA plan participants cannot, and the vendor represents and warrants that it shall not, advertise or promote coverage, products, or materials, other than those relating to the vendor's administration of the System FSA plans.

## 10.2 SAMPLE COMMUNICATION MATERIALS REQUIRED

Electronic draft copies of proposed Plan Year 2016–2017 printed materials, plan participants’ handbook, and advertising (newspaper ads, radio scripts, television ads, etc.) must be submitted as part of the proposal. Respondents to this RFP should also submit samples of other communication materials with their proposal, including consumer targeted educational materials (in both print and electronic format) and the format of the customized System-specific website.

**Important: All materials relating to the plan must be approved by the System prior to distribution to institution employees and retirees.**

## 10.3 ANNUAL ENROLLMENT

Annual Enrollment information must be promptly provided to all benefits-eligible employees and retirees. The requirements listed below apply to all Annual Enrollment materials, including information for benefits guides.

### 10.3.1 CUSTOMER SERVICE INFORMATION

All items must include the customer service phone number, hours of operation, a description of the process for filing claims (if applicable), the appeal process for claim denials, and the vendor’s website address.

### 10.3.2 DESCRIPTION OF BENEFITS

The material must include a description of the FSA plans and the corresponding benefits of participating in System’s FSA plans.

### 10.3.3 DUE DATES FOR ENROLLMENT MATERIALS

All educational and enrollment materials used for both Annual Enrollment and new employees must be distributed to all System institution benefit offices no later than June 1 of each plan year. **All materials must be approved by the System before distribution to System institutions and employees.**

#### **10.3.4 VENDOR ATTENDANCE AT ANNUAL ENROLLMENT MEETINGS**

The contracting vendor is required to attend key scheduled Annual Enrollment meetings at each System institution when requested by the institution Benefits Office at the vendor's own expense. Vendor participation at Annual Enrollment meetings will help educate employees about the FSA plans. If the contracting vendor is unable to attend all Annual Enrollment meetings being offered at a particular System institution, the institution will have the discretion to designate a particular meeting or meetings as high-priority and request vendor attendance specifically for the designated priority meeting(s).

Note: Based on prior Annual Enrollment experience, the FSA plan vendor is generally requested to attend approximately 30 Annual Enrollment events each year. Events are often held on the same day and we encourage institutions to schedule meetings to accommodate vendor travel but this is not always possible. For example, Houston area institutions will attempt to schedule their Annual Enrollment events within a three day period of one another to minimize vendor travel.

#### **10.3.5 CUSTOMER SERVICE DURING ANNUAL ENROLLMENT**

The vendor's dedicated Customer Service Team will be required to assist in answering questions regarding the FSA plans each year during the System Annual Enrollment period, including during the July 2016 Annual Enrollment period. Education by the vendor Customer Service Team must be provided to all current and potential FSA plan participants. Customer service should be made available via phone, email, in writing, or in person.

### **10.4 UT SYSTEM-SPECIFIC WEB SITE**

The vendor must establish a customized, System-specific website with the primary goal of allowing participants to easily access plan information regarding customer service toll-free numbers, claims, and plan contacts for the FSA Plans. The website must meet all requirements as detailed in this section.

The vendor's System-specific website must be available to the System for testing no later than Wednesday, **June 1, 2016**. The final System-approved website for plan year 2016-2017 must be made available by Wednesday, **June 22, 2016**, and must include the System-approved

enrollment materials. The System must approve new website additions or redesigns at least two weeks prior to any scheduled launch date. The vendor must update the website as often as needed with System-specific content (e.g., news) when requested by the System. The System's requests should be implemented within two weeks from the request date, or within a reasonable time as agreed by the System, depending on the complexity of the update requested.

#### **10.4.1 CONTENT SPECIFICATIONS**

The System-specific website should be kept regularly updated with timely, relevant information for the FSA plans. All content for the System-specific website must be approved by the System before it is released. The site must include:

A link to the FSA plan brochures and summaries, as approved by the System;

- 1) Customer service information, including phone numbers, mail and claim addresses, hours of operation, and guidelines for the complaint and appeals process;
- 2) Electronic forms or email addresses for customer complaints and questions. Responses to email complaints should have no more than a 48-hour turnaround time. A tracking system for complaints submitted online, similar to the tracking of telephone complaints, must be in place with the ability to provide data and details to the System upon request;
- 3) All necessary vendor forms (e.g. claims forms) for participants. If forms are made available in PDF format, an easily identifiable link must be provided to download Adobe Acrobat Reader to enable participant viewing and printing;
- 4) System's branding and a System-specific welcome message must be included to clearly indicate the site is specific to UT System and the UT FSA plans;
- 5) A link to the System's UT Benefits website; and
- 6) If the vendor provides a Web page on which a participant may view specific individual information, the site must utilize secured protocol (<https://>) and require authentication. The site may not use the participant's social security number, in whole or part, as either the user identification or the password. The Benefits ID may be used as the user identification. Authentication via single-sign-on is strongly preferred over requiring a unique user identification and password specific to the site. See the section of this RFP entitled "Technical and Data Requirements" for additional details.

## 10.4.2 TECHNICAL SPECIFICATIONS

The System-specific website must be accessible to as many participants as possible. Therefore, the following specifications must be met:

- 1) All website content must be clearly visible and functional in Internet Explorer, Safari, Google Chrome and Firefox browsers, and compatible with devices including but not limited to personal computers, smart phones, and tablets.
- 2) The selected vendor should create a downloadable application in order for participants to access information securely on various mobile devices including but not limited to personal computers, smart phones, tablets.;
- 3) Entering a Social Security number should not be required at any time to access information on the website;
- 4) The log-on page must not allow the browser to store the information entered in the cache. The auto-complete feature must be turned off for every form;
- 5) The font and text must be legible and easy to read; and
- 6) The Texas Department of Information Resources (DIR) has adopted rules pursuant to Chapter 2054 of the Texas Government Code, accessibility rules concerning how Texas institutions of higher education are to develop, procure, maintain and use Electronic and Information Resources (EIR) to provide access to individuals with disabilities. The rules include world wide websites within the definition of EIR.
- 7) All forms and Adobe Portable Document Format (PDF) files must be accessible. Refer to the W3C accessibility standards for PDFs:
  - a) <http://www.w3.org/TR/WCAG20-TECHS/pdf.html>.

## 10.5 ELECTRONIC AND INFORMATION RESOURCES (EIR) WARRANTY

System is required to acquire all EIRs in compliance with the legal requirements governing access to such EIRs by individuals with disabilities ("EIR Accessibility Requirements"). The EIR Accessibility Requirements applicable to the University are set forth in Chapter 2054, Subchapter M of the *Texas Government Code*, Title 1, Section 206.70 of the *Texas Administrative Code*, and Title 1, Chapter 213, Subchapter C of the *Texas Administrative Code*. In order for System to ensure that the EIRs offered by each Proposer responding to this RFP are

in compliance with the EIR Accessibility Requirements, Proposer must include all of the following in its proposal:

COMPLIANCE WITH THIS STATUTE AND THESE RULES IS NOT OPTIONAL AND THEIR APPLICABILITY CANNOT BE WAIVED.

- 1) The vendor must warrant that the website complies with the requirements set forth in Title 1, Rules §§ 206, 213.30 and 213.36 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*). The proposal must provide that to the extent vendor becomes aware that the website does not satisfy the EIR Category Warranty, vendor will, at no cost to System, perform all necessary remediation to make the website satisfy the EIR Category Warranty.
- 2) Vendor is required to submit a completed Electronic and Information Technology (EIR) Accessibility Checklist (included as Appendix H to this RFP) along with proposals. Proposals or bids without a completed checklist will be disqualified.
- 3) Vendor must provide a written explanation for each of its responses to the requirements in the Checklist with respect to the website:
  - a) If Proposer determines that the website *complies* with an applicable accessibility requirement in the Checklist, Proposer's written response to that requirement must identify how Proposer made such a determination (merely responding with "Complies" or similar non-explanatory language is *not acceptable*).
  - b) If the vendor determines that the website *does not or will not comply* with an applicable accessibility requirement in the Checklist, Proposer's written response to that requirement must identify the cause of such non-compliance and the *specific* efforts and costs that Proposer would need to assume in order to remedy such non-compliance (merely stating "Does not comply" or similar non-explanatory language is *not acceptable*).
  - c) If Proposer determines that an accessibility requirement in the Checklist *is not applicable* to the website, then Proposer's written response to that requirement must identify the reason for such inapplicability (merely stating "N/A" or similar non-explanatory language is *not acceptable*).
- 4) All vendor Proposals must:

- a) Agree to authorize UT System to engage in product accessibility conformance testing prior to and after completion of purchase.
- b) Provide the name and contact information of the individual responsible for addressing accessibility questions and issues about the product.
- c) Describe the vendor's capacity to respond to and resolve any complaint regarding accessibility of products or services provided pursuant to this RFP.

## **10.6 PROHIBITIONS; NOTICE OF INQUIRIES FROM THIRD PARTIES**

As the insurer for the System FSA plans, the vendor may receive numerous inquiries from interested third parties relating to the FSA plans and their program administration. The vendor is strictly prohibited from disseminating any information about coverage, products, or materials on the vendor's website other than those explicitly relating to the vendor's plan offered or service provided to System participants, including the System-specific OEB website.

The vendor must forward all inquiries from interested third parties relating to the FSA plans and program administration to the System Office of Employee Benefits.

## **10.7 DISSEMINATION OF COMMUNICATION MATERIALS**

Communication materials may be considered "published" when a final electronic copy is delivered to the System or is accessible on the vendor's website. Materials that contain protected health information or other confidential information such as a participant's Benefits ID number must be mailed in an envelope or packaging designed to secure confidential information from casual viewers.

## **10.8 IMPLEMENTATION AND ACCOUNT TEAM**

By no later than March 1, 2016, the selected vendor must submit to the System a list of the vendor's implementation team. In addition, the vendor must submit a list of their service representatives to be dedicated to the System account. Service representative responsibilities will include answering questions from the System and institution Benefit Offices, scheduling vendor attendance at institution Annual Enrollment meetings, and distributing vendor materials.

The vendor's implementation team must include a designated information technology contact to interface with System regarding data transmission, data integrity, and timely processing of the data files.

## 10.9 PLAN BOOKLET

A plan booklet must be provided for each plan year. If corrections or amendments are made to a plan booklet during a plan year, the revisions will be announced via e-mail and by Web announcement. The updated plan booklet will also be posted on the website. Each plan booklet must include the Summary of Benefits as approved by the System. The plan booklet shall include any additions, limitations and exclusions, and a description of the appeals process. The plan booklets should include a description of current eligibility requirements, as set forth in Chapter 1601 of the Texas Insurance Code.

The vendor is responsible for providing a draft of the plan booklet to the System each year. Final drafts of any required plan booklet must be submitted by the vendor to the System for review by **March 21, 2016**.

## 10.10 TRAINING OF SYSTEM AND INSTITUTION STAFF

The vendor must provide training to System staff and institution HR and Benefits staff regarding the FSA Plans. Centralized training for institution HR and Benefits staff occurs on an annual basis during the Benefits and Human Resources Conference (BHRC) hosted in Austin by OEB. The 2016 BHRC is scheduled to be held from **Wednesday, June 8 through Friday, June 10, 2016**. In addition, specific training for institution HR and Benefits staff may be required at other times during the year based on changes to operations and the needs of the System.

## **11.0 PERFORMANCE STANDARDS AND PENALTIES**

The vendor must comply with the System requirements listed below and report the specified information to the System on a quarterly basis in an Administrative Performance Report. Refer to the template for the required reporting format for the FSA Plans Administrative Performance Report (Appendix E to this RFP).

The vendor selected to administer the System FSA Plans must agree to pay the financial penalties as shown in this section if the associated performance standards are not met. Additionally, the vendor should be aware that compliance with these requirements will be a key consideration during any future contract renegotiations.

### **11.1 ANNUAL ENROLLMENT MATERIALS**

**System Requirement:** The vendor must meet all due date requirements as specified in this RFP for materials related to Annual Enrollment.

**Financial Penalty:** A penalty of \$4,000 may be assessed for each violation of the due date requirements for: (1) preparation of the System-specific website; and (2) distribution of plan materials.

### **11.2 ADMINISTRATIVE REPORT TIMELINESS**

**System Requirement:** Each Administrative Performance Report is due no later than the last day of the month that immediately follows the end of the System plan year quarter or by the first business day following the last day of the month.

**Financial Penalty:** A penalty of \$4,000 may be assessed for each quarter in which the vendor fails to submit the Administrative Performance Report by the required due date.

### **11.3 COMPLAINTS**

**System Requirement:** The average time to resolve System participants' complaints should not exceed 30 calendar days, with at least 90% resolved in 15 days. The vendor must report the total number of complaints received from System participants (via mail or email), the average

length of time to resolve complaints, and the percentage resolved within 15 days of receipt. System-specific data is required.

Financial Penalty: A penalty of \$4,000 may be assessed for each quarter in which the average time to resolve complaints received from System participants exceeds 30 days or when fewer than 90% are resolved within 15 days.

## 11.4 CUSTOMER SERVICE CALL HANDLING

System Requirement: When contacting the toll-free FSA Plans customer service number, the average time a caller waits before speaking to a vendor customer service representative should be 30 seconds or less. The average abandonment rate should not exceed 5%. System-specific data is strongly preferred; however, if System-specific data is not available due to technical limitations, these two customer service statistics for the complete book of business may be reported instead.

Financial Penalty: A penalty of \$4,000 may be assessed for each quarter in which the ASA exceeds 30 seconds and \$4,000 for each quarter in which the ABR exceeds 5%.

## 11.5 CALL CENTER AND WEBSITE OUTAGES

System Requirement: Outages of customer service access points, including telephone and IVR services at the Customer Service call center as well as with the System-specific website, should be kept to a minimum. If an outage does occur (or is expected to occur), the vendor must report the outage to System as soon as possible and service should generally be restored within one (1) hour of the outage, dependent upon specific circumstances.

Financial Penalty: A penalty of \$1,000 may be assessed for each outage longer than one (1) hour but less than eight (8) hours. If an outage is greater than 8 hours but less than 24 hours, a penalty of \$2,000 may be assessed. If an outage lasts longer than 24 hours, a penalty of \$4,000 per 24-hour period may be assessed for each occurrence, up to a maximum penalty of \$12,000 for each quarter. OEB may waive this penalty based on extenuating circumstances, including down time due to unusually severe weather, a natural disaster, or an act of terrorism.

## 11.6 DEBIT CARDS

**System Requirement:** The vendor must issue 95% of debit cards within 10 business days after receiving a dataset which indicates enrollment or change in the HCFSAs debit card program.

**Quarterly Report:** The vendor must report the following quarterly: (1) the total number of debit cards issued to UT FLEX participants, the total number of transactions, the total dollar amount charged on these cards, the total amount denied, and the total amount refunded; (2) the number of receipt request letters mailed to participants and the number of transactions relating to the letter; and (3) the percentage of debit card transactions that are copayments, over-the-counter transactions, matches with the System contracting medical, prescription and dental vendors, and other transactions.

**Financial Penalty:** A penalty of \$4,000 may be assessed for each quarter that the vendor does not issue at least 95% of debit cards within 10 business days

## 11.7 CLAIMS PROCESSING

**System Requirement:** Once complete information is received, the vendor should average processing System participants' claims as follows:

- a) 85% of FSA Plans claims to be processed within five (5) calendar days following date of receipt.
- b) 98% of FSA Plans claims to be processed within fifteen (15) days of receipt.

The vendor must report its total number of System claims received from System participants, the total dollar amounts paid and denied, the average processing time (in days) for these claims, and the percentage processed within 5 days and 15 days, respectively, from date of receipt.

**Financial Penalty:** A penalty of \$5,000 may be assessed for each quarter and for each timeliness standard regarding claims processing that the vendor fails to meet.

## 11.8 APPEALS

**System Requirement:** The vendor's appeals procedure must be in compliance with all applicable statutes and regulations including, but not limited to, the rules and regulations of the Texas Department of Insurance. The vendor must have all levels of appeals required by law. The vendor must provide performance in total number of appeals received, upheld and denied plus the average time (in days) to reach a decision, as well as the percentage processed within 30 days of receipt.

Financial Penalty: A penalty of \$4,000 may be assessed for each quarter in which the average time to resolve complaints received from System participants exceeds 30 days.

## **11.9 ENROLLMENT AND CONTRIBUTION DATASET PROCESSING**

System Requirement: Maintenance enrollment and contribution datasets received from the System by 11:00 a.m. (central) on any business day will be processed within 24 hours of receipt and System notified of the status once processed. If problems with a dataset or with the vendor's information system prevent processing of any file within 24 hours of receipt, the vendor shall immediately notify System of the issue and begin resolving the issue(s).

Financial Penalty: A penalty of \$5,000 may be assessed for each successfully transmitted dataset not processed by the vendor within the specified time frame or failure to notify System of a transmitted dataset's status within the specified time frame, up to a maximum penalty of \$25,000 per Contract Year.

## **11.10 EMERGENCY UPDATE PROCESSING**

System Requirement: Valid emergency update requests from System institution staff must be processed and confirmation sent to the submitter within four (4) hours of receipt when received by 1:00 p.m. (central) on a business day. Requests received after 1:00 p.m. (central) on a business day or anytime on a non-business day must be processed no later than noon (central) on the following business day.

Financial Penalty: A penalty of \$1,000 may be assessed for each occurrence in which a valid update request was not processed and confirmation sent within the required time frame.

## **12.0 PROPOSAL EVALUATION**

Proposals submitted in response to this RFP will be evaluated on the basis of criteria described below. The criteria, which should not be assumed to be listed in order of importance, are intended to provide the basis for an objective evaluation of each proposal.

The evaluation process will focus on the selection of a vendor who, in the judgment of the System, demonstrates the ability to consistently and effectively partner with System to provide the best administration of the FSA Plans during the contract period for the amount of administrative fees paid.

### **12.1 VENDOR LICENSURE**

To be considered for selection, vendors must have a certificate of authority in good standing from the Texas Department of Insurance to provide the proposed plan that has been filed and approved by TDI.

### **12.2 COMPLIANCE WITH AND ADHERENCE TO THE RFP**

Proposals containing deviations are strongly discouraged. If included, deviations must be specifically identified and described in detail to be considered. While a proposal with minor deviations from the RFP specifications 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. Information about proposed unique or value-added benefits and programs that would enhance or supplement the current benefit offering specified within this RFP are welcome when presented in conjunction with confirmation that the vendor agrees to the requirements as presented in this RFP.

The System will interpret all responses to be indicating agreement with the specifications contained herein except in cases where deviations are specifically noted and described as required. Deviations will not be included in the final contract unless expressly accepted and agreed to by the System in writing and accepted by the System. In all cases, this RFP, the vendor's RFP response, and the contract terms shall be binding.

### **12.3 IMPLEMENTATION TIMELINE AND CRITICAL DEADLINES**

The vendor's ability to meet the required dates for critical implementation tasks as specified in the section of this RFP entitled "Implementation Timeline," will be an important consideration in the evaluation of vendor proposals.

## 12.4 THE CONTRACT

All proposals must include an affirmation of the vendor's willingness to accept the provisions set forth in the System's Sample Contract, included as Appendix F to this RFP. Proposals indicating that a vendor is unwilling to sign a contract in the format prescribed by System and containing the essential terms set forth in the Sample Contract, without deviations, will not be considered.

## 12.5 FINANCIAL STRENGTH

The System has specified a minimum net worth of \$10 million that is applicable for consideration as a prospective vendor under this RFP. A net worth substantially in excess of the minimum will not be considered to indicate a superior proposal. However, a net worth below the specified minimum will result in disqualification of the proposal.

## 12.6 ADMINISTRATIVE CAPABILITY

Vendors will be evaluated on the basis of their demonstrated ability to provide high-quality services to the System in the management and administration of the FSA Plans. All aspects of the services described herein are considered important to this evaluation, including customer service, claims processing, data processing and reporting capabilities.

## 12.7 OPERATIONAL EXPERIENCE

Demonstrated experience with administering and managing the FSA Plans and on behalf of large employers (with more than 10,000 members), and particularly experience with large public employer plans, will be an important consideration in the overall proposal evaluation process.

## 12.8 ACCOUNT MANAGEMENT TEAM

A vendor's commitment to a strong and consistent Account Management Team will be an important consideration in the evaluation process.

The System considers the account service relationship to be a critical link in developing and maintaining a strong partnership dedicated towards the achievement of plan objectives. Vendors must be prepared to provide the System with account service that is at the highest

levels in the industry and that is fully consistent with the System's expectations. The vendor and the System will mutually define the criteria to be used for measurement and evaluation of account service performance.

## 12.9 DATA MANAGEMENT

The vendor's ability to consistently and accurately provide data transmission and processing, as specified in this RFP, will be an important consideration in the selection process. Some of the key factors to be evaluated include:

- a) A management information system that will support the database maintenance and management reporting requirements specified herein;
- b) The vendor's ability to accept enrollment datasets as specified herein, to update enrollment records in a timely manner, and to promptly notify System upon the success or failure of the attempt to load each enrollment dataset received;
- c) The vendor's ability to accept emergency enrollment updates via email and confirm processing of requested changes within the timeframes specified herein; and
- d) The availability of a secure website through which System staff can view enrollment status for participants and make updates if necessary.

## 12.10 CUSTOMER SERVICE

Evaluation of the vendor's ability and willingness to provide customer service according to the standards specified in this RFP will include consideration of the vendor's:

- a) Customer service and data reporting capabilities;
- b) Ability to provide general administrative services;
- c) Willingness to commit to specified service and quality performance levels;
- d) Willingness to provide communications materials and personnel for attendance at the annual Benefits and Human Resources Conference for HR and Benefits Office staff from all System institutions (usually held in Austin for 2-3 days during June of each year) and for attendance at Annual Enrollment meetings for employees (generally approximately 25 - 30 meetings beginning in early July and continuing through most of the month of July) held at locations throughout the state;
- e) Ability to meet the Electronic Information and Resources (EIR) Warranty requirements described in the "Communications Requirements" section of this RFP.

- f) Ability to develop and maintain a System-specific website.

## 12.11 ADMINISTRATIVE COST

The System expects to receive proposals from several qualified vendors, all of which can provide high-quality, cost-effective service. Although cost is a key consideration, the System is not required to select the proposal with the lowest administrative fees. A distinguishing factor will be the organization's proposed fees and the percentage of the fees designated for administrative costs.

## 12.12 SECURITY OF SYSTEM DATA

System will require the selected vendor to demonstrate its ability to safeguard the privacy and security of System data collected and/or maintained by the vendor on behalf of System in compliance with System's own privacy and security requirements.

## 12.13 EIR ACCESSIBILITY RULES

The System is required to ensure that the vendor is able to comply with the EIR Accessibility Rules and provide the required EIR Accessibility Warranty as described in Appendix H of this RFP.

## 12.14 COMPLIANCE WITH HIPAA

The System is a HIPAA Hybrid Entity and the HCFSAs are subject to HIPAA. System requires strict compliance with the HIPAA Administrative Simplification regulations and System's HIPAA Privacy, Security and Breach Response Policies. The selected vendor must demonstrate a robust HIPAA Compliance Program and a willingness to comply with all HIPAA requirements applicable to the System HCFSAs.

## 12.15 OTHER FACTORS

Based on responses provided, other factors will be considered during the evaluation process, including the following:

- a) The vendor's overall financial stability;
- b) An organizational structure and a delivery mechanism that have demonstrated the ability to deliver high-quality, cost-effective management and administration of the FSA Plans; and

c) Information obtained from the vendor's list of references.

System reserves the right to request that representatives from vendors determined to be finalists meet with System representatives (at a location to be determined by System) to clarify responses and answer questions related to this RFP. System may also choose to conduct site visits with selected finalists. System will utilize information gained during any such meetings and site visits with selected finalists during the evaluation process.

The System reserves the right to reject any and/or all proposals and/or call for new proposals if the System deems it to be in the best interests of the FSA Plans and its participants. The System also reserves the right to reject any proposal submitted that does not fully comply with the RFP's instructions and criteria. The System is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFP or receipt of a Proposal.

## 13.0 INTERROGATORIES

The vendor must provide responses to all of the items in this section. Responses must be detailed enough to satisfactorily explain the vendor's position on each particular issue. It is the vendor's responsibility to respond to each item in such a way that the System has a full and complete understanding of the vendor's intent. It is important that the vendor carefully defines any key words or phrases used in this section. Each response must be preceded by the question to which the response pertains.

### DEVIATIONS FROM THE RFP

- 1) Identify any provision in your response that does not conform to the standards described in the RFP. For each deviation, provide the specific location in the response and a detailed explanation as to how the provision differs from the RFP standards and why. Deviations, which are strongly discouraged, must be specifically identified in order to be considered. The System will interpret your proposal to match the specifications of this document except for deviations specifically noted and described in response to this item. If the System enters into a contract with your organization, deviations shall not become a part of the final Contract unless expressly agreed to by the System in writing and accepted by the System.

### ORGANIZATIONAL INFORMATION

Please provide the following details:

- 2) The vendor's full legal name, address, telephone number, and the URL for the corporate website.
- 3) The name, title, mailing address, telephone number, fax number, and email address for the following individuals:
  - a) The vendor's contact person for this RFP;
  - b) The person authorized to execute any contract(s) that may be awarded;
  - c) The person who will serve as the vendor's legal counsel;

- d) The actuarial/financial expert(s) responsible for preparation of items in this response, who must be available to respond to inquiries made by System or its consulting actuary and provide any requested information concerning such items.
- 4) If applicable, a description of the parent company of the vendor as well as any subsidiaries and/or affiliates, including whether each is publicly or privately owned.
- 5) Type of incorporation (for-profit, not-for-profit, or nonprofit); publicly or privately owned.
- 6) State of incorporation.
- 7) Date(s) that FSA services were first provided in the state of Texas by the vendor.
- 8) A copy of the vendor's current certificate of authority, issued by the Texas Department of Insurance, to provide the type of FSA services described in the proposal in the state of Texas.
- 9) Is the vendor required to maintain any other license(s)? If so, please describe and confirm the validity of any required license(s).
- 10) Provide a copy of the vendor's current State of Texas Vendor ID number (14-digit number).
- 11) Copies of recent ratings and reports regarding the vendor issued by independent rating organizations or similar entities (e.g., Best's, Moody's, Standard & Poor's, etc.).
- 12) A copy of the vendor's most recent audited financial statement.

## FINANCIAL INTERESTS AND REQUIREMENTS

- 13) Provide the names and addresses of all parties who would receive compensation as a result of the vendor's selection under this RFP, including, but not limited to, consulting fees, finder's fees, and service fees.
- 14) State the name and address of any sponsoring, parent, or other entity that provides financial support to the vendor. Include an indication of the type of support (i.e., guarantees, letters of credit, etc.) provided as well as the maximum limits of additional financial support from other entities. If applicable, provide a copy of the sponsoring organization's most current audited financial statement.

- 15) Is the vendor presently actively considering or subject to any mergers with and/or acquisitions of or by other organizations? If so, provide specifics. Affirm that the vendor agrees to notify the System immediately upon reaching any form of binding agreement in connection with any merger, acquisition or reorganization of the vendor's management.
- 16) Please disclose any contractual relationships with affiliates that could present a conflict of interest with the vendor's role as insurer of the FSA plans.
- 17) Identify by name and address all persons or entities that hold a 20% or greater ownership interest in the vendor.
- 18) Does the vendor agree to submit and receive all payments made to and from System through ACH or other electronic fund transfer methods? Confirm that the vendor will provide written notice to System at least 30 days in advance of the effective date of any changes to the banking information associated with electronic fund transfers to and from System.
- 19) Does the vendor agree to assume responsibility for the escheatment process in accordance with Texas law for any payments disbursed on behalf of the FSA plans?

## REFERENCES

- 20) List as references five major employers for whom you provide FSA plan services for their employees. The System is particularly interested in employers located in Texas and in public entities, but is also interested in seeing references outside of Texas as well. For each employer, include:
  - a) The name and telephone number of a representative of the employer who is familiar with the services you provide;
  - b) The nature of your relationship with the employer, i.e., insurer, administrator, reinsurer, manager of provider network; and,
  - c) The number of employees and dependents for whom FSA services are provided.

**Note: Your response to this request officially authorizes the System to contact these employers to discuss the services that you have provided for their employees and authorizes the employers to provide such information to the System.**

## LEGAL AND REGULATORY HISTORY

- 21) Describe any litigation, regulatory proceedings, and/or investigations completed, pending or threatened against the vendor and/or any of its related affiliates, officers, directors, and any person or subcontractor performing any part of the services being requested in connection with the Contract during the past five (5) years. Identify the full style of each suit, proceeding or investigation, including county and state, regulatory body and/or federal district, and provide a brief summary of the matters in dispute, current status and resolution, if any.
- 22) Describe any investigations, proceedings, or disciplinary actions by any state regulatory agency against the vendor and/or any of its related affiliates, officers, directors and any person or subcontractor performing any part of the services being requested in connection with the Contract during the past five (5) years. Identify the full style of each suit, proceeding or investigation including county and state, regulatory body and/or federal district, and provide a brief summary of the matters in dispute, current status and resolution, if any.
- 23) System is authorized to offer fully funded insurance coverage only if the policy or evidence of coverage, as applicable, has been approved by the Texas Department of Insurance (TDI). Please confirm that TDI has or will approve the proposed coverage prior to the contracting period.

## HUB POLICY COMPLIANCE

- 24) Confirm that three original versions of the HUB Subcontracting Plan (HSP), based on details included within this RFP and requirements included in Appendix G to this RFP, have been completed and submitted with this proposal. Provide the name, mailing address, telephone number, fax number, and email address of the person in the vendor who can answer questions from System regarding the submitted HUB documents.
- 25) Indicate whether the Texas General Services Commission certifies the organization as a Historically Underutilized Business (HUB) and provide any information about past participation in a HUB program. See Appendix G of this RFP.
- 26) Indicate whether any of the services to be provided to the System will be subcontracted by the vendor.

## CONFIRMATION AND ACKNOWLEDGEMENTS

- 27) Confirm that the vendor understands, has the ability to, and will comply with all of the requirements included within each of the following sections of this RFP:
- a) General Requirements (Section 2.0);
  - b) Implementation Timeline (Section 3.0);
  - c) Contract and Other Legal Requirements (Section 4.0);
  - d) Financial Requirements (Section 5.0);
  - e) Benefits and Program Requirements (Section 6.0)
  - f) Eligibility and Enrollment (Section 7.0)
  - g) Operational Requirements (Section 8.0);
  - h) Technical and Data Exchange Requirements (Section 9.0);
  - i) Communication Requirements, including the Electronic Resources Warranty (Section 10.0); and,
  - j) Performance Standards and Penalties (Section 11.0)

## GENERAL ADMINISTRATION

- 28) Are all administrative services performed internally? If the vendor contracts with a management company for some or all of its administrative services, please specify the name of the company, the services provided and the method of reimbursement. Be aware that this would require compliance with the HUB requirements in this RFP.
- 29) Where is the primary administrative facility located?
- 30) Provide the names and titles of the vendor's administrative support staff that will administer the FSA plans, including the total number of full-time equivalent employees and which employees are located in Texas. What is the turnover rate among this staff for the past two (2) years? Describe the vendor's ability to provide a support staff dedicated to the administration of the System account.

- 31) Confirm that the System will be given a specific contact person responsible for administering the System-specific website. State where this contact person is located and their typical hours of availability.
- 32) Confirm that your organization has the ability to meet the COBRA requirements as described in this RFP. Does your organization provide COBRA administration in-house? If not, please provide the name, address, and telephone number of the organization that administers this function for your organization.
- 33) What are the vendor's contingency plans and procedures for providing back-up service in the event of strike, natural disaster, backlog, or other event that might interrupt, delay, or disrupt service? Provide a copy of the vendor's disaster recovery plan and/or business resumption plan, including results of the vendor's most recent test of the plan.

## BENEFITS ADMINISTRATION

- 34) How long has the vendor been providing FSA plan services?
- 35) Provide the vendor's total commercial enrollment as of December 1, 2014, and December 1, 2015. Provide a statement of the vendor's capacity to accept new participants and the likelihood of any future limitations on increased participants.
- 36) Confirm that the vendor has the ability to administer the benefits specified in Appendix A.
- 37) Explain your previous experience in providing FSA services, as applicable, to groups of 10,000 or more.
- 38) Indicate the percentage of covered individuals filing claims during the last year?
- 39) Describe the services you will generally provide in compliance with this RFP, as well as the specific services you will render in connection with the installation of the plan, education of benefit staffs, printing of booklets, forms, etc.

## FSA CLAIMS ADMINISTRATION AND CUSTOMER SERVICE

- 40) What is the address of the claims office where the HCFA and the DDCFA reimbursements would be processed and serviced?

41) Provide answers for this question *without* the debit card feature for your organization's HCFSA and DDCFSA claims administration.

- (a) Describe or show in detail each step of your organization's HCFSA and DDCFSA claims administration processes. Important: Give the time duration of each step, where indicated. Include at least the following: administration processes. Important: Give the time duration of each step, where indicated. Include at least the following:
1. The participants' claims filing process (by paper, fax, or other methods),  
Your organization's claims adjudication process (Include the approval process, denial process, and steps taken if more information is needed from participants.) Include any specific processes for:
    - i. Orthodontic claims
    - ii. Claims for OTC items
    - iii. Claims with Coordination of Benefits
    - iv. Claims requiring Letters of medical necessity
    - v. Maintenance of requested/required documents for each participant
  2. Your organization's claims reimbursement process for mailing checks
  3. Your organization's claims reimbursement process for electronic direct deposit (Important: Include the time frame for notifying participants about direct deposit.)
  4. Your organization's mail room process (Important: Describe in detail and give the time duration of each step. Also indicate any steps performed manually, i.e., not automated.)
- (b) Provide a copy of your organization's claims forms and describe how participants obtain, fill out, and submit this form.
- (c) List the documentation employees must submit in order to receive a reimbursement.
- (d) How frequently will your organization process claims from System participants? How frequently will your organization reimburse by check and reimburse by direct deposit?
- (e) Provide your organization's average time in approving a claim and denying a claim for reimbursement. How and when are participants notified if a claim is denied?

- (f) Describe your organization's automated capabilities, including system edit capabilities.
  - (g) Describe any parts of the claims administration process without automation, i.e., manually performed.
  - (h) How does your organization audit for errors and how are corrections and updates accomplished?
  - (i) Describe how each FSA participant would certify that any expenses reimbursed have not been (or will not be) reimbursed by another plan.
  - (j) If an eligible individual elects COBRA, describe how your organization handles COBRA Flexible Spending Accounts.
- 42) Minimum withdrawal amount – Confirm that your organization does not require a minimum reimbursement amount.
- 43) Provide a sample employee statement and describe the information contained on the statement. Describe the methods and frequency used by your organization to distribute statements to participants.
- 44) Provide the following information about the DEBIT CARD feature and its use for administration of an Health Care FSA: (Note: Do not include information on Dependent Day Care FSAs because the System will implement the debit card feature only for the UT FLEX Health Care FSA.)
- (a) If your organization contracts with a management or service company for some or all debit card administrative services, specify the name of the company, your organization's relationship to the administration of an FSA debit card, specify the name of the company, your organization's historical experience with this company, the services provided, and the method of reimbursement.
  - (b) Provide a complete description of your organization's debit card process, including a flow chart, with at least the following information: measures taken to properly adjudicate eligible claims, information needed on receipts, methods and time frame for obtaining necessary information from participants, claims substantiation, auditing of claims reimbursements, accounting for payments made in error, and recoupment of payments made in error.

- (c) Describe processes for ensuring your organization's compliance (and any sub-contractor's compliance) with current and future requirements of the Internal Revenue Code, as applicable.
- (d) Confirm your organization will collect a monthly UT FLEX FSA fee for each UT FLEX participant as specified in this RFP, if the fee is reinstated.
- (e) Describe how your organization will collect an annual fee at the beginning of the plan year (or prorated fee for mid-year enrollees) only for each UT FLEX participant who selects the debit card feature, or for each UT FLEX participant who automatically receives a debit card upon enrollment in the HCFSA, if the fee is reinstated.
- (f) List in detail your organization's processes and safeguards for ensuring that only qualified expenses are approved and reimbursed.
- (g) Describe your organization's debit card processes for ensuring the required claims substantiation for reimbursement of participants' qualified expenses.
- (h) Describe how your organization uses merchant codes with the debit card, including a description of the number and types of merchant codes, how the merchant codes are used at the "point of sale," how merchant codes are used to validate claims, and a description of the processes for handling claims not validated in connection with merchant codes.
- (i) Give a complete description of the debit card process for determining the availability of participant's funds to cover the transaction at "point of sale."
- (j) Provide a complete description of the debit card process at "point of sale" if claim not validated and not approved, including a flow chart of this process.
- (k) Describe your organization's process for claims substantiation using the debit card if the expense correlates to a copayment under the health plan option selected by the participant.
- (l) Describe your organization's process for claims substantiation using the debit card if correlated to a recurring amount for a previously approved charge, such as a prescription refill at the same pharmacy.
- (m) Describe the methods for claims substantiation using the debit card for a claim that does not correlate to a copayment under the plan or to a recurring reimbursement that was previously approved. For claims not correlated to a copayment, the vendor will provide a description of the process for obtaining

necessary information to appropriately adjudicate and substantiate claim reimbursement.

- (n) Provide a description of debit card methods for obtaining participant certification stating that a health care expense has not been and will not be reimbursed under another plan.
- (o) For OTC drugs, provide a complete description of debit card claims adjudication with examples including at least the following: measures taken to properly adjudicate eligible claims, claims substantiation for OTC drugs, “dual use” issues, auditing of OTC claims, accounting for OTC payments made in error, and recouping of payments made in error.
- (p) Describe the advantages and disadvantages for participants who use the debit card as an option for HCFSA.
- (q) Describe the advantages and disadvantages for employers who offer the debit card as an option for HCFSA participants.
- (r) Describe the advantages and disadvantages for employers who provide the debit card to all HCFSA participants.
- (s) Describe the use of the debit card and how designated merchant codes are used for OTC drug claims.
- (t) How does your organization guarantee that only items eligible for FSA reimbursement as set forth in IRS guidelines are charged to the card? State how your organization will identify, prevent, and investigate any improper use of the debit card.
- (u) When an employee participant leaves employment, how does your organization administer the cancellation of the debit card?
- (v) For the administrative fee quotation in RFP Section 14.0, did your organization include both an additional fee for the optional election of a debit card and also a fee that includes an automatic debit card for all HCFSA participants?
- (w) Describe any legal, logistical, and practical problems associated with debit card services.
- (x) Describe how the appearance of the debit card would be customized for System participants. Include a sample.
- (y) If your organization has electronic data sharing capabilities with healthcare companies such as third party administrators for health, prescription, dental and/or vision plans: Describe in detail the logistics for implementing automated claims adjudication and substantiation through

electronic data sharing with third party administrators of the System's insurance plans. Are additional fees associated with this type of arrangement? If so, itemize your organization's fees. If fees are usually charged by PBMs, itemize the usual fees charged by PBMs. Note: If your organization includes this type of arrangement, include these fees in the Part D of administrative fee quotation in Section 14.0. (This fee quotation should be all-inclusive of any and all fees, including one-time setup fees.)

- (z) Would your organization, or its subcontractor, require the System to maintain a minimum cash balance in the Controlled Disbursement Account to facilitate the authorization of debit card transactions at the point of sale? If so, please describe how this minimum balance would be determined.

**45)** Explain the procedures used by your organization for keeping your organization's system and employees up-to-date on changes in IRS regulations and rulings and any legislation affecting FSAs.

- (a) Describe the sources of information used by your organization for ensuring your organization's employees and any of your organization's contractors (if any) have accurate, up-to-date FSA information. Also describe in detail the involvement of your organization's legal counsel.
- (b) Describe of how your organization informs client organizations regarding any changes affecting FSA administration. For instance, include examples of your organization's communication to FSA employer customers and their employees regarding the IRS statement on FSA reimbursement of certain OTC (Over-The-Counter) drugs.
  - (i) Include samples of communication to participants about OTC drugs and reimbursement under HCFSAs, with specific information on how to submit claims, the information needed to substantiate claims, communication regarding approval of claims, communication if more information needed from participant, and communication regarding denial of claims.
  - (ii) Describe the steps your organization will take to recover any OTC claims paid in error if claims are not properly adjudicated.

**46)** Explain each of the services included in your organization's proposal regarding communications and participation of your personnel in employee meetings during annual enrollment periods. Will your organization provide personnel who will attend employee

meetings during annual enrollment on a statewide basis? Would your organization be willing to provide personnel for these meetings at times other than 8:00 a.m. to 5:00 p.m. on regular business days to accommodate the System institutions that have 24-hour facilities? How many meetings will your organization attend?

- 47)** Confirm your organization will provide a toll-free telephone number for participants. Confirm that telephone access will not require a password. Confirm your organization will provide a toll-free fax number for participant claims submission. Describe the days of the week and the hours of the day these services would be available for System participants.
- 48)** Describe features and/or functionality of downloadable applications for mobile devices including but not limited to smartphones, tablets, personal computers. Please include in your description if your application allows participants to access:
- a. FAQs
  - b. List of Eligible Expenses
  - c. Online Customer Service
  - d. Upload Claims
  - e. Claims history
  - f. Balance information
  - g. Push text notifications
  - h. Capability to interface with third party applications, for example Wallet
  - i. Autopay functionality in lieu of using Flex Convenience card

Please be sure to share any additional features and/or functionality your application offers to participants.

- 49)** Provide the following information about your organization's Account Service Team:
- (a) What was your organization's aggregate 2014 and 2015 employee turnover rate?
  - (b) Indicate the average number of telephone calls and claims handled with current staff resources on a weekly basis. Describe the experience level of the individuals answering inquiries.
  - (c) Provide an organizational chart identifying the staff members who would be responsible for the administration and account management. Identify each

staff member's role on the team, the number of years working for your organization and key clients served. Additionally, identify a senior-level contact who would assist the System with any pressing issues following implementation. Describe any other non-System duties these staff members will perform.

- (d) Describe the availability of UT FLEX administration training sessions at each of the System component institutions, included as part of the implementation process, as well as training sessions available on an ongoing basis.
  - (e) If applicable and tracked separately, what was your call center turnover for 2014 and 2015 for the center that will service the System?
  - (f) Confirm the System will be notified of any change in the account management team dedicated to the System. Describe your organization's efforts to retain talented staff and reduce turnover on account management teams who are responsible for your organization's major group accounts.
- 50) Confirm that your organization will provide a System-specific web site as described in this RFP. Explain your organization's current online capability for a customer service representative or System participant to view historical claims online. Include a log-on ID and web site address for viewing examples of your organization's online capabilities.
- 51) Confirm that your organization will provide a web site for authorized UT benefits representatives as described in this RFP. Explain your organization's current online capability for client access to view historical claims online. Include a log-on ID and web site address for viewing examples of your organization's online capabilities.
- 52) Describe your organization's billing processes. Include information regarding billing, grace periods, billing/payment reconciliation, and ability to provide for client self-billing. Confirm your organization accepts the System's required electronic billing capability and the 60 day grace period from the receipt of invoice.
- 53) Confirm your organization will provide the banking arrangements required in this RFP for administration of the FSAs.
- 54) Does your organization administer COBRA Flexible Spending Accounts? If so, describe in detail your organization's administration processes.
- 55) Confirm that your organization will provide the UT FLEX administrative services specified in the RFP, including the requirements outlined in Section 6.0.

- 56) Will your organization perform non-discrimination testing for the System FSAs? With what frequency would these tests be performed and at what cost?
- 57) Does your organization prepare annual Form 5500 returns for the Section 125 plan/flexible spending accounts as a standard service? Note that for the System, separate returns are needed for each member entity. Is there an additional charge for this service, or is preparation of returns (for all System component institutions) included in your proposed fees? Describe the background and training (e.g., CPA) of the individual(s) who would prepare Form 5500 returns for the System.
- 58) How does your organization distinguish itself from other competitors in providing FSA administrative services? Describe any other special or value-added services your organization has the capacity to provide in order to address any current and future business needs in FSA administration.

## ACCOUNT AND IMPLEMENTATION TEAMS

- 59) Where would the primary person responsible for account and client management associated with System's contract be located? Will any Account Management Team members be located in Texas? If so, where in Texas?
- 60) Confirm that the System will be notified of any change in the dedicated Account Management Team. Describe the efforts the vendor makes to discourage turnover of Account Management Team personnel responsible for oversight of major group accounts.
- 61) Briefly outline the vendor's account management philosophy. Please include information about how the team members are compensated by the vendor.
- 62) Describe the overall organization, location, and structure of the account service team that will provide ongoing program support for the FSA plans. Please provide a résumé for each team member, including current professional responsibilities and length of employment with the vendor.
- 63) How many other contracting customer organizations is the assigned account manager currently servicing and how many total members are represented by those organizations?
- 64) What is the vendor's account manager/executive turnover rate for the last twenty-four (24) months?

- 65) Provide a list of individuals who will comprise the vendor's implementation team along with a résumé and complete contact information for each team member. Identify the individuals who will be primarily responsible for handling details related to each of the following categories:
- a) Enrollment reporting;
  - b) Customer service;
  - c) Communication materials;
  - d) Claims processing;
  - e) Grievance processing;
  - f) Network enhancement;
  - g) Financial functions, including payments and reconciliation; and
  - h) Information systems and technology, including specifically benefits programming, claims processing, and enrollment data processing.

## CUSTOMER SERVICE

- 66) Describe the vendor's customer service unit, including the manner in which it is accessed, days and hours of call center operation, and the location of the customer service call center(s) that will provide service to FSA plan participants.
- 67) Are any major changes currently planned or anticipated for the customer service organization or facilities (e.g., moving to a different location, reorganizing or merging units)? If so, please describe.
- 68) Will the vendor provide a separate toll-free telephone number for System participants and potential participants?
- 69) How many telephone lines and support staff will be dedicated to customer service and claims processing for the FSA plans?
- 70) Indicate the average number of telephone calls received by the vendor customer service unit over the past six (6) months on a weekly basis.
- 71) How are after-hours calls to customer service handled?

- 72) Does the vendor's customer service system support TTY, also known as TDD (Telecommunications Device for the Deaf) technologies?
- 73) How does the vendor's customer service system support Spanish-speaking participants? What other languages can the vendor's customer service system support?
- 74) How will the customer service unit be staffed? What is the turnover rate for vendor's non-management call center staff?
- 75) Briefly describe the training that each employee or representative receives to provide customer service. Include the length of time it takes to advance from training to a qualified Customer Service Representative (CSR).
- 76) How does the vendor ensure that its CSRs are providing timely and accurate information?
- 77) How does the vendor monitor first-call resolution and member inquiries that do not get resolved?
- 78) Does the vendor's customer service inquiry system allow CSRs to enter information and provide the ability for CSRs to review previous notes to better assist members?
- 79) Can CSRs view historical call and claims information online to assist participants?
- 80) Does the vendor record all phone calls and notify all parties that their conversations are being electronically recorded and stored? If not, how many calls are recorded, and what criteria are used in their selection?
- 81) Will System have the ability to listen to customer service calls in Austin?
- 82) Describe how the vendor handles written inquiries. Are they always responded to in writing? How will correspondence (including complaints) received by the System from participants be handled by the vendor?
- 83) What is the vendor's current standard for response time with respect to questions requiring written communication?
- 84) Describe the vendor's problem resolution policies.
- 85) Describe the vendor's procedures for handling and escalation of customer service complaints.
- 86) Confirm that the vendor's proposal contains no provision for "binding arbitration" in a complaint procedure and that no such provision shall be utilized with regard to System FSA plan participants.

- 87) Describe the customer complaint tracking system that the vendor utilizes. How long has this system been in place?
- 88) Describe any changes that are planned or scheduled within the next 36 months for the vendor's computer systems, including Customer Support changes, and provide timelines for when the changes will be implemented to the existing computer system.

## CLAIMS APPEAL PROCEDURES

- 89) Provide a detailed description of the grievance and appeals process for benefits provided by your organization.

## COST CONTAINMENT

- 90) Provide a detailed description of the procedures and systems that the vendor uses to prevent, deter, detect and investigate fraud or related issues, and explain how such processes shall be utilized in connection with the System's FSA plans.
- 91) Discuss how the vendor would communicate with the participant, provider, or other vendor once a fraud or abuse issue has been identified. How will the information be reported to the System?
- 92) Discuss the vendor's policies and procedures for addressing situations in which FSA benefits have been utilized after a participant's benefits have ended (e.g., due to a delay with updating participant data or similar issue).
- 93) Describe the vendor's experience in providing cost-containment enhancements to current and former clients.

## QUALITY ASSURANCE

- 94) Describe the vendor's quality assurance (QA) program. Please provide the name of the designated senior executive responsible for the program as well as a copy of the vendor's current QA policies and procedures.
- 95) Describe the vendor's processes for monitoring the adequacy of customer service and claims service. How often are surveys specific to these functions conducted? Please provide a copy of the most recent results.

- 96) Does the vendor currently perform overall participant satisfaction surveys? If so, does an outside organization perform the surveys? Please provide a copy of the latest survey and its results, including the percentage of participants who indicated that they were “satisfied” or “very satisfied” with the overall program.
- 97) Describe the vendor’s processes for monitoring the appropriateness of FSA services, including underutilization and overutilization.

## PRIVACY PRACTICES AND HIPAA COMPLIANCE

- 98) Please provide a detailed description of the vendor’s HIPAA Privacy and Security Compliance programs as these would apply to System data in the vendor’s capacity as a Covered Entity. Include information on workforce training and monitoring. Describe all policies and practices implemented to ensure the privacy of all confidential information as defined in the Contract, including but not limited to protected health information as defined by the HIPAA privacy rule, employee/participant information, or other confidential information about the System and its participants. Include a link to the vendor’s HIPAA policies and Notice of Privacy Practices as well as a brief description of any HIPAA violations alleged against the vendor by consumers or the Department of Health and Human Services, including the outcomes.
- 99) Confirm that the vendor is currently in compliance with all HIPAA requirements. In particular, confirm compliance with the rules and regulations applicable to data transmission and privacy, and the organization’s willingness to comply with future changes.
- 100) Provide the name of vendor’s HIPAA privacy officer and a description of his or her qualifications.
- 101) List any entities with whom the vendor anticipates sharing or disclosing any PHI (Protected Health Information) that the vendor has created or received from (or on behalf of) the System. State the general purpose for which the PHI will be shared or disclosed, and confirm that each entity will comply with requirements for business associates under HIPAA with regard to this PHI.
- 102) Provide a copy of your HIPAA Privacy and Security policies and the privacy notice that you provide to plan enrollees as required by HIPAA.
- 103) Confirm that you will comply with current and future HIPAA regulations, rules, and mandates, pertaining to data transmission and privacy.

- 104) What other practices and policies has your organization implemented to ensure the confidentiality of all confidential information as defined in the Contract, including but not limited to; protected health information as defined by the HIPAA privacy rule, employee/participant information, or other confidential information of the System and participants? Provide a brief description of any HIPAA violations alleged against your organization. Is your organization currently in compliance with all HIPAA requirements?
- 105) How would the HIPAA electronic data interchange (EDI), transactions and code set standards apply to organization's business with the System and to the FSA plan? If applicable, will the vendor comply with them?
- 106) Describe the specific steps your organization is taking to ensure that it is meeting and shall continue to meet HIPAA Title II Administrative Simplification compliance (Electronic Transaction Standards and Privacy Standards). Provide a copy of your current HIPAA policies and procedures.

## INFORMATION SECURITY

- 107) Provide a detailed description of the vendor's information technology security program that would be applicable to System data collected and/or maintained by the vendor. Include, at a minimum, the following details:
- a) Does the vendor have an information security plan in place, supported by security policies and procedures, to ensure the protection of information and information resources? If so, provide an outline of the plan and note how often it is updated. If not, describe what alternative methodology the vendor uses to ensure the protection of information and information resources.
  - b) Describe the procedures and tools used for monitoring the integrity and availability of the information systems interacting with the service proposed, detecting security incidents, and ensuring timely remediation.
  - c) Describe the physical access controls used to limit access to the vendor's data center and network components.
  - d) Does the vendor provide the capability to use local credentials (i.e., federated authentication) for user authentication and login? If yes, describe how the vendor provides that capability.
  - e) Does the vendor allow for multiple security levels of access based on affiliation (e.g., staff, faculty, and student) and roles (e.g., system administrators,

analysts, and information consumers), and organizational unit (e.g., college, school, or department)? If yes, describe how the vendor provides for multiple security levels of access.

- f) Does the vendor provide the capability to limit user activity based on user affiliation, role, and/or organizational unit (i.e., who can create records, delete records, create and save reports, run reports only, etc.)? If yes, describe how the vendor provides that capability. If no, describe what alternative functionality is provided to ensure that users have need-to-know based access to System data.
- g) What administrative safeguards and best practices does the vendor have in place to vet vendor's and third-parties' staff members that would have access to the environment hosting System data to ensure need-to-know-based access?
- h) What procedures and best practices does the vendor have in place to ensure that user credentials are updated and terminated as required by changes in role and employment status?
- i) What procedures and best practices does the vendor follow to harden all information systems that would interact with the service proposed, including any systems that would hold, process, or from which System data might be accessed?
- j) If the vendor were selected, would the vendor agree to a vulnerability scan by System of all information systems that would interact with the service proposed, including any systems that would hold, process, or from which System data might be accessed? If the vendor objects to a vulnerability scan, describe in detail the reasons for objection.
- k) Does the vendor have a data backup and recovery plan, supported by policies and procedures, in place for the hosted environment? If so, provide an outline of the plan and note how often it is updated. If not, describe what alternative methodology the vendor uses to ensure the restoration and availability of System data.

- l) Does the vendor encrypt data backups? If so, describe the methods used to encrypt backup data. If not, what alternative safeguards will the vendor use to protect System data backups against unauthorized access?
- m) Does the vendor encrypt data in transit and at rest? If so, describe how that security is provided. If not, what alternative methods are used to safeguard data in transit and at rest?
- n) What technical security measures does the vendor propose to detect and prevent unintentional (accidental) and intentional corruption or loss of System data?
- o) What safeguards does the vendor have in place to segregate System and other customers' data to prevent accidental or unauthorized access to System data?
- p) What safeguards does the vendor have in place to prevent the unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access, or disclosure of System data?
- q) What administrative safeguards and best practices does the vendor employ with respect to staff members (vendor and third-party) who would have access to the environment hosting all information systems that would interact with the service proposed, including any information systems that would hold, process, or from which System data may be accessed, to ensure that System data and resources will not be accessed or used in an unauthorized manner.
- r) What procedures and safeguards does the vendor have in place for sanitizing and disposing of System data according to prescribed retention schedules or following the conclusion of a project or termination of a contract to render System data unrecoverable and prevent accidental and unauthorized access to System data? Describe the degree to which sanitizing and disposal processes addresses System data that may be contained within backup systems. If System data contained in backup systems is not fully sanitized, describe processes in place that would prevent subsequent restoration of backed-up System data.
- s) Describe the procedures and methodology in place to detect information security breaches and notify customers in a manner that meets the requirements of HIPAA and Texas breach notification laws.

- t) Describe the procedures the vendor has in place to isolate or disable all information systems that would interact with the service proposed, including systems that would hold, process, or from which Institution data might be accessed, when a security breach is identified?
- u) Describe the procedures and methodology the vendor has in place to detect information security breaches, including unauthorized access by vendor's and subcontractor's own employees and agents and provide required notifications in a manner that meets the requirements of the state breach notification law.
- v) Describe the safeguards in place to ensure that all information systems that would interact with the service proposed, including any systems that would hold, process, or from which System data might be accessed, reside within the United States.
- w) What additional administrative, technical, and physical security controls does the vendor have in place or plan to put in place?
- x) List and describe any regulatory or legal actions taken against the vendor for security or privacy violations or security breaches or incidents, including the final outcome.

## DATA EXCHANGE AND PROCESSING

- 108) Confirm that the vendor can accept and properly manage enrollment and other key FSA plan data using the dataset layouts as described in this RFP, including the Benefit Enrollment and Maintenance Transaction Set (ASC X12N 834).
- 109) Confirm that the vendor has the capability to accept enrollment data via SFTP on a real-time basis.
- 110) Confirm that the vendor has the ability to comply with the user-authentication requirements for the System-specific FSA plan website as described in this RFP, including the use of SAML-based authentication (v2.0).
- 111) Describe the vendor's ability to provide automated notification upon receipt of enrollment and contribution data as well as automated, timely notifications confirming either successful load or failure to load for each enrollment and/or contribution dataset received from System.

- 112) Explain how the vendor plans to ensure that it meets all requirements regarding protecting the confidentiality of Social Security numbers as outlined in this RFP, including the requirements of Section 35.58 of the Texas Business and Commerce Code, CONFIDENTIALITY OF SOCIAL SECURITY NUMBER.
- 113) Describe the vendor's experience with automated enrollment systems, including any specific automated systems that the organization has worked with.
- 114) Explain how data is entered into the vendor's enrollment system. Provide a data flow diagram of the process to receive, audit, and load enrollment and/or contribution datasets, including an indication of whether the diagram refers to a current or proposed system. If documenting a proposed system, the anticipated implementation date should be included.
- 115) What is the location of the computer system that maintains and hosts the vendor's enrollment system and data? Is a third-party application used for entering data into the vendor's enrollment system or was proprietary software developed in-house?
- 116) Upon receipt of enrollment/contribution datasets from System, can the vendor's enrollment/contribution system produce a detailed error report indicating which records have been accepted for loading and which have been rejected? Will such reports be provided following each enrollment/contribution transmission?
- 117) Discuss the staffing and capabilities of the vendor's team that would be responsible for managing information systems and data for the FSA plans.
- 118) How soon after receiving enrollment/contribution data from the System would updates be reflected in the vendor's enrollment/contribution system?
- 119) Describe the vendor's process for implementing changes to the benefit plan design. How much advance notice is required for a change to be made in the vendor's information system?
- 120) What quality assurance processes are integrated into the vendor's information systems to ensure accurate programming of the initial benefit plan design and to improve the accuracy of programming related to plan design changes during the contract period?
- 121) Confirm the vendor's ability to accept emergency updates to FSA plan enrollment, as specified in this RFP.

## COMMUNICATIONS

- 122) Explain in detail the services that will be available at no additional cost to System regarding communications and participation of the vendor's personnel at employee/retiree meetings during Annual Enrollment periods.
- 123) Confirm that the vendor will provide personnel to attend the annual Benefits and HR Conference and employee/retiree meetings during Annual Enrollment on a statewide basis? Would the vendor be willing to provide personnel for meetings held outside of regular business hours in order to accommodate System institutions that have 24-hour facilities? How many meetings will the vendor attend?
- 124) Confirm that the vendor will assist the System in developing necessary materials for disseminating Annual Enrollment information to employees during the System Annual Enrollment period.
- 125) Confirm that the vendor will provide the System with a preview of all communications designed to notify participants of features or issues regarding the FSA plans prior to disseminating any communications directly to participants.
- 126) Confirm a copy of all written materials to be used in administering the System FSA plan has been included in response to this RFP. Note that the benefits provided must be those presented in this RFP.
- 127) Confirm a complete description of the resources and procedures that you intend to apply to the program in connection with those services required in the communication of the plan as described in this RFP has been provided.
- 128) Confirm that the vendor understands and will comply with the required technical specifications for the System-specific website as specified in this RFP and that the Electronic and Information Resources (EIR) Accessibility Checklist, included in Appendix H2 to this RFP, has been completed and included with this response.
- 129) Confirm that the vendor will comply with the requirement to provide to System a monthly dataset that includes details as specified in this RFP.
- 130) Confirm the vendor's ability to conform to the Web Accessibility Initiative at [www.w3.org/WAI](http://www.w3.org/WAI) to ensure that website content can be read by the majority of viewers, and to meet the requirements of the Americans with Disabilities Act.

## PERFORMANCE STANDARDS AND REPORTING

- 131) Describe the vendor's current reporting capability. Provide samples of utilization and administrative performance reports currently available to contracting plans. How often are reports prepared? Describe the method that the vendor would use to determine the cost of any special reports that might be requested by System.
- 132) Confirm that the vendor is able to provide all of the detailed information required in the quarterly Administrative Performance Report template, included in Appendix E to this RFP. Please provide copies of sample administrative performance reports meeting the requirements.
- 133) If the vendor is unable to provide all of the information requested in the Administrative Performance Requirements Report template included as Appendix E to this RFP, please describe in detail the information that cannot be provided and explain why it cannot be provided.
- 134) Describe any unique reporting capabilities that differentiate the vendor from its competitors.
- 135) Confirm that the vendor can provide normative data against which the System can benchmark its plan.
- 136) Confirm that the vendor understands that the failure to meet specific performance standards may result in the assessment of associated performance penalties, as described in Section 11 of this RFP.

## ADMINISTRATIVE FEE

- 137) Confirm that your organization's proposed administrative fees are guaranteed for the 36-month period from September 1, 2016 through August 31, 2019.
- 138) Confirm that your organization's proposed administrative fees include all required services as specified in this RFP, and that the required services will have no extra fees.
- 139) Confirm that your organization's proposed administrative fees do not include a provision for taxes.
- 140) Confirm there are no minimum participation requirements for the administrative fees quoted by your organization.

- 141) Confirm your organization quoted in Section 14.0 an additional fee for the debit card feature as described in this RFP.
- 142) Confirm your organization quoted in Section 14.0 a fee inclusive of all HCFA participants receiving a debit card.
- 143) Explain in detail the plan documentation and administration materials included in your organization's administrative fee (e.g., Section 125 plan documents, Summary Plan Descriptions, enrollment forms, claim forms, envelopes, etc. Confirm your organization has included in its administrative fee quotation, all the requirements specified in this RFP.
- 144) Will your organization offer any guarantee of maximum increases for future years? If so, what are the guarantees?
- 145) The System requires 210 days advance notice of administrative fee increases before the end of each plan year. Confirm that your organization agrees to this requirement.
- 146) As described in this RFP, the System requires a grace period of up to 60 days (including the first day) to pay administrative fees. Are you agreeable to this provision?

## MISCELLANEOUS

- 147) Describe any litigation, regulatory proceedings and/or investigations completed, pending or threatened against your organization and/or any person or subcontractor performing any part of the services in connection with the Contract within the past five (5) years. Identify the full style of each suit, proceeding or investigation including county and state, regulatory body and/or federal district and provide a brief summary of the matters in dispute, current status and resolution if any.
- 148) Describe any investigations, proceedings or disciplinary actions by any state regulatory agency against your organization and/or any of its related affiliates, officers, directors and any person or subcontractor performing any part of the services in connection with the Contract during the past five (5) years. Identify the full style of each suit, proceeding or investigation including county and state, regulatory body and/or federal district, and provide a brief summary of the matters in dispute, current status and resolution, if any.
- 149) The System is interested in your organization's experience in working with clients to improve the cost efficiency of their FSA services programs. Describe your experience in providing cost containment enhancements to former and current clients.

## 14.0 ADMINISTRATIVE FEE PROPOSAL

Name of Organization: \_\_\_\_\_

**Part A-1:** Enter the monthly administrative fee for UT FLEX. The administrative fee quotation should include administration of both FSA accounts: Health Care and Dependent Day Care. **This quote should not include the debit card feature.** The administration fee must be guaranteed for the three-year period from September 1, 2016 through August 31, 2019. **Quote the Administrative Fee as a dollar amount per employee *participant* per month.** In the fee quotation, include all required services as specified in this RFP (except the debit card feature). The administrative fee quotation must not include any minimum participation requirement and must not include any provision for taxes.

**ADMINISTRATIVE FEE (Not Including Debit Card Feature):** \$ \_\_\_\_\_ **Per Employee Per**  
**Month**

**Part B:** The System requests a fee quotation for the debit card as the System will require a debit card for all participants in the UT FLEX Health Case FSA. (The debit card will not be offered as an option for the Dependent Care FSA.) **Quote the fee for the Debit Card as a one-time flat fee.** This fee quotation should include only the amount that would be assessed as a one-time flat fee assessed the first month the employee participates in the debit card program. This fee must be guaranteed for the three-year period from September 1, 2016 through August 31, 2019 and must be inclusive of all requirements specified in the RFP, including any start-up fees. The debit card fee must not include any minimum participation requirements and must not contain any provision for taxes.

**FEE FOR REQUIRED DEBIT CARD**      \$ \_\_\_\_\_

*I hereby certify that I have the authority to bind the above named organization concerning this Administrative Fee Proposal.*

Signature of Authorized Officer \_\_\_\_\_ Date \_\_\_\_\_

Printed Name of Authorized Officer \_\_\_\_\_ Title \_\_\_\_\_

# 15.0 SIGNATURE PAGE FOR ADMINISTRATION OF THE UT FLEX HEALTH CARE FLEXIBLE SPENDING ACCOUNT AND DEPENDENT DAY CARE FLEXIBLE SPENDING ACCOUNT PLANS PROPOSAL

In accordance with the attached proposal(s), \_\_\_\_\_  
(Print Name of Organization)

hereby agrees, if selected by The University of Texas System, to enter into negotiations for a Contract to provide administration of UT FLEX (Health Care Flexible Spending Accounts and Dependent Day Care Flexible Spending Accounts) for at least the three year period beginning September 1, 2016. I have read the RFP from which this page is taken and verify that the above named organization can meet the requirements outlined.

The Number of Addenda to this RFP reviewed is \_\_\_\_\_.

.....  
The Primary Contact Person regarding this proposal is:

Name \_\_\_\_\_

Title \_\_\_\_\_

Mailing Address \_\_\_\_\_

Telephone # \_\_\_\_\_ Fax # \_\_\_\_\_

Email Address \_\_\_\_\_

.....  
Printed Name of Individual Signing this Form \_\_\_\_\_

Title \_\_\_\_\_

Mailing Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

I hereby certify that I have the authority to bind the above named organization.

\_\_\_\_\_  
Signature of Individual Signing this Form

\_\_\_\_\_  
Date

## **16.0 APPENDICES**

**Appendix A:** UT Flex Overview

**Appendix B:** Dataset Requirements

1) Flex Deduction & Eligibility Dataset Layout

2) Flex Claims Dataset Layout

**Appendix C:** Enrollment and Plan Experience Data

**Appendix D:** Chapter 1601, Texas Insurance Code

**Appendix E:** Administrative Performance Report Template

**Appendix F:** Sample Contract

**Appendix G:** Historically Underutilized Business (HUB)  
Program

**Appendix H:** Electronic and Information Resources (EIR)  
Requirements

1) Accessibility Warranty

2) Voluntary Product Accessibility Template

**University of Texas System Office of Employee Benefits**  
**UT FLEX RFP**  
**Health Care and Dependent Day Care Flexible Spending Accounts**  
**Appendix A**

**UT FLEX Overview**

Effective September 1, 1988, UT established the UT FLEX Plan which provides a pre-tax Premium Redirection Plan and Flexible Spending Account (FSA) Plans using automatic pre-tax payroll deductions. UT FLEX is a “cafeteria plan” established pursuant to the Internal Revenue Code. Any active UT employee, who is eligible to participate in a UT Group Insurance Plan pursuant to Chapter 1601 of the Texas Insurance Code, is eligible to participate in the UT FLEX Medical Expense Reimbursement Account Plan and/or the UT FLEX Day Care Reimbursement Account Plan. Retired employees and return-to-work retired employees are not eligible to participate in UT FLEX.

Enrollment in the UT FLEX Plan, a pre-tax redirection plan, occurs automatically when an employee elects to participate in any medical, dental, vision, life, or accidental death and dismemberment insurance plan that requires an out-of-pocket premium contribution by the employee. The employee’s part of the premiums for that coverage will be automatically deducted from the employee’s monthly salary and redirected automatically through UT’s pre-tax premium redirection plan. You do not have to participate in any of the other UT FLEX Reimbursement Accounts to be eligible to participate in the pre-tax premium redirection plan. UT self-administers the pre-tax premium redirection portion of the Plan.

Participation in the UT FLEX Enrollment in the Flexible Spending Account (FSA) Plans requires a separate enrollment process. PayFlex Systems USA, Inc. currently administers the UT FLEX FSA Plans, which consist of:

- Medical Expense Reimbursement Accounts; and
- Dependent Day Care Reimbursement Accounts.

**UT FLEX Flexible Spending Accounts Benefits Guide**

<http://www.utsystem.edu/sites/utsfiles/documents/employee-benefits/ut-flex-benefits-guide/flexguide15-16.pdf>

Appendix B1

Flex Deduction/Eligibility Dataset Layout  
(Eligibility and deduction data from UT System to Flex Vendor)

Header Record (550 bytes long):

Field	Description	Req	Type	Length	Format
DVHR-RECORD-TYPE	RECORD TYPE	REQ	A	1	H'
DVHR-SAC	STATE AGENCY CODE	REQ	A	3	NNN
DVHR-FILE-CYMD	FILE CREATION DATE	REQ	A	8	YYYYMMDD
DVHR-PAYROLL-CYMD	PAYROLL DEDUCTION DATE	REQ	A	8	YYYYMMDD
DVHR-FILLER	FILLER		A	529	
DVHR-LAST-BYTE	LAST BYTE	REQ	A	1	Z'

Employee Record (550 bytes long):

Note: Though not marked as required, records will contain full data for either all Daycare fields or all Healthcare fields or BOTH.

DVRC-RECORD-TYPE	RECORD TYPE	REQ	A	1	D'
DVRC-SAC	STATE AGENCY CODE	REQ	A	3	NNN
DVRC-SUBREF	SSN	REQ	A	9	
DVRC-FILLER-2	FILLER		A	9	
DVRC-EEID	EMPLOYEE BENEFITS ID NUMBER	REQ	A	8	
DVRC-FILLER-3	FILLER		A	13	
DVRC-LAST-NAME	EMPLOYEE LAST NAME	REQ	A	30	
DVRC-FIRST-NAME	EMPLOYEE FIRST NAME	REQ	A	30	
DVRC-MIDDLE-NAME	EMPLOYEE MIDDLE NAME	REQ	A	30	
DVRC-ADDRESS1	EMPLOYEE ADDRESS1	REQ	A	40	
DVRC-ADDRESS2	EMPLOYEE ADDRESS2		A	40	
DVRC-CITY	EMPLOYEE CITY	REQ	A	40	
DVRC-STATE	EMPLOYEE STATE	REQ	A	2	
DVRC-ZIP	EMPLOYEE ZIP	REQ	A	9	last 4 bytes optional
DVRC-EMAIL-ADDR	EMPLOYEE EMAIL ADDRESS		A	50	
DVRC-DD-ACCT-NUMBER	DD-ACCT-NUMBER	NOT USED	A	20	
DVRC-DD-ROUTING-NUMBER	DD-ROUTING-NUMBER	NOT USED	A	9	
DVRC-DD-ACCT-TYPE	DD-ACCT-TYPE	NOT USED	A	2	
DVRC-EMP-STATUS	EMPLOYEE STATUS	REQ	A	1	A' or 'T'
DVRC-HIRE-CYMD	EMPLOYEE HIRE DATE	REQ	A	8	YYYYMMDD
DVRC-ELIGIBILITY-CYMD	EMPLOYEE ELIGIBILITY DATE	REQ	A	8	YYYYMMDD
DVRC-TERMINATION-CYMD	EMPLOYEE TERMINATION DATE		A	8	YYYYMMDD
DVRC-PAY-FREQUENCY	EMPLOYEE PAY FREQUENCY	REQ	A	1	
DVRC-PAY-CYCLE-CODE	EMPLOYEE PAY CYCLE	REQ	A	2	
DVRC-FSC-CODE	EMPLOYEE FAMILY STATUS CHANGE CODE	NOT USED	A	2	
DVRC-FSC-ECYMD	EMPLOYEE FAMILY STATUS CHANGE DATE	NOT USED	A	8	YYYYMMDD
DVRC-PAYROLL-CYMD	PAYROLL DATE	REQ	A	8	YYYYMMDD
DVRC-DC-DEBIT-CARD	DEP CARE DEBIT CARD	NOT USED	A	1	
DVRC-DC-DEDUCTION-SIGN	DEP CARE DEDUCTION SIGN		A	1	'+' or '-'
DVRC-DC-DEDUCTION-AMT	DEP CARE DEDUCTION AMT		A	7	\$\$\$\$\$CC
DVRC-DC-YTD-DEDUCTION-SIGN	DEP CARE YTD DEDUCTION SIGN	NOT USED	A	1	
DVRC-DC-YTD-DEDUCTION-AMT	DEP CARE YTD DEDUCTION AMT	NOT USED	A	7	
DVRC-DC-ELECTION-SIGN	DEP CARE ELECTION SIGN		A	1	'+'
DVRC-DC-ELECTION-AMT	DEP CARE ELECTION AMT		A	7	\$\$\$\$\$CC
DVRC-DC-ELECTION-START-CYMD	DEP CARE ELECTION START DATE		A	8	YYYYMMDD
DVRC-DC-ELECTION-STOP-CYMD	DEP CARE ELECTION STOP DATE		A	8	YYYYMMDD
DVRC-HC-DEBIT-CARD	HEALTHCARE DEBIT CARD		A	1	'Y' or blank
DVRC-HC-DEDUCTION-SIGN	HEALTHCARE DEDUCTION SIGN		A	1	'+' or '-'
DVRC-HC-DEDUCTION-AMT	HEALTHCARE DEDUCTION AMT		A	7	\$\$\$\$\$CC
DVRC-HC-YTD-DEDUCTION-SIGN	HEALTHCARE YTD DEDUCTION SIGN	NOT USED	A	1	
DVRC-HC-YTD-DEDUCTION-AMT	HEALTHCARE YTD DEDUCTION AMT	NOT USED	A	7	
DVRC-HC-ELECTION-SIGN	HEALTHCARE ELECTION SIGN		A	1	'+'
DVRC-HC-ELECTION-AMT	HEALTHCARE ELECTION AMT		A	7	\$\$\$\$\$CC
DVRC-HC-ELECTION-START-CYMD	HEALTHCARE ELECTION START DATE		A	8	YYYYMMDD
DVRC-HC-ELECTION-STOP-CYMD	HEALTHCARE ELECTION STOP DATE		A	8	YYYYMMDD
DVRC-EMP-PAID-FEE	EMPLOYEE PAID FEE	NOT USED	A	4	
DVRC-COMP-PAID-FEE	COMPONENT PAID FEE	NOT USED	A	4	
DVRC-ERROR-FIELD	ERROR-FIELD		A	45	
DVRC-CYMD-OF-BIRTH	DATE OF BIRTH	REQ	A	8	YYYYMMDD
DVRC-FILLER	FILLER		A	15	
DVRC-LAST-BYTE	LAST BYTE	REQ	A	1	Z'

Trailer Record (550 bytes long):

DVTR-RECORD-TYPE	RECORD TYPE	REQ	A	1	T'
DVTR-TOTAL-RECORDS	TOTAL NBR OF DETAIL RECORDS ON FILE	REQ	A	10	
DVTR-TOTAL-DC-DEDUCTIONS	TOTAL OF DEP CARE DEDUCTIONS	REQ	A	12	\$\$\$\$\$\$\$\$\$CC
DVTR-TOTAL-DC-ELECTIONS	TOTAL OF DEP CARE ELECTIONS	REQ	A	12	\$\$\$\$\$\$\$\$\$CC
DVTR-TOTAL-HC-DEDUCTIONS	TOTAL OF HEALTH CARE DEDUCTIONS	REQ	A	12	\$\$\$\$\$\$\$\$\$CC
DVTR-TOTAL-HC-ELECTIONS	TOTAL OF HEALTH CARE ELECTIONS	REQ	A	12	\$\$\$\$\$\$\$\$\$CC
DVTR-TOTAL-EMP-PAID-FEES	TOTAL OF EMPLOYEE PAID FEES	REQ	A	12	\$\$\$\$\$\$\$\$\$CC
DVTR-TOTAL-COMP-PAID-FEES	TOTAL OF COMPONENT PAID FEES	REQ	A	12	\$\$\$\$\$\$\$\$\$CC
DVTR-FILLER	FILLER		A	466	
DVTR-LAST-BYTE	LAST BYTE	REQ	A	1	Z'

## Appendix B2

### Flex Claims Dataset Layout

Field	Description	Type	Length	Format
Data record (160 bytes long):				
FPRC-RECORD-TYPE	RECORD TYPE	A	1	D'
FPRC-PLAN-YEAR	PLAN YEAR	A	8	YYYYMMDD
FPRC-ACCOUNT-TYPE	ACCOUNT TYPE	A	16	HEALTH CARE OR DEPENDENT CARE
FPRC-SAC	STATE AGENCY CODE	A	3	NNN
FPRC-TRANSACTION-TYPE	TRANSACTION TYPE	A	35	I.E. DIRECT DEPOSIT, CHECK, REFUND
FPRC-BID	EMPLOYEE BENEFITS ID NUMBER	A	8	
FPRC-PMT-NUMBER	PAYMENT NUMBER	A	9	
FPRC-PMT-DATE	PAYMENT DATE	A	8	
FPRC-PMT-AMT	PAYMENT AMT	N	7.2	
FPRC-FILLER	FILLER	A	57	
FPRC-LAST-BYTE	LAST BYTE	A	1	Z'

## Appendix C

### Enrollment and Plan Experience Data

Fiscal Year	Sept 2011-2012	Sept 2012-13	Sept 2013-2014	Sept 2014-15	Sept 2015-16
HCFSAs Participants (1)	17,478.00	18,024.00	17,449.00	17,596.00	18,428.00
DDCFSA Participants (1)	875.00	1,032.00	1,063.00	1,153.00	1,213.00
Participating in Both (1)	1,749.00	1,825.00	1,805.00	1,835.00	1,953.00
Total Annual HCFSAs Election (1)	32,010,558.59	32,332,353.70	26,480,411.28	26,582,773.86	28,035,899.79
Total Annual DDCFSA Election (1)	10,442,263.35	11,499,260.04	11,552,734.20	12,006,799.92	12,841,201.02
Total Annual Contributions (combined) (2)	43,603,818.63	44,973,302.55	39,370,758.85	40,112,578.79	not available
Total HCFSAs Claims Paid (2)	32,083,907.36	32,093,468.16	26,423,447.44	26,277,804.17	not available
Total DDCFSA Claims Paid (2)	10,829,798.23	11,667,414.04	11,775,480.22	12,163,482.26	not available
Forfeitures	696,621.37	<b>\$ 1,176,376.47</b>	1,232,694.47	not available	not available

Notes:

(1) - statistics from beginning of plan year

(2) - data from end of plan year

<p>Office of Employee Benefits</p> <p>Administrative Manual</p> 	<p><b>UNIFORM INSURANCE BENEFITS ACT</b></p>	<p><b>111</b></p>
	<p>INITIAL EFFECTIVE DATE: JUNE 1, 2003</p>	
	<p>LATEST REVISION DATE: AUGUST 1, 2013</p>	
	<p>PURPOSE: Recodification of Texas Insurance Code, Article 3.50-3 and Section 1, 3.51-14</p>	
	<p>SCOPE: Group insurance benefits for eligible Employees and Retired Employees of The University of Texas System</p>	
<p>STATUTORY AND ADMINISTRATIVE REFERENCES: Texas Insurance Code, Chapter 1601; Acts 2001, 77<sup>th</sup> Texas Legislature; Acts 2003, 78<sup>th</sup> Texas Legislature; Acts 2011, 82<sup>nd</sup> Texas Legislature</p>		

## Chapter 1601.

# Uniform Insurance Benefits Act for Employees of The University of Texas System and The Texas A&M University System

## SUBCHAPTER A. GENERAL PROVISIONS

### § 1601.001. Short Title

This chapter may be cited as the State University Employees Uniform Insurance Benefits Act.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### § 1601.002. Purposes

The purposes of this chapter are to:

- (1) provide uniformity in the basic group life, accident, and health benefit coverages for all system employees;
- (2) enable the systems to attract and retain competent and able employees by providing employees with basic life, accident, and health benefit coverages comparable to those commonly provided in private industry and to employees of a state agency other than a system, including a public college or university whose employees are covered under Chapter 1551;
- (3) foster, promote, and encourage employment by and service to the systems as a career profession for individuals of high standards of competence and ability;
- (4) recognize and protect the investment of the systems in each employee by promoting and preserving economic security and good health among employees;
- (5) foster and develop high standards of employer-employee relationships between the systems and their employees; and
- (6) recognize the long and faithful service and dedication of employees and encourage them to remain in service until eligible for retirement by providing health benefits and other group benefits for them.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### § 1601.003. General Definitions

In this chapter:

- (1) "Administering carrier" means a carrier or organization that is:
  - (A) qualified to engage in business in this state; and
  - (B) designated by a system to administer services, benefits, insurance coverages, or requirements in accordance with this chapter.
- (2) "Basic coverage" means coverage, including health benefit coverage, that meets the basic coverage standards required under Section 1601.053(a)(1).
- (3) "Cafeteria plan" means a plan defined and authorized by Section 125, Internal Revenue Code of 1986.
- (4) "Group life, accident, or health benefit plan" means a group agreement, policy, contract, or arrangement provided by an administering carrier, including:
  - (A) a group insurance policy or contract;

- (B) a life, accident, medical, dental, or hospital service agreement;
  - (C) a membership or subscription contract; or
  - (D) any other similar group arrangement.
- (5) "Optional coverage" means group coverage other than the basic coverage.
- (6) "Service" means personal service to a system for which an employee is credited in accordance with rules adopted by the system.
- (7) "System" means The University of Texas System or The Texas A&M University System.
- (8) "The Texas A&M University System" means the entities governed under Chapters 85 through 88, Education Code, including the Texas Veterinary Diagnostic Laboratory.
- (9) "The University of Texas System" means the entities listed or described by Section 65.02, Education Code.
- (10) "Uniform program" means an employees uniform insurance benefits program provided under this chapter.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

#### **§ 1601.004. Definition of Dependent**

(a) In this chapter, "dependent," with respect to an individual eligible to participate in the uniform program under Section 1601.101 or 1601.102, means the individual's:

- (1) spouse;
- (2) unmarried child younger than 25 years of age; and
- (3) child of any age who lives with or has the child's care provided by the individual on a regular basis if the child is mentally retarded or physically incapacitated to the extent that the child is dependent on the individual for care or support, as determined by the system.

(b) In this section:

- (1) "Child" includes:
  - (A) an adopted child; and
  - (B) a stepchild, foster child, or other child who is in a parent-child relationship with an individual who is eligible to participate in the uniform program under Section 1601.101 or 1601.102.

(2) "Spouse" has the meaning assigned by the Family Code.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

#### **§ 1601.005. Definition of Carrier**

In this chapter, "carrier" means:

(1) an insurance company that is authorized by the department to provide under this code any of the types of insurance coverages, benefits, or services provided for in this chapter, and that:

(A) has an adequate surplus;

(B) has a successful operating history; and

(C) has had successful experience, as determined by the department, in providing and servicing any of the types of group coverage provided for in this chapter;

(2) a corporation operating under Chapter 842 that provides any of the types of coverage, benefits, or services provided for in this chapter and that:

(A) has a successful operating history; and

(B) has had successful experience, as determined by the department, in providing and servicing any of the types of group coverage provided for in this chapter; or

(3) any combination of carriers described by Subdivisions (1) and (2) on terms the system prescribes.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

#### **§ 1601.006. Applicability of Definitions**

The definition of a term defined by this subchapter and the use of the terms "employee" and "retired employee" as described by Sections 1601.101 and 1601.102 apply to this chapter unless a different meaning is plainly required by the context in which the term appears.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

#### **§ 1601.007. System May Define Other Words**

A system may define by rule a word or term necessary in the administration of this chapter.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.008. Exemption From Execution**

All insurance benefits and other payments and transactions made under this chapter to a participant under this chapter are exempt from execution, attachment, garnishment, or any other process.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.009. Exemption from Taxation and Fees**

Premiums on a policy, an insurance contract, or an agreement established under this chapter with a health maintenance organization are not subject to any state tax, regulatory fee, or surcharge, including a premium or maintenance tax or fee.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.010. Certain Combining of Carriers Not Restraint of Trade**

Carriers combining to bid, underwrite, or both bid and underwrite, a group life, accident, or health benefit plan for the uniform program are not in violation of Chapter 15, Business & Commerce Code.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.011. Participation of The Texas A&M University System**

Notwithstanding any other provision of this chapter, if The Texas A&M University System elects to participate in the group benefits program under Section 1551.006(c), that system, including the Texas Veterinary Medical Diagnostic Laboratory, does not participate in a uniform program established under this chapter, effective on the date participation in the group benefits program under Chapter 1551 begins.

*Added by Acts 2003, 78<sup>th</sup> Leg., ch. 366, Sec. 4.01, eff. Sept. 1, 2003.*

## **SUBCHAPTER B. ADMINISTRATION AND IMPLEMENTATION**

### **§ 1601.051. Administration and Implementation**

A system shall:

- (1) implement a uniform program for the benefit of its employees and retired employees; and
- (2) determine basic procedural and administrative practices for insurance coverage provided under this chapter.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

**§ 1601.052. Rulemaking Authority**

A system shall adopt rules consistent with this chapter as it considers necessary to implement this chapter and its purposes.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

**§ 1601.053. General Duties Relating to Coverage**

(a) A system shall:

(1) determine basic coverage standards that must be comparable to those commonly provided:

(A) in private industry; and

(B) to employees of another agency or an institution of higher education in this state under Chapter 1551; and

(2) establish procedures to allow each covered employee and retired employee to obtain prompt action regarding claims pertaining to coverages provided under this chapter.

(b) In designing a coverage plan, a system may consider existing local conditions.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

**§ 1601.054. Competitive Bidding Required**

A system shall submit the uniform program, including any agreement under which a carrier is engaged to administer a self-insured program, for competitive bidding at least every six years.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

**§ 1601.055. Identification of Administrative Costs in Bids**

A system shall include in its respective bid documents for the various coverages a provision calling for each bidder to identify the system's administrative costs as a distinguishable figure and to enumerate the services the bidder will render in exchange for the administrative costs.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

**§ 1601.056. Information on Bidders and Bidding Contracts**

(a) The department shall, on request by a system, provide a list of all carriers:

(1) authorized to engage in business in this state; and

(2) eligible to bid on insurance coverage provided under this chapter.

(b) The department shall, on request by a system, examine and evaluate a bidding contract and certify the contract's actuarial soundness to the system not later than the 15th day after the date of the request.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

#### **§ 1601.057. Selection of Bids**

(a) A system is not required to select the lowest bid under Section 1601.054 but shall take into consideration other relevant criteria, such as ability to service contracts, past experience, and financial stability.

(b) If a system selects a carrier whose bid differs from that advertised, the governing board of the system shall fully justify and record the reasons for the deviation in the minutes of the next meeting of the governing board.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

#### **§ 1601.058. Selection of Health Maintenance Organizations**

A system shall select and contract for services performed by health maintenance organizations that are approved by this state to offer health care services in specific areas of the state to eligible employees and retired employees.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

#### **§ 1601.059. Certificate of Coverage**

A system shall ensure that each employee and retired employee participating under this chapter is issued a certificate of coverage that states:

- (1) the benefits to which the participant is entitled;
- (2) to whom the benefits are payable;
- (3) to whom a claim must be submitted; and
- (4) the provisions of the plan document, in summary form, that principally affect the participant.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

#### **§ 1601.060. Accounting by Carrier Providing Purchased Coverage**

(a) A carrier providing coverage purchased under this chapter to a system shall provide an accounting for each line of coverage to the system not later than the 120th day after the end of each plan year.

(b) The accounting must be in a form acceptable to the system.

(c) The accounting for each line of coverage must state:

- (1) the cumulative amount of contributions remitted to the carrier under the coverage;
- (2) the total of all mortality and other claims, charges, losses, costs, contingency reserve for pending and unreported claims, and expenses incurred; and
- (3) the amounts of the allowance for a reasonable profit, contingency reserve, and all other administrative charges.

(d) Information provided under Subsection (c) must be provided:

- (1) for the period from the coverage's date of issue to the end of the plan year; and
- (2) for the plan year covered by the report.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.061. Special Reserve**

(a) A carrier issuing a group coverage plan under this chapter may hold as a special reserve for a system an amount that equals the amount by which the total amount described by Section 1601.060(c)(1) exceeds the sum of the corresponding amounts described by Sections 1601.060(c)(2) and (3).

(b) The system may use money in the special reserve at its discretion, including for:

- (1) providing additional coverage for participating employees or retired employees;
- (2) offsetting necessary rate increases; or
- (3) reducing contributions to the coverage by participating employees or retired employees.

(c) A special reserve held by a carrier for a system earns interest at a rate determined each plan year by the carrier and approved by the system as consistent with the rate generally used by the carrier for similar funds held under other group coverages.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.062. Reports and Records by Administering Carrier**

Each contract entered into under this chapter between a system and an administering carrier must:

- (1) require the administering carrier to provide reasonable reports that the system determines are necessary for the system to perform its functions under this chapter; and

(2) permit the system and representatives of the state auditor to examine records of the administering carrier as necessary to accomplish the purposes of this chapter.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.063. Assistance in Requesting Money**

The Legislative Budget Board and the Governor's Budget and Planning Office shall:

(1) establish procedures to ensure that each system requests appropriate money to support its uniform program; and

(2) present appropriate budget recommendations to the legislature.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

## **SUBCHAPTER C. COVERAGE AND PARTICIPATION**

### **§ 1601.101. Participation Eligibility: Employees**

(a) An individual who is employed by the governing board of a system, who performs service, other than as an independent contractor, for the system, and who is described by this section is eligible to participate as an employee in the uniform program on the date specified by Section 1601.1045.

(b) An individual is eligible to participate in the uniform program as provided by Subsection (a) if the individual receives compensation for services performed for the system, is eligible to be a member of the Teacher Retirement System of Texas, and either:

(1) is expected to work at least 20 hours per week and to continue in the employment for a term of at least 4-1/2 months; or

(2) is appointed for at least 50 percent of a standard full-time appointment.

(c) An individual is eligible to participate in the uniform program as provided by Subsection (a) if the individual:

(1) receives compensation for services performed for the system;

(2) is employed at least 20 hours a week only; and

(3) is not permitted to be a member of the Teacher Retirement System of Texas because the individual is solely employed by the system in a position that as a condition of employment requires the individual to be enrolled as a student in the system in graduate-level courses.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1198, Sec. 5, eff. January 1, 2012.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78<sup>th</sup> Leg., ch. 366, Sec. 4.02, eff. Sept. 1, 2003; Acts 2003, 78<sup>th</sup> Leg., ch. 1266, Sec. 2.11, eff. Sept. 1, 2003. Amended by Acts 2011, 82<sup>nd</sup> Leg., R.S., Ch. 91, Sec. 14.002, eff. September 1, 2011 and Acts 2011, 82<sup>nd</sup> Leg., R.S., Ch. 1198, Sec. 5, eff. January 1, 2012.*

### **§ 1601.102. Participation Eligibility: Retirees**

(a) An individual who retires in a manner described by this section and who meets the requirements of Subsection (f) is eligible to participate, subject to Section 1601.1045, as a retired employee in the uniform program.

(b) An individual is eligible to participate in the uniform program as provided by Subsection (a) if:

(1) the individual has at least 10 years of service with a system for which the individual was eligible to participate in the uniform program under Section 1601.101;

(2) the individual's last state employment before retirement was with that system; and

(3) the individual retires under the jurisdiction of:

(A) the Teachers Retirement System of Texas under Subtitle C, Title 8, Government Code;

(B) the Employees Retirement System of Texas; or

(C) subject to Subsection (c):

(i) the optional retirement program established by Chapter 830, Government Code; or

(ii) any other federal or state statutory retirement program to which the system has made employer contributions.

(c) An individual retiring in the manner described by Subsection (b)(3)(C) is a retired employee only if the individual meets all applicable requirements for retirement, including service and age requirements, adopted by the system comparable to the requirements for retirement under the Teachers Retirement System of Texas.

(d) An individual is eligible to participate in the uniform program as provided by Subsection (a) if the individual:

(1) meets the minimum requirements under Subsection (b) except that the last state employment before retirement is not at the employing system; and

(2) does not meet the requirements for an annuitant under Section 1551.102.

(e) An individual is eligible to participate in the uniform program as provided by Subsection (a) if the individual retired under Subtitle C, Title 8, Government Code, before September 1, 1991, with at least five and less than 10 years of service.

*Text of subsec. (f) as added by Acts 2003, 78th Leg., ch. 366, Sec. 4.03*

(f) Notwithstanding Subsections (b)-(d), an individual is eligible to participate in the uniform program only if the individual:

(1) has at least 10 years of service credit and the sum of the person's age and amount of service credit, including months of age and credit, equals or exceeds the number 80; or

(2) is at least 65 years old and has at least 10 years of service credit.

*Text of subsec. (f) as added by Acts 2003, 78th Leg., ch. 1266, Sec. 2.08*

(f) Notwithstanding Subsection (b), an individual to whom this subsection applies is eligible to participate in the uniform program as provided by Subsection (a) if:

(1) the individual has at least three years of service with a system for which the individual was eligible to participate in the uniform program under Section 1601.101;

(2) the individual's last state employment before retirement was with that system; and

(3) the individual retires under the jurisdiction of:

(A) the Teacher Retirement System of Texas under Subtitle C, Title 8, Government Code;

(B) the Employees Retirement System of Texas; or

(C) subject to Subsection (c):

(i) the optional retirement program established by Chapter 830, Government Code; or

(ii) any other federal or state statutory retirement program to which the system has made employer contributions.

*Text of subsec. (g) as added by Acts 2003, 78th Leg., ch. 366, Sec. 4.03*

(g) A person eligible to participate and participating in the uniform program as an annuitant on September 1, 2003, may continue to participate in the program as an annuitant if a lapse in coverage has not occurred.

*Text of subsec. (g) as added by Acts 2003, 78th Leg., ch. 1266, Sec. 2.08*

(g) Subsection (f) applies only to a person who, on August 31, 2003:

(1) was eligible to participate in the uniform program as an employee under Section 1601.101; or

(2) was eligible to participate in the uniform program as a retired employee under this section as this section existed on January 1, 2003.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 366, Sec. 4.03, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1266, Sec. 2.08, eff. June 20, 2003.*

**§ 1601.1021. Participation Eligibility: Certain Postdoctoral Fellows and Graduate Students**

(a) An individual who is not eligible to participate in the uniform program under Section 1601.101 is eligible to participate in the uniform program under this section if the individual, at an institution in a system:

(1) holds:

(A) a postdoctoral fellowship; or

(B) one or more graduate student fellowships awarded to the individual on a competitive basis that, either singly or in combination, are valued at not less than \$10,000 per year; and

(2) is currently receiving a stipend from an applicable fellowship.

(b) An individual who is eligible to participate in the uniform program under this section shall pay all contributions required under this chapter for the coverage selected by the individual, except that an institution of higher education may make contributions for the individual from available funds other than money appropriated to the institution from the general revenue fund.

(c) An institution of higher education shall determine which individuals are eligible to participate in the uniform program under this section and, at the time of initial eligibility, shall notify each individual of the individual's eligibility to participate in the program.

(d) An individual who participates in the uniform program under this section is not considered an employee of an institution of higher education solely as a result of the individual's participation in the program.

*Added by Acts 2011, 82nd Leg., R.S., Ch. 1198, Sec. 3, eff. September 1, 2011.*

**§ 1601.103. Right to Coverage**

An individual eligible to participate in the uniform program under Section 1601.101 or 1601.102 may not be denied enrollment in any coverage provided under this chapter.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### § 1601.104. Automatic Coverage

(a) A system shall automatically provide the basic coverage to each full-time employee unless the employee has:

- (1) waived participation in the basic coverage; or
- (2) selected an optional coverage plan.

(b) An employee or retired employee who is automatically covered under this section may subsequently:

- (1) retain the basic coverage or waive participation in the basic coverage; and
- (2) apply for any other coverage provided under this chapter within applicable standards.

(c) Automatic coverage as described under this section begins on the first date of employment.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### Sec. 1601.1045. Date Eligibility Begins; Waiting Period

(a) Except as provided by Subsection (c) or (d), eligibility under Section 1601.101 begins on the first day of the calendar month that begins after the 90th day after the date the employee performs services for a system.

(b) Except as provided by Subsection (c), eligibility under Section 1601.102, for an individual who does not retire at the end of the last month for which the individual is on the payroll of a system before retirement, begins on the first day of the calendar month that begins after the 90th day after the date the individual retires.

(c) The waiting period established by Subsections (a) and (b) applies only to the determination of initial eligibility to participate in the group health benefits program and does not apply to the determination of initial eligibility to participate in optional coverages under the uniform program.

(d) Notwithstanding Subsection (a), eligibility under Section 1601.101 may not begin earlier than the first day that an employee performs services for a system if any amount paid for premium incurred before the date specified under Subsection (a) for the employee and any dependents of the employee is paid from money not appropriated from the general revenue fund, in accordance with policies and procedures established by the system.

*Added by Acts 2003, 78<sup>th</sup> Leg., ch. 366, Sec. 4.05, eff. Sept. 1, 2003.*

### § 1601.105. Waiver

An employee or retired employee may waive in writing any coverage provided under this chapter.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

**§ 1601.106. Optional Coverage**

A system shall provide optional coverage in accordance with Section 1601.201.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

**§ 1601.107. Coverage for Dependents**

An individual who is eligible to participate in the uniform program under Section 1601.101, ~~or~~ 1601.102, or 1601.1021 is entitled to secure for a dependent of the individual any group coverages provided under this chapter for dependents under rules adopted by the applicable system.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

*Amended by Acts 2011, 82nd Leg., R.S., Ch. [1198](#), Sec. 4, eff. September 1, 2011.*

**§ 1601.108. Coverage Options for Certain Surviving Spouses**

(a) This section applies only to the surviving spouse of:

- (1) an individual eligible to participate in the uniform program under Section 1601.101 who had at least five years of service on the date of the individual's death, including at least three years of service as an eligible employee with the employing system; or
- (2) an individual eligible to participate in the uniform program under Section 1601.102.

(b) A surviving spouse to whom this section applies may elect to retain any of the following coverages in effect on the date of the participant's death:

- (1) the surviving spouse's authorized coverages; and
- (2) authorized coverages for any eligible dependent of the deceased participant.

(c) The coverage is at the group rate for other participants.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

**§ 1601.109. Coverage for AIDS, HIV, or Serious Mental Illness**

(a) In this section, "serious mental illness" has the meaning assigned by Section 1, Article 3.51-14.

(b) A system may not contract for or provide for group insurance or HMO coverage or provide self-insured coverage, that:

- (1) excludes or limits coverage or services for acquired immune deficiency syndrome, as defined by the Centers for Disease Control and Prevention of the United States Public Health Service, or human immunodeficiency virus infection; or
- (2) provides coverage for serious mental illness that is less extensive than the coverage provided for any other physical illness.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.110. Disease Management Services**

(a) In this section, "disease management services" means services to assist an individual manage a disease or other chronic health condition, such as heart disease, diabetes, respiratory illness, end-stage renal disease, HIV infection, or AIDS, and with respect to which the governing board of a system identifies populations requiring disease management.

(b) A health benefit plan provided under this chapter must provide disease management services or coverage for disease management services in the manner required by the governing board of a system, including:

- (1) patient self-management education;
- (2) provider education;
- (3) evidence-based models and minimum standards of care;
- (4) standardized protocols and participation criteria; and
- (5) physician-directed or physician-supervised care.

(c) The governing board of each system shall conduct a study that evaluates the savings to the state as a result of implementation of comprehensive disease management programs as described by Subsections (a) and (b). The governing board of a system shall evaluate the clinical outcomes of participants enrolled in a disease management program. The governing board of a system shall report the progress of the study to the governor, lieutenant governor, and speaker of the house of representatives not later than December 1, 2004, and the final results of the study not later than December 1, 2005.

(d) The governing board of a system may conduct the study under Subsection (c) in conjunction with an academic center.

(e) Subsections (c) and (d) and this subsection expire January 1, 2006.

*Added by Acts 2003, 78<sup>th</sup> Leg., ch. 589, Sec. 5, eff. June 20, 2003.*

### **§ 1601.111. Programs Promoting Disease Prevention, Wellness, and Health**

A system may establish premium discounts, surcharges, rebates, or a revision in otherwise applicable copayments, coinsurance, or deductibles, or any combination of those incentives, for

an individual who participates in system-approved programs promoting disease prevention, wellness, and health.

*Added by Acts 2011, 82nd Leg., R.S., Ch. 1049, Sec. 3.02, eff. June 17, 2011.*

## **SUBCHAPTER D. GROUP COVERAGES**

### **§ 1601.151. Authority to Self-insure; Exemption from Other Insurance Laws**

(a) Notwithstanding any other provisions of this chapter, the governing board of a system may:

- (1) self-insure a plan provided under this chapter; and
- (2) hire a carrier to administer the system's uniform program.

(b) A plan for which a system provides coverage on a self-insured basis is exempt from any other insurance law of this state that does not expressly apply to that plan or this chapter.

(c) Expenses for the administration of a self-insured plan may come from the contributions of employees and the state after payments for any coverage provided under this chapter have been made.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.152. Cafeteria Plan**

(a) The governing board of a system may develop, implement, and administer a cafeteria plan.

(b) The governing board may include in the cafeteria plan any benefit that may be included in a cafeteria plan under federal law.

(c) The governing board may cooperate and work with and enter into a necessary contract or agreement with an independent and qualified agency, person, or entity to:

- (1) develop, implement, or administer a cafeteria plan; or
- (2) assist in those activities.

(d) The governing board may adopt an order terminating the cafeteria plan and providing a procedure for the orderly withdrawal of the system and its employees from the cafeteria plan if the governing board determines that a cafeteria plan adopted under this section is no longer advantageous to the system and its employees.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.153. Systems May Join in Procuring Insurance**

The systems may join together to procure one or more group contracts with an insurance company authorized to engage in business in this state to insure the employees and retired employees of each participating system.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.154. Long-term Care Coverage**

(a) A system may join with a board of trustees that administers the uniform program established under Chapter 1551 or the group program established under Chapter 1575 to provide long-term care insurance coverage.

(b) Each participating board of trustees and the governing board of the system must mutually agree to join together for this purpose, subject to terms that are beneficial to all participants.

(c) A system may not participate in an agreement under this section unless any cost or administrative burden associated with the development or implementation of or communications about the long-term care coverage plan is incidental.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.155. Reinsurance**

A system may arrange with an administering carrier issuing a policy under this chapter for the reinsurance of portions of the total amount of insurance under the policy with other carriers that elect to participate in the reinsurance.

*Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

## **SUBCHAPTER E. PAYMENTS, CONTRIBUTIONS, AND COSTS**

### **§ 1601.201. Payment for Coverage**

(a) A system may not contribute more than the amounts specified by this section for coverages provided under the uniform program.

(b) For an employee designated by the system as working 40 or more hours a week, the system may contribute:

- (1) the full cost of basic coverage for the employee; and
- (2) not more than 50 percent of the cost of dependent coverage.

(c) For an employee designated by the system as working less than 40 hours a week, including an individual employed by the system in a position that as a condition of employment requires the individual to be enrolled as a student in the system in graduate-level courses, the system, from money appropriated from the general revenue fund, may contribute:

- (1) not more than 50 percent of the cost of basic coverage for the employee; and
- (2) not more than 25 percent of the cost of dependent coverage.

(d) Subsection (c) does not prohibit a system from contributing, from money not appropriated from the general revenue fund, amounts in excess of the amount specified by that subsection for:

- (1) an individual employed by the system in a position that as a condition of employment requires the individual to be enrolled as a student in the system in graduate level courses; or
- (2) an individual who is a tenured faculty member with whom the system has entered into a phased retirement agreement under which the individual will work less than 40 hours a week for a specified period of time at the end of which the individual will retire.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 366, Sec. 4.06, eff. Sept. 1, 2003. Amended by Acts 2011, 82nd Leg., R.S., Ch. [1049](#), Sec. 3.03, eff. June 17, 2011.*

#### **§ 1601.202. Fees for Cafeteria Plan**

(a) The governing board of a system may establish a monthly fee in an amount set by the board to be paid by each employee who elects to participate in a cafeteria plan for the purpose of paying the expenses of administering the cafeteria plan.

(b) If the governing board establishes a monthly fee, each employee who participates in the cafeteria plan must authorize payment of the fee by executing a separate payroll deduction agreement or as part of a salary reduction agreement, as determined by the governing board.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

#### **§ 1601.203. Payment for Coverage for Dependents**

Contributions for coverages for a dependent of an individual eligible to participate in the uniform program under Section 1601.101 or 1601.102 required of the participant that exceed the amount of system contributions shall be paid:

- (1) by a deduction from the monthly compensation of the participant;
- (2) by a reduction of the monthly compensation of the participant in the appropriate amount; or

(3) in the form and manner the system determines.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

#### **§ 1601.204. Authorization of Employee Deduction**

(a) Except for a participant who participates in a cafeteria plan, each individual eligible to participate in the uniform program under Section 1601.101 must authorize a deduction from the participant's monthly compensation in an amount equal to the difference between:

- (1) the total cost for coverages for which the participant applies; and
- (2) the amount contributed by the system.

(b) The authorization must be:

- (1) in writing or performed electronically; and
- (2) in a form satisfactory to the system.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

#### **§ 1601.2041. Employee Deduction For Automatic Coverage**

Each individual automatically enrolled in a uniform program under Section 1601.104 is considered to have authorized a deduction from the participant's monthly compensation in an amount equal to the difference between:

- (1) the total cost of the employee's basic coverage; and
- (2) the amount contributed by the system for the employee's basic coverage.

*Added by Acts 2011, 82nd Leg., R.S., Ch. [1049](#), Sec. 3.04, eff. June 17, 2011.*

#### **§ 1601.205. Employee Payments for Participation in Cafeteria Plan**

(a) If an employee elects to participate in a cafeteria plan, the employee must execute a salary reduction agreement under which the employee's monthly compensation will be reduced in an amount equal to the difference between:

- (1) the amount appropriated for that purpose in the General Appropriations Act or the system's budget; and
- (2) the cost of the employee's selected coverages for which the employee is eligible to pay under the cafeteria plan.

(b) The employee must execute a salary reduction agreement for any portion of the cost that is not covered by state or system appropriations and cafeteria plan contributions.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.206. Payment by Retired Employee**

An individual eligible to participate in the uniform program under Section 1601.102 must execute an agreement and make appropriate contributions in a manner analogous to the requirements adopted under Sections 1601.204 and 1601.205 for an individual eligible to participate in the uniform program under Section 1601.101.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.207. System Contributions**

A system shall contribute monthly to the cost of each participant's coverage provided under this chapter an amount:

- (1) if the participants are compensated from amounts appropriated in the General Appropriations Act, equal to or greater than the amount appropriated for that purpose in the Act; or
- (2) if the participants are compensated from amounts appropriated by the governing board of the system in its official operating budget, an amount equal to the amount appropriated for a participant under the General Appropriations Act.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.208. Amount of System Contribution**

Not later than November 1 preceding each regular session of the legislature, each system shall certify to the Legislative Budget Board and the budget division of the Governor's Budget and Planning Office the amount necessary to pay the contributions of the system for the coverages provided under this chapter to each employee and retired employee of the system.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.209. Order of Precedence of Payment To Survivors**

(a) The amount of group life coverages and group accidental death and dismemberment coverages in force for a participant on the date the participant dies shall be paid, on the establishment of a valid claim, to a person surviving the death in the following order of precedence:

- (1) to the beneficiary designated by the participant in a signed and witnessed writing received before death by the appropriate office of the applicable system; or
- (2) if a beneficiary is not designated under Subdivision (1), in accordance with the death benefit provisions of Subtitle C, Title 8, Government Code.

(b) For purposes of Subsection (a)(1), a designation, change, or cancellation of a beneficiary in a document, including a will, that is not executed and filed in the manner described by that subsection is not valid.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

#### **§ 1601.210. Provision of Necessary Information**

The Teacher Retirement System of Texas, Optional Retirement Program carriers, and Employees Retirement System of Texas shall provide to each system information the system considers necessary to provide retired employees with the coverages and system contributions provided under this chapter.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **SUBCHAPTER F. CAFETERIA PLAN FUND**

#### **§ 1601.251. System Cafeteria Plan Fund**

(a) The governing board of each system may establish and administer a cafeteria plan fund.

(b) The following shall be credited to the cafeteria plan fund of a system:

- (1) salary reduction payments for benefits included in a cafeteria plan adopted under this chapter, other than group coverage plans under the uniform program;
- (2) appropriations by the state for the administration of a cafeteria plan; and
- (3) a monthly fee established under Section 1601.202.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

#### **§ 1601.252. Use of Fund**

The cafeteria plan fund of a system is available without fiscal year limitation:

- (1) for all payments for any benefits included in a cafeteria plan adopted by the system under this chapter other than group coverage plans under the uniform program; and
- (2) for payment of expenses of administering the cafeteria plan.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

#### **§ 1601.253. Investment of Money in Fund**

(a) The governing board of a system may invest the money in the system's cafeteria plan fund.

(b) The earnings, including interest, and the proceeds from the sale of the investments become a part of the fund.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

## **SUBCHAPTER G. ADVISORY COMMITTEE**

### **§ 1601.301. Advisory Committee**

An advisory committee for each system shall be selected, serve, and perform duties as provided by this subchapter.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.302. Election of Members**

One member of the advisory committee shall be elected from each of the components, units, or agencies of the system:

- (1) at times designated by the system; and
- (2) in accordance with general guidelines for the election provided by the system.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.303. Qualifications of Members**

- (a) A member of a system's advisory committee must be an employee of the system.
- (b) A member must:
  - (1) demonstrate mature judgment, special abilities, and sincere interest in employee coverage plans; and
  - (2) be able to represent the needs of all employees of the component, unit, or agency the member represents with respect to an action of the advisory committee.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

### **§ 1601.304. Terms**

A member of the advisory committee is elected for a two-year term, subject to reelection.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

**§ 1601.305. Officers**

Annually, the members of a system's advisory committee shall elect a presiding officer and other necessary officers.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

**§ 1601.306. Vacancy**

The chief executive officer of a component, unit, or agency of a system shall appoint to the system's advisory committee an employee of the component, unit, or agency to fill the remainder of a vacated term of a member who is an employee of the component, unit, or agency.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

**§ 1601.307. Duties of Committee**

(a) The advisory committee of a system shall cooperate and work with the governing board of the system in coordinating and correlating the administration of the uniform program among the various components, units, and agencies of the system.

(b) Members of the advisory committee shall cooperate and work with the governing board of the system as advisors in the development, implementation, coordination, and administration of the uniform program among the various components, units, and agencies of the system.

(c) The advisory committee shall provide a channel for open communication of ideas and suggestions regarding coverages, eligibility, claims, procedures, bidding, administration, and any other aspect of employee plan benefits.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

**§ 1601.308. Expenses; Payment by Employees**

(a) A member's service on the advisory committee of a system is in addition to the duties of the member's state office or employment.

(b) An expense incurred by an advisory committee member in performing a duty as a member of the committee shall be paid from money made available for that purpose to the system of which the member is an employee or officer.

(c) Employees shall pay the expenses of an advisory committee established under this subchapter from:

(1) the amount of employer contributions due the employees; or

(2) the amount of additional contributions due for selected coverages under this chapter.

*Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.*

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UT FLEX Administrator

	<u>Performance Standard</u>	<u>First Quarter 9/16-11/16</u>	<u>Second Quarter 12/16-2/17</u>	<u>Third Quarter 3/17-5/17</u>	<u>Fourth Quarter 6/17-8/17</u>	<u>Total 9/16-8/17</u>
<b>ADMIN REPORT TIMELINE</b>						
Date Report Due	End of next mo.	12/31/2016	3/31/2017	6/30/2017	9/30/2017	
Date Submitted by Vendor	--					
Date Received by OEB	--					

	<u>Performance Standard</u>	<u>First Quarter 9/16-11/16</u>	<u>Second Quarter 12/16-2/17</u>	<u>Third Quarter 3/17-5/17</u>	<u>Fourth Quarter 6/17-8/17</u>	<u>Total 9/16-8/17</u>
<b>COMPLAINTS</b>						
Provider Issues	--					
Claims Services	--					
Customer Service	--					
Plan Design/Benefits	--					
Debit Card						
Other	--					
Total Complaints Received	--					
Average Time to Resolve	<30 days					
% resolved within 15 days	90%					
% resolved within 30 days	--					

Total number of written and emailed complaints received from University of Texas participants.

Average Time to Resolve is measured from date complete information relating to complaint was received by the UT FLEX vendor to date resolved.

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UT FLEX Administrator

	Performance <u>Standard</u>	First Quarter <u>9/16-11/16</u>	Second Quarter <u>12/16-2/17</u>	Third Quarter <u>3/17-5/17</u>	Fourth Quarter <u>6/17-8/17</u>	Total <u>9/16-8/17</u>
<b>CUSTOMER SERVICE CALLS</b>						
Total telephone calls received	--					
Average Abandonment Rate (%)	5%					
Average Waiting Time (seconds)	<30 sec					

Customer calls specific to Univ. of Texas is preferred; however, System will accept statistics for total book of business if UT specific call data is not available.

	Performance <u>Standard</u>	First Quarter <u>9/16-11/16</u>	Second Quarter <u>12/16-2/17</u>	Third Quarter <u>3/17-5/17</u>	Fourth Quarter <u>6/17-8/17</u>	Total <u>9/16-8/17</u>
<b>DEBIT CARDS</b>						
Number of debit cards issued this quarter	--					
No. Mailed Within 5 Days	--					
Total cards used						
Number of debit card transactions						
Amount charged on debit cards						
Amount denied						
Amount refunded						

Debit cards issued to and used by U.T. System participants

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UT FLEX Administrator

Performance	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
<u>Standard</u>	<u>9/16-11/16</u>	<u>12/16-2/17</u>	<u>3/17-5/17</u>	<u>6/17-8/17</u>	<u>9/16-8/17</u>

DEBIT CARD LETTERS						
Receipt Request Letters #1	--					
Transactions Requested Re Letters #1	--					
Receipt Request Letters #2	--					
Transactions Requested Re Letters #2						

Number of letters mailed to participants and the transactions associated with the letters

Performance	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
<u>Standard</u>	<u>9/16-11/16</u>	<u>12/16-2/17</u>	<u>3/17-5/17</u>	<u>6/17-8/17</u>	<u>9/16-8/17</u>

DEBIT CARD SUBSTANTIATION						
Plan Copayments	--	3 of 7				
Over The Counter (OTC) Items	--					

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UT FLEX Administrator

Medical/Drug/Dental/Vision Claims Match	--					
Other	--					

Represents the percentage of all debit card transactions substantiated by each method

	Performance Standard	First Quarter <u>9/16-11/16</u>	Second Quarter <u>12/16-2/17</u>	Third Quarter <u>3/17-5/17</u>	Fourth Quarter <u>6/17-8/17</u>	Total <u>9/16-8/17</u>
<b>CLAIMS PROCESSING</b>						
Total Claims Processed	--					
Amount Paid	--					
Amount Denied	--					
Amount Pending						
Avg Time to Pay a Claim	<15 days					
% Paid within 5 work days	85%					

Average Time to Process Claim is measured from date complete information received to date processed.

	Performance Standard	First Quarter <u>9/16-11/16</u>	Second Quarter <u>12/16-2/17</u>	Third Quarter <u>3/17-5/17</u>	Fourth Quarter <u>6/17-8/17</u>	Total <u>9/16-8/17</u>
<b>FRAUD DETECTION</b>						
Total amount recovered	--		4 of 7			

using its automated systems to detect and prevent participant and provider fraud, abuse, and other improprieties.

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UT FLEX Administrator

Report here the total number of dollars recovered during the quarter through the UT FLEX plan administrator's fraud investigation activity.

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UT FLEX Administrator

	Performance Standard	First Quarter <u>9/16-11/16</u>	Second Quarter <u>12/16-2/17</u>	Third Quarter <u>3/17-5/17</u>	Fourth Quarter <u>6/17-8/17</u>	Total <u>9/16-8/17</u>
<b>APPEALS</b>						
Total Appeals Received	--					
Number Upheld						
Number Overturned						
Avg Days for Decision	<30 days					
% Processed within 30 days						

Written appeals received and processed from UT participants.

	Performance Standard	First Quarter <u>9/16-11/16</u>	Second Quarter <u>12/16-2/17</u>	Third Quarter <u>3/17-5/17</u>	Fourth Quarter <u>6/17-8/17</u>	Total <u>9/16-8/17</u>
<b>EMERGENCY UPDATE PROCESSING</b>						
Total Update Requests Received	--					
Avg Time to Process	< 4 hrs					
% of Updates Processed w/i 4 hrs	--					

Total received includes emergency update requests received from UT institutions and the Office of Employee Benefits.

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UT FLEX Administrator

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**AGREEMENT BETWEEN SYSTEM AND CONTRACTOR FOR  
THIRD PARTY ADMINISTRATIVE SERVICES FOR THE UT FLEX HEALTH CARE  
FLEXIBLE SPENDING ACCOUNT AND DEPENDENT DAY CARE FLEXIBLE  
SPENDING ACCOUNT PLANS**

This Agreement between System and Contractor ("**Agreement**") is made and entered into effective as of September 1, 2016 (the "**Effective Date**"), by and between The University of Texas System Administration (System), an agency established under the laws of the State of Texas and [ ] ("**Contractor**"), TX Comptroller Vendor Identification Number [ ]. System and Contractor hereby agree as follows:

**1. Incorporation of the Request for Proposal and Contractor's Response into the Agreement; Interpretation**

- 1.1 System issued a document entitled "Request for Proposals for Administrative Services for the UT Flex Health Care Flexible Spending Account and Dependent Day Care Flexible Spending Account Plans for the Employees of The University of Texas System ("the RFP") to which Contractor submitted a response ("the Response"). The RFP, which shall remain on file as **Exhibit A**, the Response, which shall remain on file as **Exhibit B, is** incorporated herein by reference for all purposes as if both are restated in full.
- 1.2 To the extent that the terms of this Agreement conflict with either **Exhibit A** or the relevant portions of **Exhibit B**, the terms of this Agreement shall prevail. To the extent that the terms of **Exhibit A** conflict with **Exhibit B**, **Exhibit A** shall prevail.

**2. Scope of Services.**

The services to be provided by Contractor shall be described in **Exhibit A** .

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

The term of this Agreement will begin on the Effective Date and expire on August 31, 2019. System will have the option to renew this Agreement, at its sole discretion, for one (1) additional three (3) year term subject to terms and conditions acceptable to the System.

**4. Contractor's Obligations, Performance Guarantees.**

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- 4.1 Contractor will perform the Services in compliance with all applicable federal, state and local laws, regulations, and ordinances. Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for the firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor's response to System's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.
- 4.2 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will cause all persons connected with Contractor directly in charge of the Services to be duly registered and/or licensed under all applicable federal, state and local laws, regulations, and ordinances. Contractor will assign to the Project a designated representative who will be responsible for the administration and coordination of the services.
- 4.3 Contractor represents that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 4.4 Contractor will comply with the Performance Guarantees under the terms described in **Exhibit D**, Performance Guarantees, which is attached and incorporated for all purposes.

5. **The Contract Amount.**

- 5.1 System will pay Contractor the fees set forth in **Exhibit C**, Fee Schedule, for the full, satisfactory and timely performance of the services contracted for.
- 5.2 System will pay no additional fees or costs for out of pocket cost to Contractor incurred in the performance of services under this contract.
- 5.3 The Contract Amount includes all applicable federal, state or local sales or use taxes payable as a result of the execution or performance of this Agreement.

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5.4 System, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the services in accordance with Section 151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* (“**TAC**”) Section 3.322.

**6. Payment Terms.**

The Payment Methodology is described in the RFP. Vendor agrees not to submit billings to plan participants.

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

Contractor agrees that System shall have complete and unrestricted access to any written reports, work papers, electronic data, documentation, or other information prepared in association with performances hereunder. System may reproduce and use any such information without Contractor’s permission and without expense or charge. For purposes of this Agreement, “provide specific discounts” and “provider specific reimbursement” means any specific reimbursement and discount rate or amount for a particular provider whether derived through the provider’s name, identification number or other identifier or deduction/calculation.

**8. Default and Termination.**

8.1 In the event of a material failure by a party to this Agreement to perform in accordance with the terms of this Agreement (“**default**”), the other party may terminate this Agreement upon ninety (90) days’ written notice of termination setting forth the nature of the material failure; provided, that, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the ninety-day period.

8.2 System may, without cause, terminate this Agreement at any time upon giving ninety (90) days’ advance written notice to Contractor. Upon termination pursuant to this Section, Contractor will be entitled to payment of an amount that will compensate Contractor for the services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement. Notwithstanding any provision in this Agreement to the contrary, System will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor.

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8.3 Termination under **Sections 8.1** or **8.2** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.

8.4 If Contractor fails to cure any default within ninety (90) days after receiving written notice of the default, System will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Contractor under this Agreement, any and all reasonable expenses incurred in connection with System's curative actions.

**9. Indemnification**

To the fullest extent permitted by law, Contractor will and does hereby agree to indemnify, protect, defend with counsel approved by System, and hold harmless System, and its affiliated enterprises, regents, officers, directors, attorneys, employees, representatives and agents (collectively "**Indemnitees**") from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively "**Claims**") by any person or entity, arising out of, caused by, or resulting from Contractor's performance under or breach of this Agreement and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of Contractor, anyone directly employed by Contractor or anyone for whose acts Contractor may be liable. The provisions of this Section will not be construed to eliminate or reduce any other indemnification or right which any Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

In addition, Contractor will and does hereby agree to indemnify, protect, defend with counsel approved by System, and hold harmless Indemnitees from and against all claims arising from infringement or alleged infringement of any patent, copyright, trademark or other proprietary interest arising by or out of the performance of services or the provision of goods by Contractor, or the use by Indemnitees, at the direction of Contractor, of any article or material; provided that, upon becoming aware of a suit or threat of suit for infringement, System will promptly notify Contractor and Contractor will be given the opportunity to negotiate a settlement. In the event of litigation, System agrees to reasonably cooperate with Contractor. All parties will be entitled to be represented by counsel at their own expense.

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**10. Relationship of the Parties.**

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venturer, or agent of System. Contractor will not bind nor attempt to bind System to any agreement or contract. As an independent contractor, Contractor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance.

**11. Miscellaneous.**

**11.1 Assignment and Subcontracting.** [ include if subcontracting will occur Except as specifically provided in **Exhibit F**, Historically Underutilized Business Subcontracting Plan, attached and incorporated for all purposes.]

Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on System; and (b) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Texas law, including Chapter 2161, *Texas Government Code*, and 34 TAC Chapter 20, §§20.101 – 20.108. The benefits and burdens of this Agreement are assignable by System.

**11.2 Texas Family Code Child Support Certification.** Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

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

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- 11.4 **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until the debt or delinquency is paid in full.
- 11.5 **Loss of Funding.** System performance of its duties and obligations under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "**Legislature**") and/or allocation of funds by the Board of Regents of The University of Texas System (the "**Board**"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then System will issue written notice to Contractor and System may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of System.
- 11.6 **Entire Agreement; Modifications.** This Agreement supersedes all prior agreements, written or oral, between Contractor and System and will constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by both System and Contractor.
- 11.7 **Force Majeure.** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("**force majeure occurrence**").
- 11.8 **Captions.** The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
- 11.9 **Governing Law.** Travis County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties to this Agreement and all of the terms and conditions of this Agreement will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

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11.10 **Waivers.** No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.

11.11 **Confidentiality and Safeguarding of System Records; Public Information.** Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of System, or (3) have access to, records or record systems (collectively, "**System Records**"). Among other things, System Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by applicable federal, state and local, laws, regulations, and ordinances. Contractor represents, warrants, and agrees that it will: (1) hold System Records in strict confidence and will not use or disclose System Records except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by System in writing; (2) safeguard System Records according to reasonable administrative, physical and technical standards as described in its Proposal and that at no time shall be less rigorous than the standards by which Contractor protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that System Records are safeguarded and the confidentiality of System Records is maintained in accordance with all applicable federal, state and local, laws, regulations, and ordinances, and the terms of this Agreement; and (4) comply with the System's rules, policies, and procedures regarding access to and use of System's computer systems.

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

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

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Protected Health Information as that term is defined by HIPAA shall be governed by the HIPAA Business Associate Agreement which is attached to this Agreement as **Exhibit E**.

11.11.3 **Disclosure.** If Contractor discloses any System Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this Section.

11.11.4 **Public Information.** System strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act*, Chapter 552, *Texas Government Code*. Any disclosures of information maintained, collected, or assembled by Contractor in connection with the transaction of official business of System must be authorized by System. Contractor will instruct its employees that any release of records may be authorized only by System, and will be in accordance with the laws of the State of Texas. If Contractor receives such a request for information, Contractor shall send a copy of same to System by facsimile, email or overnight mail no later than one business day after Contractor's receipt of the request, so that System can determine if a disclosure is required under the Act. Contractor shall maintain all information and materials submitted to it by virtue of the Contract, except as is necessary to perform its duties under this Contract. Contractor shall not use or permit to be used or transmitted to others any information obtained as a result of its duties under this Contract without the written consent of System, except as is necessary for Contractor to perform its duties under this Contract.

11.11.5 **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if System reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, System may immediately terminate this Agreement without notice or opportunity to cure.

11.11.6 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

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- 11.12 **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.
- 11.13 **Records.** Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments will be available to System or its authorized representative during business hours and will be retained for four (4) years after final Payment or abandonment of the Project, unless System otherwise instructs Contractor in writing.
- 11.14 **Notices.** Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission, or email, as provided below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile, or email when received:

Scott C. Kelley, Executive Vice Chancellor  
for Business Affairs  
The University of Texas System  
701 Colorado Street  
Austin, Texas 78701-3043  
Fax: 512/499-4289

with copy to: Laura C. Chambers, Director  
Office of Employee Benefits  
210 West 6<sup>th</sup> Street, Room B.410E  
Austin, Texas 78701  
Fax: 512/499-4620

Except that notices of any incident that may constitute a "breach" as that term is defined by HIPAA shall be directed to the System's HIPAA Privacy Officer as designated in **Exhibit E**, HIPAA Business Associate Agreement, of this Agreement.

If to Contractor:

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

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

Scott C. Kelley, Executive Vice Chancellor  
for Business Affairs  
The University of Texas System  
701 Colorado Street  
Austin, Texas 78701-3043  
Email: LegalNotices@utsystem.edu

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

- 11.15 **Severability.** In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.
- 11.16 **State Auditor's Office.** Contractor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "**Auditor**"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with subcontractors.
- 11.17 **Limitation of Liability.** EXCEPT FOR SYSTEM'S OBLIGATION (IF ANY) TO PAY CONTRACTOR CERTAIN FEES AND EXPENSES, SYSTEM WILL HAVE NO LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING ANY DUTY OR OBLIGATION OF SYSTEM TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR, NO PRESENT OR FUTURE AFFILIATED ENTERPRISE, SUBCONTRACTOR, AGENT, OFFICER, DIRECTOR, EMPLOYEE, REPRESENTATIVE, ATTORNEY OR REGENT OF THE UNIVERSITY OF TEXAS SYSTEM, OR ANYONE CLAIMING UNDER SYSTEM HAS OR WILL HAVE ANY PERSONAL

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LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER  
CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS  
AGREEMENT.

**11.18 Survival of Provisions.** No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination, including **Sections 6, 7, 9, 11.5, 11.9, 11.10, 11.11, 11.13, 11.16, 11.17, 11.19** and **11.21**.

**11.19 Breach of Contract Claims.**

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

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

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

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

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

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

11.20 **Undocumented Workers.** The *Immigration and Nationality Act* (8 *United States Code* 1324a) ("**Immigration Act**") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form ("**I-9 Form**") as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country

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who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, System may terminate this Agreement in accordance with **Section 8**. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

**11.21 Limitations.** THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF SYSTEM (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING THOSE TERMS AND CONDITIONS RELATING TO LIENS ON SYSTEM'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "**LIMITATIONS**"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON SYSTEM EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

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

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**11.23 HIPAA Compliance.** Contractor agrees that it will execute a HIPAA Business Associate Agreement (“BAA”) with System and the BAA will be in the form set forth in **Exhibit E**, HIPAA Business Associate Agreement, attached and incorporated for all purposes.

**[Included if Contract will involve subcontracting]** **11.24 Historically Underutilized Business Subcontracting Plan.** Contractor agrees to use good faith efforts to subcontract the services in accordance with the Historically Underutilized Business Subcontracting Plan (“HSP”) (ref. **Exhibit F**). Contractor agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to University in the format required by Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency (collectively TPSS). Submission of the compliance report (PAR) will be required as a condition of payment under this Agreement. If System determines that Contractor has failed to subcontract as set out in the HSP, System will notify Contractor of any deficiencies and give Contractor an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. If System determines that Contractor failed to implement the HSP in good faith, System, in addition to any other remedies, may report nonperformance to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108. System may also revoke this Agreement for breach and make a claim against Contractor.

**11.24.1 Changes to the HSP.** If at any time during the term of this Agreement, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with 34 TAC Section 20.14; (b) the changes must be reviewed and approved by System; and (c) if System approves changes to the HSP, this Agreement must be amended in accordance with Section 11.6 to replace the HSP with the revised subcontracting plan.

**11.24.2 Expansion of the Services.** If System expands the scope of the services through a change order or any other amendment, System will determine if the additional services contains probable subcontracting opportunities *not* identified in the initial solicitation for the services. If System determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34 TAC Section 20.14 before (a) this Agreement may be amended to include the additional services;

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or (b) Contractor may perform the additional services. If Contractor subcontracts any of the additional subcontracting opportunities identified by System without prior authorization and without complying with 34 TAC Section 20.14, Contractor will be deemed to be in breach of this Agreement and will be subject to any remedial actions provided by Texas law including Chapter 2161, *Texas Government Code* and 34 TAC Section 20.14. System may report nonperformance under this Agreement to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108.]

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

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

**THE UNIVERSITY OF TEXAS SYSTEM**

**(contractor)**

By: \_\_\_\_\_

By: \_\_\_\_\_

Scott C. Kelley

\_\_\_\_\_

Executive Vice Chancellor  
For Business Affairs

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

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

**Exhibits:**

**EXHIBIT A**

**RFP (On File with System)**

**EXHIBIT B**

**Response (On File with System)**

**EXHIBIT C**

**Fee Schedule**

**EXHIBIT D**

**Performance Guarantees**

**EXHIBIT E**

**HIPAA Business Associate Agreement**

**EXHIBIT F** **HUB Subcontracting Plan** [if subcontracting will occur)

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**EXHIBIT F**

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (the “Agreement”), is made by and between [ ] (“Contractor”) and The University of Texas System (“System”) (collectively the “Parties”) to comply with privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160 and 164 (“the Privacy Rule”) and security standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160, 162 and 164, (“the Security Rule”), and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 and regulations promulgated there under and any applicable state confidentiality laws.

### **RECITALS**

WHEREAS, Contractor has agreed to enter into the Underlying Agreement with System for third party administrative services (“Services”) for the );

WHEREAS, in connection with these Services, Contractor access to System PHI (defined below) that is subject to protection under the HIPAA Rules for the purpose of providing these services; and

WHEREAS, the HIPAA Rules require that System receive adequate assurances that Business Associate will comply with certain obligations with respect to the PHI received in the course of providing Services to or on behalf of Covered Entity.

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- A. Definitions. Terms used herein, but not otherwise defined, shall have meaning ascribed by the Privacy Rule and the Security Rule.
  1. Breach. “Breach” shall mean the unauthorized acquisition, access, use, or disclosure of protected health information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.
  2. Business Associate. “Business Associate” shall mean Contractor.
  3. Covered Entity. “Covered Entity” shall mean System.

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4. Designated Record Set. "Designated Record Set" shall mean a group of records maintained by or for a covered entity, as defined by HIPAA, that is: (i) the medical records and billing records about Individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the covered entity to make decisions about Individuals. For purposes of this definition, the term "record" means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a covered entity.
5. HIPAA Rules. The Privacy Rule and the Security Rule and amendments codified and promulgated by the HITECH Act are referred to collectively herein as "HIPAA Rules."
6. Individual. "Individual" shall mean the person who is the subject of the protected health information.
7. Protected Health Information ("PHI"). "Protected Health Information" or PHI shall mean individually identifiable health information that is transmitted or maintained in any form or medium.
8. Required by Law. "Required by Law" shall mean a mandate contained in law that compels a use or disclosure of PHI.
9. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her Designee.
10. Sensitive Personal Information. "Sensitive Personal Information" shall mean an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: a) social security number; driver's license number or government-issued identification number; or account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or b) information that identifies an individual and relates to: the physical or mental health or condition of the individual; the provision of health care to the individual; or payment for the provision of health care to the individual.

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11. Unsecured PHI. "Unsecured PHI" shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111–5 on the HHS Web site.

B. Obligations of Business Associate. Business Associate agrees to comply with applicable federal and state confidentiality and security laws, specifically the provisions of the HIPAA Rules applicable to business associates, including:

1. Use and Disclosure of PHI. Except as otherwise permitted by this Agreement or applicable law, Business Associate shall not use or disclose PHI except as necessary to provide the Services described above to or on behalf of Covered Entity, and shall not use or disclose PHI that would violate the HIPAA Rules if used or disclosed by Covered Entity. Provided, however, Business Associate may use and disclose PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities. In such cases, Business Associate shall:

- a. Provide information and training to members of its workforce who use or disclose PHI regarding the confidentiality requirements of the HIPAA Rules and this Agreement;

- b. Obtain reasonable assurances from the person or entity to whom the PHI is disclosed that:

1. the PHI will be held confidential and further used and disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity; and

2. the person or entity will notify Business Associate of any instances of which the person is aware the confidentiality of the PHI has been breached; and

- c. Agree to notify the Privacy Officer of Covered Entity of any instances of which it is aware PHI was used or disclosed for a purpose that is not

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2. Data Aggregation. The Services Business Associate provides for Covered Entity may include data aggregation.
3. De-identified Information. The Business Associate will not use or disclose de-identified PHI, except as necessary to provide the Services described above.
4. Safeguards.
  - a. Business Associate shall maintain appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this Agreement or as Required by Law.
  - b. Business Associate shall assure that all PHI be secured when accessed by Business Associate's employees, agents or subcontractors. Any access to PHI by Business Associate's employees, agents or subcontractor shall be limited to legitimate business needs while working with PHI.
5. Minimum Necessary. Business Associate shall ensure that all uses and disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed.
6. Disclosure to Agents and Subcontractors. Business Associate shall not disclose PHI received from Covered Entity to agents, including a subcontractor, except in the course of, and as necessary to, providing the Services described above.
7. Individual Rights Regarding Designated Record Sets.
  - a. If Business Associate receives Protected Health Information from Covered Entity in a Designated Record Set, then Business Associate agrees to provide access, at the request of Covered Entity, 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

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45 CFR § 164.524, provided that Business Associate shall have at least twenty (20) days from Covered Entity notice to provide access to, or deliver such information.

- b. If Business Associate receives Protected Health Information from Covered Entity in a Designated Record Set, then Business Associate agrees to make any amendments to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, provided that Business Associate shall have at least twenty (20) days from Covered Entity notice to make an amendment.
  - c. Business Associate agrees to provide to an Individual, and in the time and manner mutually agreed by the Parties, information collected in accordance with Section 1(h) of this Agreement, to permit system to respond to a request by an Individual for an Accounting of Disclosures of PHI in accordance with 45 CFR 164.528. Upon termination of this Agreement, Contractor will respond to an Individual's request for an Accounting of Disclosures of PHI for a period of up to six years.
8. Internal Practices, Policies and Procedures. Business Associate agrees to make internal practices, books, and records, relating to the use and disclosure of PHI received from, or received by Business Associate on behalf of Covered Entity available to the Covered Entity, or to the Secretary or its designee for purposes determining Covered Entity's compliance with the HIPAA Rules.
  9. Authorization. The use or disclosure of PHI in this Agreement is not based upon an Individual's specific authorization for the use or disclosure of his or her PHI.
  10. Knowledge of HIPAA Rules. Business Associate agrees to review and understand the HIPAA Rules as it applies to Business Associate, and to comply with the applicable requirements of the HIPAA Rule, as well as any applicable amendments.
  11. Information Breach Notification for PHI. Business Associate expressly recognizes that Covered Entity has certain reporting and disclosure obligations to the Secretary and the Individual in case of a security breach of Unsecured PHI. Business Associate agrees to notify System of any Breach involving System PHI within two (2) business days of its discovery by Administrator and further, to provide Covered Entity no later than fifteen (15) days following discovery of a verified Breach all information required by 45 CFR 164.410 and any other

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information required by Covered Entity to comply with its obligation under the HITECH Act with regard to Breach notification and reporting and to provide to System, without unreasonable delay and within the timeframes prescribed, all other information regarding the Breach required by System to allow System to comply with its obligations under HIPAA and/or HITECH and any applicable rule adopted thereto as to any individual affected by the Breach and/or the Secretary.

12. Notice. Any notice required by Business Associate to Covered Entity shall be submitted the individuals designated in the Underlying Agreement to receive all notices pertaining to the Underlying Agreement, except that all Notices required by Section B(11) of this Agreement shall also be provided to, and all required consents shall be obtained from, Covered Entity's HIPAA Privacy Officer:

Barbara Holthaus, Senior Attorney &  
Systemwide Privacy Officer Coordinator  
Office of General Counsel  
The University of Texas System  
201 West 7<sup>th</sup> St, Suite 600  
Austin, Texas 78701-2902  
Fax 512/499-4523

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

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C. Permitted Uses and Disclosures by Business Associates.

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 the Underlying Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. Also, Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with the HIPAA Rules.

1. Use. Business Associate will not, and will ensure that its directors, officers, employees, contractors and other agents do not, use PHI other than as permitted or required by Business Associate to perform the Services or as required by law, but in no event in any manner that would constitute a violation of the Privacy Standards or Security Standards if used by Covered Entity.
2. Disclosure. Business Associate will not, and will ensure that its directors, officers, employees, contractors, and other agents do not, disclose PHI other than as permitted pursuant to this arrangement or as required by law, but in no event disclose PHI in any manner that would constitute a violation of the Privacy Standards or Security Standards if disclosed by Covered Entity.
3. Business Associate acknowledges and agrees that Covered Entity owns all right, title, and interest in and to all PHI, and that such right, title, and interest will be vested in Covered Entity. Neither Business Associate nor any of its employees, agents, consultants or assigns will have any rights in any of the PHI, or right to use the PHI in any form including, but not limited to, stripped or aggregated information, or statistical information derived from or in connection with the PHI, except as expressly set forth above. Business Associate represents, warrants, and covenants that it will not compile and/or distribute analyses to third parties using any PHI without Covered Entity's express written consent.

D. Application of Security and Privacy Provisions to Business Associate.

1. Security Measures. Sections 164.308, 164.310, 164.312 and 164.316 of Title 45 of the Code of Regulations dealing with the administrative, physical and technical safeguards as well as policies, procedures and documentation requirements that apply to Covered Entity shall in the same manner apply to Business Associate. Any additional security requirements contained in Sub Title D of Title IV of the HITECH Act that apply to Covered Entity also apply to

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Business Associate to the extent that Business Associate creates, receives, or has access to or transmit any electronic PHI pursuant to this Agreement or the Underlying Agreement.

2. Privacy Provisions. The enhanced HIPAA privacy requirements including but not necessarily limited to accounting for certain PHI disclosures for treatment, restrictions on the sale of PHI, restrictions on marketing communications, payment and health care operations contained in Subtitle D of the HITECH Act that apply to the Covered entity shall equally apply to the Business Associate.
3. Application of Civil and Criminal Penalties. If Business Associate violates any security or privacy provision specified in subparagraphs (1) and (2) above, sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to Business Associate with respect to such violation in the same manner that such sections apply to Covered Entity if it violates such provisions as determined by the appropriate governmental agency.

E. Obligations of Covered Entity. If deemed applicable by Covered Entity, Covered Entity shall:

1. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI 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 PHI
4. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.
5. If Covered Entity or Business Associate receives a request from an Individual for confidential communication of PHI by alternative means or at alternative locations in accordance with 45 CFR 164.522(b), Covered Entity, prior to

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- 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 Associate of its decision on the request for confidential communication of PHI.
6. Covered Entity shall provide Business Associate the necessary information to fulfill Business Associate's obligations under this Agreement, including but not limited to, a written statement, if applicable of the restrictions for the Disclosure of PHI by Business Associate to the Employer. Employer represents and warrants that the Employer's benefit Plan Documents have been amended in compliance with 45 CFR 164.314(b) and 45 CFR 164.504(f) and that information from the applicable amendments shall be provided to Business Associate's, as applicable.
  7. Covered Entity shall identify its Business Associates and Covered Entity employees to whom Business Associate is permitted to directly Disclose PHI. Covered Entity shall provide information on any limitations or restrictions on Business Associate's Disclosure to a specific Business Associate or Covered Entity employee.

F. Term and Termination.

1. Term. This Agreement shall be effective as of the Effective Date and shall be terminated when all PHI provided to Business Associate by Covered Entity, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.
2. 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 as well as the Underlying 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 as well as the Underlying Agreement if Business Associate has 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.

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3. **Return of System Records.** The Parties agree that returning or destroying the PHI is not feasible due to: (1) state or federal regulatory requirements applicable to Contractor and System, or (2) Contractor's record retention policies. Therefore, Contractor shall extend the protections of this Agreement to such PHI, limiting further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such PHI.

G. Miscellaneous.

1. Mitigation. If Business Associate violates this Agreement or either of the HIPAA Rules, Business Associate agrees to mitigate any damage caused by such breach.
2. Rights of Proprietary Information. Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.
3. Survival. The respective rights and obligations of Business Associate under this Agreement shall survive the termination of this Agreement.
4. Amendments. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. However, the Parties agree to amend this Agreement from time to time as necessary, in order to allow Covered Entity to comply with the requirements of the HIPAA Rules.
5. Choice of Law. This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the State of Texas, without regard to applicable conflict of laws principles.
6. No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.
7. Severability. The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or

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unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.

8. No Third Party Beneficiaries. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.
9. Headings. The descriptive headings of the articles, sections, subsections, exhibits and schedules of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in anyway the meaning or interpretation of this Agreement.
10. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes all previous written or oral understandings, agreements, negotiations, commitments, and any other writing and communication by or between the Parties with respect to the subject matter hereof. In the event of any inconsistencies between any provisions of this Agreement in any provisions of the Exhibits, Riders, or amendments, the provisions of this Agreement shall control.
11. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules and any applicable state confidentiality laws. The provisions of this Agreement shall prevail over the provisions of any other agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement or the HIPAA Rules.
12. Regulatory References. A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.
13. Indemnification. BUSINESS ASSOCIATE SHALL INDEMNIFY AND HOLD HARMLESS COVERED ENTITY FOR COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES), DAMAGES AND OTHER LOSSES RESULTING FROM ANY BREACH OF THIS AGREEMENT. COVERED ENTITY SHALL INDEMNIFY AND HOLD HARMLESS BUSINESS ASSOCIATE FOR COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES),

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DAMAGES AND OTHER LOSSES RESULTING FROM ANY BREACH OF THIS AGREEMENT  
INCLUDING, CLAIMS ARISING FROM ACTIONS TAKEN BY BUSINESS ASSOCIATE AT THE  
SPECIFIC DIRECTION OF COVERED ENTITY. TO THE EXTENT THAT THERE IS A CONFLICT  
BETWEEN THIS AGREEMENT AND OTHER AGREEMENTS, THE TERMS OF THIS  
AGREEMENT SHALL GOVERN REGARDING INDEMNIFICATION FOR ANY BREACH OF  
OBLIGATIONS UNDER THIS AGREEMENT. THIS SECTION SHALL SURVIVE THE EXPIRATION  
OR EARLIER TERMINATION OF THIS AGREEMENT.

SAMPLE CONTRACT ONLY. DO NOT SIGN. DO NOT EDIT OR MARK UP

IN WITNESS WHEREOF, Business Associate and Covered Entity have executed this Agreement  
on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**COVERED ENTITY (UT System)**

**BUSINESS ASSOCIATE (**

By: \_\_\_\_\_

By: \_\_\_\_\_

Scott C Kelley  
Executive Vice Chancellor  
for Business Affairs

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

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

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THE UNIVERSITY OF TEXAS SYSTEM ADMINISTRATION

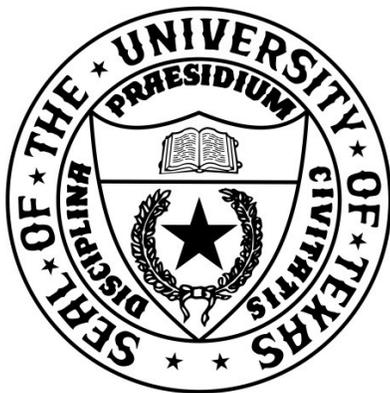
OCTOBER 2015

## **APPENDIX III**

### **POLICY ON UTILIZATION**

### **HISTORICALLY UNDERUTILIZED BUSINESSES**

### **VENDOR/COMMODITIES**



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

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○ HSP Good Faith Effort Method A (Attachment A)	Page 15
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Minority and Trade Organizations contact information is available online at: <a href="http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/">http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/</a>	
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**The University of Texas System  
Office of HUB Development**

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

**Introduction**

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

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

- 11.2% for heavy construction other than building contracts;
- 21.1% for all building construction, including general contractors and operative builders contracts;
- 32.9% for all special trade construction contracts;
- 23.7% for professional services contracts;
- 26% for all other services contracts, and
- 21.1% for commodities contracts.

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

***NOTE: The goals above are the State of Texas HUB goals. For purposes of this procurement, The University of Texas System goals listed in the Special Instructions on page 11 will apply.***

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

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

1. In all contracts for professional services, contracting services, and/or commodities with an expected value of \$100,000 or more, The University of Texas System, “UT System” or the “University” will indicate in the purchase solicitation (e.g. RFQ, RFP, or CSP) whether or not subcontracting opportunities are probable in connection with the contract. A HUB Subcontracting Plan is a required element of the architect, contractor or vendor Response to the purchase solicitation. The HUB Subcontracting Plan shall be developed and administered in accordance with the Policy. **Failure to submit a required HUB Subcontracting Plan (HSP) will result in rejection of the Response.**
2. If subcontracting opportunities are probable UT System will declare such probability in its invitations for bids, requests for proposals, or other purchase solicitation documents, and shall require submission of the appropriate HUB Subcontracting Plan with the Response.
  - a. When subcontracting opportunities are probable, and the Respondent proposes to subcontract any part of the work, the Respondent shall submit a **HUB Subcontracting Plan as prescribed by the Texas Comptroller** identifying subcontractors **[34 TAC §20.14 (d) (1)(A)(B)(C)(D) (2) (3)(A)(B)(C)(D)(E)(F) (4)(A)(B)]**.
  - b. When subcontracting opportunities are probable, but the Respondent can perform such opportunities with its employees and resources, the Respondent’s HUB Subcontracting Plan shall include **Section 3 –Self Performance [34 TAC §20.14 (d) (5) (A) (B) (C) (D)]**.
3. If subcontracting opportunities are not probable UT System will declare such probability in its invitations or bids, requests for proposals, or other purchase solicitation documents and shall require submission of the appropriate HUB Subcontracting Plan with the Response.
  - a. When subcontracting opportunities are not probable, and the Respondent proposes to perform all the work with its employees and resources, the Respondent shall submit a HUB Subcontracting Plan that includes **Section 3 – Self Performance Justification**.
  - b. When subcontracting opportunities are not probable, but the Respondent proposes to subcontract any part of the work, the Respondent shall submit a **HUB Subcontracting Plan as prescribed by the Texas Comptroller** identifying subcontractors.
4. Respondents shall follow, but are not limited to, procedures listed in the Policy when developing a HUB Subcontracting Plan.
5. **Competitive Sealed Proposals (CSP):** Respondents shall submit a HUB Subcontracting Plan (packaged separately) twenty-four (24) hours following the Response submission date and time or as prescribed by the project manager.
6. In making a determination whether a good faith effort has been made in the development of the required HUB Subcontracting Plan, UT System shall follow the procedures listed in the Policy. If accepted by the

University, the HUB Subcontracting Plan shall become a provision of the Respondent's contract with UT System. **Revisions necessary to clarify and enhance information submitted in the original HUB subcontracting plan may be made in an effort to determine good faith effort.** Any revisions after the submission of the HSP shall be approved by the HUB Coordinator.

7. **Design Build (DB) and Construction Manager @ Risk (CM@R) responses:** Respondents to a "design build" or "construction manager-at-risk" purchase solicitation shall include the Letter of HUB Commitment in their Response attesting that the Respondent has read and understands the Policy on Historically Underutilized Businesses (HUBs), and a HUB Subcontracting Plan for all preconstruction and construction services including a HUB Subcontracting Plan as prescribed by the Texas Comptroller specific to construction services identifying first, second and third tier subcontractors. Respondents proposing to perform Part 1 preconstruction services with their own resources and employees shall submit, as part of their HSP, the Self Performance Justification.
8. **DB and CM@R HUB Contract Requirements:** Contractors engaged under design-build and construction manager-at-risk contracts shall submit a HUB Subcontracting Plan for all preconstruction and construction Phase Services, and, must further comply with the requirements of this Policy by developing and submitting a HUB Subcontracting Plan for each bid package issued in buying out the guaranteed maximum or lump sum price of the project. The HSP shall identify first, second and third tier subcontractors.
9. The University of Texas System shall reject any Response that does not include a fully completed HSP as required. **An incomplete HUB Subcontracting Plan is considered a material failure to comply with the solicitation for proposals.**
10. **Changes to the HUB Subcontracting Plan:** Once a Respondent's HSP is accepted by UT System and becomes a provision of the contract between Respondent and UT System, the Respondent can only change that HSP if (a) the Respondent complies with 34 TAC Section 20.14; (b) the Respondent provides its proposed changes to UT System for review; (c) UT System (including UT System's HUB Coordinator) approves Respondent's proposed changes to its HSP; and (d) UT System and the Respondent amend their contract (in writing signed by authorized officials of both parties) in order to replace the contract's existing HSP with a revised HSP containing the changes approved by UT System.
11. **Expansion of Work:** If, after entering into a contract with a Respondent as a result of a purchase solicitation subject to the Policy, UT System wishes to expand the scope of work that the Respondent will perform under that contract through a change order or any other contract amendment (the "additional work"), UT System will determine if the additional work contains probable subcontracting opportunities not identified in the initial purchase solicitation for that contract. If UT System determines that probable subcontracting opportunities exist for the additional work, then the Respondent must submit to UT System an amended HUB Subcontracting Plan covering those opportunities that complies with the provisions of 34 TAC Section 20.14. Such an amended HSP must be approved by UT System and the Respondent (including UT System's HUB Coordinator) before (a) the contract may be amended by UT System and the Respondent to include the additional work and the amended HSP and (b) the Respondent performs the additional work. If a Respondent subcontracts any of the additional subcontracting opportunities identified by UT System for any additional work (i) without complying with 34 TAC Section 20.14 or (ii) before UT System and that Respondent amend their contract to include a revised HSP that authorizes such subcontracting, then the Respondent will be deemed to be in breach of its contract with UT System. As a result of such breach, UT System will be entitled to terminate its contract with the Respondent, and the Respondent will be subject to any remedial actions provided by Texas law, including those set forth in Chapter 2161, Texas Government Code, and 34 TAC Section 20.14. The University may report a Respondent's nonperformance under a

contract between that Respondent and UT System to the Texas Comptroller in accordance with 34 TAC Sections 20.10 through 20.18.

12. A Response may state that the Respondent intends to perform all the subcontracting opportunities with its own employees and resources in accordance with the Policy. However, if such a Respondent enters into a contract with UT System as a result of such a Response but later desires to subcontract any part of the work set forth in that contract, before the Respondent subcontracts such work it must first change its HUB Subcontracting Plan in accordance with the provisions of Section 10 above.
13. The University of Texas System shall require a professional services firm, contractor or vendor to whom a contract has been awarded to report the identity and the amount paid to its subcontractors on a monthly basis using a **HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report (PAR)** as a condition for payment.
14. If the University of Texas System determines that the successful Respondent failed to implement an approved HUB Subcontracting Plan in good faith, UT System, in addition to any other remedies, may report nonperformance to the Texas Comptroller in accordance with 34 TAC Section 20.14, (g) (1) related remedies of nonperformance to professional services firms, contractor and vendor implementation of the HSP.
15. In the event of any conflict between this “Summary of Requirements” and the remainder of the HUB Policy, the remainder of the HUB Policy will control.
16. These requirements, including the attachments referred to above, may be downloaded over the Internet from <http://utsystem.edu/offices/historically-underutilized-business/hub-forms>. For additional information contact:  
The Office of HUB Programs  
The University of Texas System  
210 West 6<sup>th</sup> Street  
Suite B.140E  
Austin, Texas 78701  
512/499/4530

**Other Services/Vendor/Commodities HSP  
Summary of Attachments Required from Respondents**

	Letter of Transmittal Page 8	Letter of HUB Commitment Page 9	HUB Subcontracting Plan (HSP) Pages 11-18	Progress Assessment Report (PAR) Page 19
<b>1. UT SYSTEM DETERMINES THAT SUBCONTRACTING OPPORTUNITIES ARE PROBABLE.</b>				
<b>1. A. Respondent Proposes Subcontractors:</b> Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are probable</u> .	X		X	
<b>1.B. Respondent Proposes Self-Performance:</b> Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are probable</u> , but the Respondent can perform such opportunities with its employees and resources.	X		X	
<b>2. UT SYSTEM DETERMINES THAT SUBCONTRACTING OPPORTUNITIES ARE NOT PROBABLE.</b>				
<b>2.A. Respondent Proposes Self-Performance:</b> Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are not probable</u> , but the Respondent can perform such opportunities with its employees and resources.	X		X	
<b>2. B. Respondent Proposes Subcontractors:</b> Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are not probable</u> , but the Respondent proposes to subcontract any part of the work.	X		X	
<b>3. INDEFINITE DURATION/INDEFINITE QUANTITY CONTRACTS:</b> Submit with initial qualifications. Attachments required from the Respondent prior to contract execution for each contract associated with a solicitation for miscellaneous services.		X	X	
<b>4. CHANGES IN THE HUB SUBCONTRACTING PLAN AFTER AWARD:</b> Attachments required from the Respondent to whom a contract has been awarded if it desires to make changes to the approved HUB Subcontracting Plan.			X	
<b>5. REPORTING:</b> Progress Assessment Report (PAR) required with all payment requests. The submittal of this attachment is a condition of payment.				X

(RESPONDENT’S BUSINESS LETTERHEAD)

Date

Regional HUB Coordinator  
The Office of HUB Programs  
The University of Texas System  
201 W. 6<sup>th</sup> St., Room B.140E  
Austin, Texas 78701

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

Dear ,

In accordance with the requirements outlined in the specification section “HUB Participation Program,” I am pleased to forward this HUB Subcontracting Plan as an integral part of our response in connection with your invitation for Request for Proposals referencing the above project.

I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs). I also understand the State of Texas Annual Procurement Goal according to 34 Texas Administrative Code Section §20.13, and the goal as stated in the Agency Special Instructions section of the HUB Subcontracting Plan, page 11.

*Select one of the following:*

- \_\_\_\_\_ 32.9% for all special trade construction contracts
- \_\_\_\_\_ 26% for all other services contracts
- \_\_\_\_\_ 31.04% for commodities contracts

Subcontractors	No. of Subcontractors	Total Subcontract \$ Value	Total Estimated HUB %	% Minority Owned	% Woman Owned	% Service Disabled Veteran
HUB						
NON-HUB						
TOTAL						

I understand the above HUB percentages must represent Texas Comptroller HUB certification standards. For each of the listed HUB firms, I have attached a Texas Comptroller HUB Certification document.

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

Sincerely,

(Project Executive)

cc: Contract Administrator

(RESPONDENT'S BUSINESS LETTERHEAD)

Date

Regional HUB Coordinator  
The Office of HUB Programs  
The University of Texas System  
201 W. 6<sup>th</sup> St., Room B.140E  
Austin, TX 78701

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

Dear ,

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

I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs). I also understand the State of Texas Annual Procurement Goal according to 34 Texas Administrative Code Section §20.13, and the goal as stated in the Agency Special Instructions section of the HUB Subcontracting Plan, page 11.

Good Faith Effort will be documented by a two part HUB Subcontracting Plan (HSP) process. Part one (1) of the HSP submission will reflect self-performance with the appropriate sections completed per the instructions in Option One of the HSP Quick Checklist located on page 10 of The University of Texas Exhibit H Policy on Utilization of Historically Underutilized Businesses (HUBs).

As the scope of work/project is defined under this ID/IQ contract, part two (2) of the process will require a revised HUB Subcontracting Plan (HSP) and the Good Faith Effort will be documented per instructions in Attachment B (page 16-17) and Option Three of the HSP Quick Check List. The revised HUB Subcontracting Plan will be submitted to the HUB Coordinator prior to execution of each contract process. Documentation of subcontracted work will be provided with each pay request.

Sincerely,

(Project Executive)

cc: Contract Administrator



# HUB Subcontracting Plan (HSP)

## QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

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

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

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

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

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

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

**Option Four** - If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources, complete:

- Section 1 - Respondent and Requisition Information
- Section 2a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources
- Section 3 - Self Performing Justification
- Section 4 - Affirmation
- Letter of HUB Commitment

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



# HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only aggregate percentage of the contract expected to be subcontracted to HUBs with which the respondent does not have a continuous contract\* in place for more than five (5) years shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

In accordance with 34 TAC §20.13 (d)(1)9D)(iii), the goals stated below are the applicable goals for The University of Texas System Administration only.

**Commodities HUB Goal – 31.04%**

**Other Services HUB Goal – 26%**

**Special Trades HUB Goal – 32.9%**

- Responses shall submit a completed HUB Subcontracting Plan (HSP) to be considered responsive. Failure to submit a completed HSP shall result in the bid, proposal or other expression of interest to be considered NON-responsive.
- Respondents who intend to Self-Perform all of their work shall submit an HSP for Self-Performance (pages 11-14).
- HUB Subcontracting Plan (HSP) Prime Contractor Assessment Report (PAR) shall be submitted with each request for payment and is a condition of payment.
- Only fax, email and certified letter are acceptable documentation of the Good Faith Effort.

## SECTION-1: RESPONDENT AND REQUISITION INFORM

- a. Respondent (Company) Name: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_  
 Point of Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_ Fax #: \_\_\_\_\_
- b. Is your company a State of Texas certified HUB?  - Yes  - No
- c. Requisition #: \_\_\_\_\_ Bid Open Date: \_\_\_\_\_

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

**SECTION 2: SUBCONTRACTING INTENTIONS RESPONDENT**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b, of this SECTION and continue to Item c of this SECTION.)
- No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If No, continue to SECTION 3 and SECTION 4.)

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

	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- No (If No, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract\* in place with for five (5) years or less meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements".

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

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

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

**SECTION-2: SUBCONTRACTING INTENTIONS RESPONDENT (CONTINUATION SHEET)**

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

	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years.</u>	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%

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

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

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

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

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

**SECTION-4: AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature	Printed Name	Title	Date (mm/dd/yyyy)
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**Reminder:**

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



# HSP Good Faith Effort - Method B (Attachment B)

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

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

**SECTION B-1: SUBCONTRACTING OPPORTUNITY**

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

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

**SECTION B-2: MENTOR PROTÉGÉ PROGRAM**

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, to continue to SECTION B-4.)
- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

**SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY**

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://mycpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB Status code "A" signifies that the company is a Texas certified HUB.
- b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	VID Number	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>.
- d. List two (2) trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No

Appendix G

(Attachment B)

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

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

## SECTION B-4: SUBCONTRACTOR SELECTION

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

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

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

Company Name	Texas certified HUB	VID Number (Required if Texas certified HUB)	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

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

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





**The University of Texas System Office of Employee Benefits**  
**RFP for Administration of the UT Flex Health Care Flexible Spending**  
**Account and Dependent Day Care Flexible Spending Account Plans**  
**for the Employees of the University of Texas System beginning**  
**September 1, 2016**

**Appendix H1 – EIR Accessibility Warranty**

**ACCESS BY INDIVIDUALS WITH DISABILITIES**

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

# VPAT™

## Voluntary Product Accessibility Template®

### Version 1.3

The purpose of the **Voluntary Product Accessibility Template**, or **VPAT™**, is to assist Federal contracting officials and other buyers in making preliminary assessments regarding the availability of commercial “Electronic and Information Technology” products and services with features that support accessibility. It is assumed and recommended that offerers will provide additional contact information to facilitate more detailed inquiries.

The first table of the Template provides a summary view of the Section 508 Standards. The subsequent tables provide more detailed views of each subsection. There are three columns in each table. Column one of the Summary Table describes the subsections of subparts B and C of the Standards. The second column describes the supporting features of the product or refers you to the corresponding detailed table, e.g., “equivalent facilitation.” The third column contains any additional remarks and explanations regarding the product. In the subsequent tables, the first column contains the lettered paragraphs of the subsections. The second column describes the supporting features of the product with regard to that paragraph. The third column contains any additional remarks and explanations regarding the product.

**Date:**

**Name of Product:**

**Contact for more Information (name/phone/email):**

<b>Summary Table</b> <b>VPAT™</b> <b>Voluntary Product Accessibility Template®</b>		
<i>Criteria</i>	Supporting Features	Remarks and explanations
Section 1194.21 <a href="#">Software Applications and Operating</a>		

<a href="#">Systems</a>		
Section 1194.22 <a href="#">Web-based Internet Information and Applications</a>		
Section 1194.23 <a href="#">Telecommunications Products</a>		
Section 1194.24 <a href="#">Video and Multi-media Products</a>		
Section 1194.25 <a href="#">Self-Contained, Closed Products</a>		
Section 1194.26 <a href="#">Desktop and Portable Computers</a>		
Section 1194.31 <a href="#">Functional Performance Criteria</a>		
Section 1194.41 <a href="#">Information, Documentation and Support</a>		

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## **Section 1194.21 Software Applications and Operating Systems – Detail**

**VPAT™**

### **Voluntary Product Accessibility Template®**

<i>Criteria</i>	<b>Supporting Features</b>	<b>Remarks and explanations</b>
(a) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.		
(b) Applications shall not disrupt or disable activated features of other products that are identified as		

<p>accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.</p>		
<p>(c) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that Assistive Technology can track focus and focus changes.</p>		
<p>(d) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to Assistive Technology. When an image represents a program element, the information conveyed by the image must also be available in text.</p>		
<p>(e) When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.</p>		
<p>(f) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.</p>		

<p>(g) Applications shall not override user selected contrast and color selections and other individual display attributes.</p>		
<p>(h) When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.</p>		
<p>(i) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.</p>		
<p>(j) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.</p>		
<p>(k) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.</p>		
<p>(l) When electronic forms are used, the form shall allow people using Assistive Technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.</p>		

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***Section 1194.22 Web-based Internet information and applications – Detail***

# VPAT™

## Voluntary Product Accessibility Template®

<i>Criteria</i>	Supporting Features	Remarks and explanations
(a) A text equivalent for every non-text element shall be provided (e.g., via "alt", "longdesc", or in element content).		
(b) Equivalent alternatives for any multimedia presentation shall be synchronized with the presentation.		
(c) Web pages shall be designed so that all information conveyed with color is also available without color, for example from context or markup.		
(d) Documents shall be organized so they are readable without requiring an associated style sheet.		
(e) Redundant text links shall be provided for each active region of a server-side image map.		
(f) Client-side image maps shall be provided instead of server-side image maps except where the regions cannot be defined with an available geometric shape.		
(g) Row and column headers shall be identified for data tables.		
(h) Markup shall be used to associate data cells and header cells for data tables that have two or more logical levels of row or column headers.		
(i) Frames shall be titled with text that facilitates frame identification and navigation		
(j) Pages shall be designed to		

<p>avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.</p>		
<p>(k) A text-only page, with equivalent information or functionality, shall be provided to make a web site comply with the provisions of this part, when compliance cannot be accomplished in any other way. The content of the text-only page shall be updated whenever the primary page changes.</p>		
<p>(l) When pages utilize scripting languages to display content, or to create interface elements, the information provided by the script shall be identified with functional text that can be read by Assistive Technology.</p>		
<p>(m) When a web page requires that an applet, plug-in or other application be present on the client system to interpret page content, the page must provide a link to a plug-in or applet that complies with §1194.21(a) through (l).</p>		
<p>(n) When electronic forms are designed to be completed on-line, the form shall allow people using Assistive Technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.</p>		
<p>(o) A method shall be provided that permits users to skip repetitive navigation links.</p>		
<p>(p) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.</p>		

Note to 1194.22: The Board interprets paragraphs (a) through (k) of this section as consistent with the following priority 1 Checkpoints of the Web Content Accessibility Guidelines 1.0 (WCAG 1.0) (May 5 1999) published by the Web Accessibility Initiative of the World Wide Web Consortium: Paragraph (a) - 1.1, (b) - 1.4, (c) - 2.1, (d) - 6.1, (e) - 1.2, (f) - 9.1, (g) - 5.1, (h) - 5.2, (i) - 12.1, (j) - 7.1, (k) - 11.4.

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**Section 1194.23 Telecommunications**  
**Products – Detail**  
**VPAT™**  
**Voluntary Product Accessibility Template®**

<i>Criteria</i>	Supporting Features	Remarks and explanations
(a) Telecommunications products or systems which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. Microphones shall be capable of being turned on and off to allow the user to intermix speech with TTY use.		
(b) Telecommunications products which include voice communication functionality shall support all commonly used cross-manufacturer non-proprietary standard TTY signal protocols.		
(c) Voice mail, auto-attendant, and interactive voice response telecommunications systems shall be usable by TTY users with their		

TTYs.		
(d) Voice mail, messaging, auto-attendant, and interactive voice response telecommunications systems that require a response from a user within a time interval, shall give an alert when the time interval is about to run out, and shall provide sufficient time for the user to indicate more time is required.		
(e) Where provided, caller identification and similar telecommunications functions shall also be available for users of TTYs, and for users who cannot see displays.		
(f) For transmitted voice signals, telecommunications products shall provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, at least one intermediate step of 12 dB of gain shall be provided.		
(g) If the telecommunications product allows a user to adjust the receive volume, a function shall be provided to automatically reset the volume to the default level after every use.		
(h) Where a telecommunications product delivers output by an audio transducer which is normally held up to the ear, a means for effective magnetic wireless coupling to hearing technologies shall be provided.		
(i) Interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) shall be reduced to the lowest possible level that allows a user of hearing technologies to utilize the		

telecommunications product.		
(j) Products that transmit or conduct information or communication, shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide the information or communication in a usable format. Technologies which use encoding, signal compression, format transformation, or similar techniques shall not remove information needed for access or shall restore it upon delivery.		
(k)(1) Products which have mechanically operated controls or keys shall comply with the following: Controls and Keys shall be tactilely discernible without activating the controls or keys.		
(k)(2) Products which have mechanically operated controls or keys shall comply with the following: Controls and Keys shall be operable with one hand and shall not require tight grasping, pinching, twisting of the wrist. The force required to activate controls and keys shall be 5 lbs. (22.2N) maximum.		
(k)(3) Products which have mechanically operated controls or keys shall comply with the following: If key repeat is supported, the delay before repeat shall be adjustable to at least 2 seconds. Key repeat rate shall be adjustable to 2 seconds per character.		
(k)(4) Products which have mechanically operated controls or keys shall comply with the		

<p>following: The status of all locking or toggle controls or keys shall be visually discernible, and discernible either through touch or sound.</p>		
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**Section 1194.24 Video and Multi-media  
Products – Detail  
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<b>Criteria</b>	<b>Supporting Features</b>	<b>Remarks and explanations</b>
<p>a) All analog television displays 13 inches and larger, and computer equipment that includes analog television receiver or display circuitry, shall be equipped with caption decoder circuitry which appropriately receives, decodes, and displays closed captions from broadcast, cable, videotape, and DVD signals. As soon as practicable, but not later than July 1, 2002, widescreen digital television (DTV) displays measuring at least 7.8 inches vertically, DTV sets with conventional displays measuring at least 13 inches vertically, and stand-alone DTV</p>		

<p>tuners, whether or not they are marketed with display screens, and computer equipment that includes DTV receiver or display circuitry, shall be equipped with caption decoder circuitry which appropriately receives, decodes, and displays closed captions from broadcast, cable, videotape, and DVD signals.</p>		
<p>(b) Television tuners, including tuner cards for use in computers, shall be equipped with secondary audio program playback circuitry.</p>		
<p>(c) All training and informational video and multimedia productions which support the agency's mission, regardless of format, that contain speech or other audio information necessary for the comprehension of the content, shall be open or closed captioned.</p>		
<p>(d) All training and informational video and multimedia productions which support the agency's mission, regardless of format, that contain visual information necessary for the comprehension of the content, shall be audio described.</p>		
<p>(e) Display or</p>		

<p>presentation of alternate text presentation or audio descriptions shall be user-selectable unless permanent.</p>		
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**Section 1194.25 Self-Contained, Closed Products – Detail**

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<b>Criteria</b>	<b>Supporting Features</b>	<b>Remarks and explanations</b>
<p>(a) Self contained products shall be usable by people with disabilities without requiring an end-user to attach Assistive Technology to the product. Personal headsets for private listening are not Assistive Technology.</p>		
<p>(b) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.</p>		
<p>(c) Where a product utilizes touchscreens or contact-sensitive controls, an input method shall be provided that complies with §1194.23 (k) (1)</p>		

through (4).		
(d) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.		
(e) When products provide auditory output, the audio signal shall be provided at a standard signal level through an industry standard connector that will allow for private listening. The product must provide the ability to interrupt, pause, and restart the audio at anytime.		
(f) When products deliver voice output in a public area, incremental volume control shall be provided with output amplification up to a level of at least 65 dB. Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.		
(g) Color coding shall not be used as the only means of conveying information, indicating an		

<p>action, prompting a response, or distinguishing a visual element.</p>		
<p>(h) When a product permits a user to adjust color and contrast settings, a range of color selections capable of producing a variety of contrast levels shall be provided.</p>		
<p>(i) Products shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.</p>		
<p>(j) (1) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: The position of any operable control shall be determined with respect to a vertical plane, which is 48 inches in length, centered on the operable control, and at the maximum protrusion of the product within the 48 inch length on products which are freestanding, non-portable, and intended to be used in one location and which have operable controls.</p>		
<p>(j)(2) Products which are freestanding, non-portable, and intended to be used in one location and which have operable</p>		

<p>controls shall comply with the following: Where any operable control is 10 inches or less behind the reference plane, the height shall be 54 inches maximum and 15 inches minimum above the floor.</p>		
<p>(j)(3) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: Where any operable control is more than 10 inches and not more than 24 inches behind the reference plane, the height shall be 46 inches maximum and 15 inches minimum above the floor.</p>		
<p>(j)(4) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: Operable controls shall not be more than 24 inches behind the reference plane.</p>		

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**Section 1194.26 Desktop and Portable  
Computers – Detail**

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<b>Criteria</b>	<b>Supporting Features</b>	<b>Remarks and explanations</b>
(a) All mechanically operated controls and keys shall comply with §1194.23 (k) (1) through (4).		
(b) If a product utilizes touchscreens or touch-operated controls, an input method shall be provided that complies with §1194.23 (k) (1) through (4).		
(c) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.		
(d) Where provided, at least one of each type of expansion slots, ports and connectors shall comply with publicly available industry standards		

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## **Section 1194.31 Functional Performance**

**Criteria – Detail****VPAT™****Voluntary Product Accessibility Template®**

<b>Criteria</b>	<b>Supporting Features</b>	<b>Remarks and explanations</b>
(a) At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for Assistive Technology used by people who are blind or visually impaired shall be provided.		
(b) At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for Assistive Technology used by people who are visually impaired shall be provided.		
(c) At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for Assistive Technology used by people who are deaf or hard of hearing shall be provided		
(d) Where audio		

<p>information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an enhanced auditory fashion, or support for assistive hearing devices shall be provided.</p>		
<p>(e) At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for Assistive Technology used by people with disabilities shall be provided.</p>		
<p>(f) At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.</p>		

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**Section 1194.41 Information, Documentation  
and Support – Detail**

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<b>Criteria</b>	<b>Supporting Features</b>	<b>Remarks and explanations</b>
(a) Product support documentation provided to end-users shall be made available in alternate formats upon request, at no additional charge		
(b) End-users shall have access to a description of the accessibility and compatibility features of products in alternate formats or alternate methods upon request, at no additional charge.		
(c) Support services for products shall accommodate the communication needs of end-users with disabilities.		

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