



THE TEXAS
STATE
UNIVERSITY
SYSTEM

REQUEST FOR PROPOSAL

Request for Proposal (“RFP”) No: 758-19-00068

FOR

Third Party Administrator for Auto Claims

ALL PROPOSALS MUST BE RECEIVED NO LATER THAN:

Thursday, August 22, 2019 AT 2:30 PM CENTRAL

Prepared by:
Jennifer DeLeon
The Texas State University System
Jennifer.Deleon@tsus.edu
Issue Date: 7/29/19

TABLE OF CONTENTS

	PAGE
Section 1 – General Information	1
Section 2 – Notice to Respondents	3
Section 3 – Requirements of Proposal	7
Section 4 – Terms & Conditions of Proposal	10
Section 5 – Scope of Work	14
Section 6 – Pricing & Delivery.....	21
Section 7 – Execution of Offer	23
Section 8 – Proposer’s Questionnaire.....	24
Section 9 – Additional Questions Specific to RFP.....	27
Section 10 – General Terms & Conditions of Contract	29

Attachments:

APPENDIX ONE: AGREEMENT

Section 1 – General Information

1.1 OBJECTIVE: The Texas State University System (“**The System**”) is soliciting proposals in response to this Request for Proposal RFP No. 758-19-00068 (this “**RFP**”), from qualified vendors to provide Third Party Administrator (“**TPA**”) services for auto claims (the “**Services**” or “**Project**”). The System expects to enter into a contract with the selected firm or firms to provide the Services as further described in **Section 5** of this RFP.

This solicitation sets forth, at a minimum, the specifications, terms, conditions, and requirements to be considered for this solicitation. System will select the proposal(s) that offers the “best value” based on the published selection criteria and on its ranking evaluation of submitted proposals. Firms that respond to this RFP will be referred to as “**Proposers.**”

1.2 DESCRIPTION OF THE SYSTEM: The Texas State University System, founded in 1911, is the first higher education system established in Texas. Beginning as an administrative means to consolidate the support and management of state teacher colleges, the System has evolved into a network of higher education institutions stretching from the Texas–Louisiana border to the Big Bend region of West Texas.

The System includes a System Administration office and seven (7) component institutions that offer a broad range of academic and career opportunities. Throughout the System, faculty and staff are preparing students to work in and contribute to our global society. The System and its component institutions (“**Component Institutions**”) are:

- The Texas State University System Administration, Austin, Texas
- Lamar University, Beaumont, Texas
- Sam Houston State University, Huntsville, Texas
- Sul Ross State University, Alpine, Texas
- Texas State University, San Marcos, Texas
- Lamar Institute of Technology, Beaumont, Texas
- Lamar State College - Orange, Orange, Texas
- Lamar State College - Port Arthur, Port Arthur, Texas

The Texas State University System is governed by a nine-member Board of Regents appointed by the governor. In addition, a nonvoting student regent is appointed annually to the board. The administration, which is led by a board-appointed chancellor, is based in Austin, where it provides support to the Component Institutions and state government.

1.3 BACKGROUND & SPECIAL CIRCUMSTANCES: The System’s Office of Finance is looking to make structural changes to its existing automobile insurance program. The System requires the assistance of an automobile liability and physical damage claims TPA with experience managing claims for higher education institutions and / or public entities in Texas. The successful Proposer(s) will be capable of providing nationwide TPA services related to the investigation and adjustment of the System’s automobile liability, physical damage claims management and claims payment services. The System prefers a qualified TPA that will deliver innovative solutions, provide prompt claim resolution, and has experience guiding new TPA programs.

Current providers:

- TPA: none
- Broker: Arthur J Gallagher

Estimated claim frequency (per year):

- Auto Liability Bodily Injury: 10
- Auto Liability Property Damage: 32
- Auto Physical Damage: 15

1.4 CONTRACT TERM: The base contract term shall be for three (3) years, beginning on the effective date of the Agreement. System may renew the contract for up to two (2) additional one (1) year terms. Notice of renewal will be issued in writing approximately thirty (30) days prior to the end of the current performance period.

1.5 SCHEDULE OF EVENTS:

- a. Issue RFP on or about: July 29, 2019
- b. Last Day for questions: August 7, 2019
- c. Proposals due: **August 22, 2019 at 2:30 p.m. (Central Time)**

1.6 CLASS AND ITEM (NIGP) CODES: The related Class and Item code(s) for goods / services requested are: 953-00, 958-61

1.7 GROUP PURCHASING AUTHORITY: Texas law authorizes institutions of higher education (defined by Section 61.003, Education Code) to use the group purchasing procurement method (ref. Section 51.9335, Education Code). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Proposer under this RFP.

Texas institutions of higher education (“IHEs”) routinely evaluate whether a contract resulting from a procurement conducted by another IHE might be suitable for use, and if so, this RFP could give rise to additional purchase volumes. As a result, in submitting its proposal, Proposer should consider proposing a pricing model and other commercial terms that take into account the higher volumes and other expanded opportunities that could result from the eventual inclusion of other IHEs in the purchase contemplated by this RFP. Any purchases made by other IHEs based on this RFP will be the sole responsibility of those IHEs.

Section 2 – Notice to Respondents

2.1 PUBLIC INFORMATION: All information, documentation, and other materials submitted in response to this Solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, et seq.) after the Solicitation is completed.

- 2.1.1 The 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, and *Texas Government Code*.
- 2.1.2 Proposer is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise exempted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.
- 2.1.3 Information provided to Proposer by the System, including information from representatives of the System or any of its Component Institutions, and information provided to Proposer by members of the public or any other third party shall belong to the System.
- 2.1.4 Information created or otherwise produced by Proposer shall remain the exclusive property of Proposer. Proposer acknowledges any final report or papers will be provided in accordance with this RFP, and that any information contained in any report or papers, which Proposer believes is confidential under Texas law will be clearly designated as such by Proposer.
- 2.1.5 If the System receives a request for public information for any portion of any final report or papers that have been designated by Proposer to be confidential, the System will provide notice to Proposer and Proposer may submit a brief to the Office of the Attorney General, as provided by Chapter 552, Tex. Govt. Code.

2.2 POINT OF CONTACT: The System designates the following person as its representative and Point of Contact for this RFP:

Jennifer DeLeon

Email: Jennifer.Deleon@tsus.edu

The System instructs interested parties to restrict all contact and questions regarding this RFP to **written** communications with the Point of Contact. Proposers shall restrict all contact with the System and direct all questions regarding this RFP in writing to the Point of Contact:

2.3 PROPOSER QUESTIONS: After the RFP is advertised, Proposers will have until **Wednesday, August 7, 2019** (the “**Question Deadline**”) to submit written questions, including questions regarding terms and conditions or for clarification of the proposal, to The System’s Point of Contact (ref. **Section 2.2**). All questions submitted and received prior to the deadline will be reviewed, consolidated where possible, and answered in a written addendum. The addendum will be posted on the Texas Electronic State Business Daily (“**ESBD**”) at: <http://www.txsmartbuy.com/sp>. Enter “**758**” in the **Agency Number** field to

search ESD for The Texas State University System solicitations. The System will provide responses as soon as practicable following the Question Deadline however, the System reserves the right to decline to respond to any question. It is the Proposer's responsibility to continually check the ESD for Addenda.

2.4 CLARIFICATIONS AND INTERPRETATIONS: Any clarifications or interpretations of this RFP that materially affect or change its requirements will be issued formally by the System as a written addendum. Addenda, if required, will be issued by the System and posted on the ESD (ref. **Section 2.3**). It is the responsibility of all Proposers to check the status of formal addenda before the submission deadline and to obtain this information in a timely manner. the System intends to issue any required addenda a minimum of five (5) business days prior to the Submittal Deadline (ref. **Section 3.1**) to allow time for Proposers to review information and complete responses. All such addenda issued by the System must be acknowledged by Proposers and incorporated into the RFP response (ref. **Section 7**).

2.5 EVALUATION OF PROPOSALS: It is the intent of the System to award a contract to the responsible, responsive Proposer(s) that submits a proposal that meets the minimum criteria set forth herein, and that represents the best value, per 51.9335 (b) Texas Education Code, to the System. All properly submitted proposals will be reviewed, evaluated, and ranked by the System. Proposals will be evaluated by a review panel on the basis of the criteria and relative criteria weights listed below. Only criteria designated in the solicitation can be considered in the award determination.

EVALUATION CRITERIA AND WEIGHTED VALUES (100% maximum):

Texas Education Code Best Value Criteria		RFP Specific Criteria	Weight
1	purchase price	Pricing (ref. Section 6)	40%
2	the total long-term cost to the institution of acquiring the vendor's goods or services		
3	the reputation of the vendor and of the vendor's goods or services	Vendor Experience (ref. Section 9.1)	15%
4	the vendor's past relationship with the institution		
5	the quality of the vendor's goods or services	Quality of Services (ref. Section 9.2) Provision of Services (ref. Section 9.3)	40%
6	the extent to which the goods or services meet the institution's needs		
7	any other relevant factor that a private business entity would consider in selecting a vendor		5%

When considering 'best value' and award, the System reserves the right to set a minimum score requirement regarding the non-cost criteria listed in the table above.

2.6 PRESENTATIONS: The System may, at its sole discretion, invite select responsive firm(s), at the firm(s) expense, to give an oral and/or written presentation and respond to questions. Presentations, at the System's discretion, may be either on site at the System's offices in Austin, Texas or by video conference.

2.7 NEGOTIATIONS: If possible, an award will be made without holding negotiations. If negotiations are necessary, they will be scheduled after all proposals are evaluated. Negotiations will only be held with Proposer(s) who have a reasonable chance of receiving contract award. Therefore, do not anticipate negotiations being held. Best and Final Offers will only be requested if negotiations are held. Proposer's are strongly encouraged to submit the best offer at the time proposals are due.

2.8 AWARD OF CONTRACT:

2.8.1 A response to this RFP is an offer to contract based upon the best price, terms, conditions and specifications contained herein. Proposals do not become contracts until they are accepted through a purchase order or fully executed contract. Any contract shall be governed, construed and interpreted under the laws of the State of Texas, and the System policy as the same may be amended from time to time. Any legal actions must be filed in Travis County, Austin, Texas.

2.8.2 **Tie Proposals:** Awards will be made in accordance with Rule 1 TAC Section 113.6 (b) and 113.8 (preferences).

2.8.3 **Multiple Awards and Utilization:** It may be determined that having the Services provided by multiple Proposers is more advantageous to the System. The System reserves the right to make multiple awards against this RFP. The System will only pay for Services utilized and makes no guarantee of a maximum amount to be paid over the course of any contract that may result from the RFP.

2.8.4 **No Guarantee of Award:** The System makes no warranty or guarantee that an award will be made as a result of this RFP. The System reserves the right to accept or reject any or all proposals, waive any formalities or minor technical inconsistencies and delete any requirement or specification from this RFP or the Agreement when deemed to be in the System's best interest. The System reserves the right to seek clarification of any item contained in Proposer's proposal prior to final selection. Such clarification may be provided by telephone or personal meeting with or in writing to the System, at the System's discretion. Representations made by Proposer within its proposal will be binding on Proposer. The System will not be bound to act by any previous communication or response submitted by Proposer, other than this RFP.

2.9 THE SYSTEM'S RESERVATION OF RIGHTS: The System may evaluate the Proposals based on the anticipated completion of all or any portion of the Project. The System reserves the right to divide the Project into multiple parts, to reject any and all proposals and re-solicit for new proposals, or to reject any and all proposals and temporarily or permanently abandon the Project. The System makes no representations, written or oral, that it will enter into any form of agreement with any Proposer to this RFP for any project and no such representation is intended or should be construed by the issuance of this RFP.

2.10 ACCEPTANCE OF EVALUATION METHODOLOGY: By submitting its proposal in response to this RFP, Proposer accepts the evaluation process and acknowledges and accepts that the determination of the "best value" firm(s) will require subjective judgments by the System.

- 2.11 NON-REIMBURSEMENT FOR COSTS:** Proposer acknowledges and accepts that any costs incurred from the Respondent's participation in this RFP process shall be at the sole risk and responsibility of the Respondent. Respondents submit proposals at their own risk and expense.
- 2.12 CONFLICTS / CONTACT:** Respondents shall not contact existing members of The Texas State University System Board of Regents or System employees, including those of Component Institutions about this RFP until the resulting contract(s), if any, are fully executed.
- 2.13 OWNERSHIP AND USE OF WORK MATERIAL:** All work material, whether or not accepted or rejected by the System, is the sole property of the System and for its exclusive use and re-use at any time without further compensation and without any restriction.
- 2.14 TERMINATION / CANCELLATION:** The System may terminate any resulting agreement for any reason, including material changes to selected Proposer's firm, upon thirty (30) days written notice to the other party.
- 2.15 CERTIFICATE OF INTERESTED PARTIES:** Pursuant to Texas Government Code 2252.908 and Texas Ethic Commission Rule 46, for contracts that either have a value of at least \$1 million or require approval of The Texas State University System Board of Regents, a business entity (vendor) must submit a copy of the Disclosure of Interested Parties (Texas Ethics Commission Form 1295) filed with the Texas Ethics Commission when the business entity submits the signed contract. No such contract may be presented to The Texas State University System Board of Regents for approval without the disclosure. By submitting a proposal in response to this RFP, Proposer agrees to comply with this law. Information on the Disclosure of Interested Parties can be found at: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

Section 3 – Requirements of Proposal

3.1 PROPOSAL SUBMITTAL DEADLINE AND LOCATION: The System will receive proposals for this RFP at the time and location described below. The Proposer (not the System, the carrier, mail service/courier, or other party) is solely responsible for ensuring that the proposal is received by the Point of Contact, in the format described below (ref. **Section 3.3**), **prior** to the specified due date and time noted in this Section.

Submittal Deadline: Thursday, August 22, 2019 at 2:30 PM CENTRAL

The Texas State University System
Attn: Jennifer DeLeon
601 Colorado Street
Austin, Texas 78701
Re: RFP 758-19-00068

NOTE: A public opening of responses will not be conducted for this RFP.

3.2 HISTORICALLY UNDERUTILIZED BUSINESSES: It is the policy of the System to promote and encourage contracting and subcontracting opportunities for Historically Underutilized Businesses (“**HUBs**”). Accordingly, the System has adopted a policy on the Utilization of Historically Underutilized Businesses. The policy applies to all contracts with an expected value of \$100,000 or more. If the System determines that subcontracting opportunities are probable, then a HUB Subcontracting Plan is a required element of the proposal. Failure to submit a required HUB Subcontracting Plan form will result in rejection of the proposal. The HUB participation goals for the System are:

Other Services:	12.8%
Commodity Purchasing:	21%

- 3.2.1 The System has determined that subcontracting opportunities are not probable under this RFP.
- 3.2.2 A HUB Subcontracting Plan is not required for this RFP.

3.3 PROPOSAL FORMAT AND REQUIRED COPIES:

- 3.3.1 **Unacceptable Proposal Delivery Methods:** The System will not accept proposals in response to this RFP that are submitted by telephone, facsimile (fax) transmission, or electronic mail.
- 3.3.2 **Proposal Envelope/Box/Container:** Proposal must be placed in a sealed envelope, box, or container that is completely and properly identified with the name of Proposer’s firm, RFP number, due date and time. It is the Proposer’s responsibility to have the proposal correctly marked, addressed and delivered to the System by the Submittal Deadline for receipt by the Point of Contact.
- 3.3.3 **Format for Proposal:** Proposer shall make every effort to present the required information in a detailed, orderly, and compact presentation. Proposer should provide

visual examples of functionality to clarify and reinforce key product features and services. Long or elaborate proposals are not desired. Sections will be tabbed and clearly labeled for ease of review and evaluation.

Proposer should submit the complete proposals, both the paper and electronic copies, using a format substantially similar to the following in terms of order of content:

- A. Cover page
- B. Table of Contents
- C. Executive Summary of Proposal
- D. Pricing and Delivery Schedule (ref. **Section 6**)
- E. Execution of Offer (ref. **Section 7**)
- F. Proposer's Questionnaire (ref. **Section 8**)
- G. Additional Questions Specific to RFP (ref. **Section 9**)
- H. Statement of agreement with terms or redlined agreement (ref. **Section 10**)
- I. Supplemental Information: Proposer may submit any additional information Proposer feels is relevant to the proposal. This information must be clearly labeled as "Supplemental Information" and in a separate tabbed section of the proposal.

NOTE: Proposers are responsible for submitting all required information as requested in this RFP. The above listing of items to be included in the proposal submission is a summary provided to aid Proposers in putting together the proposal package. Any items stated in other Sections of the RFP, but not listed in this Section, are still required to be provided as part of the proposal submission.

- 3.3.4 **Required Copies:** Proposer must submit (a) one (1) complete paper copy of its entire proposal, and (b) one (1) USB flash drive with the individual and separate files as described below. The USB flash drive must include a protective cover and be labeled with Proposer's name and the RFP number. An original signature by an authorized officer of Proposer's firm must appear on the Execution of Offer (ref. **Section 7**) included in the submitted proposals, both paper and electronic.

The USB flash drive must contain the following three (3) individual and separate files:

- A. One (1) complete electronic copy of the entire proposal, in a single .pdf file
- B. One (1) electronic copy of the proposal in a single .pdf file that **does not** contain pricing information relative to **Section 6**
- C. One (1) redlined electronic copy of APPENDIX ONE, if applicable, in an editable format (i.e. Microsoft Word)

3.5 PRICING: Proposer shall provide all-inclusive pricing as requested in **Section 6** of this RFP. All pricing must be in United States Dollars.

3.6 EXECUTION OF OFFER: Proposer must complete, sign and return the attached Execution of Offer (ref. **Section 7**) as part of the proposal. The Execution of Offer must be signed by an authorized officer of Proposer's firm duly authorized to bind the Proposer to its proposal. Failure to sign and return the Execution of Offer will result in the rejection of the proposal.

3.7 PROPOSER'S QUESTIONNAIRE: Proposer must completely answer all questions asked in **Section 8** (Proposer's Questionnaire). By submitting a proposal, Proposer certifies that, to the best of its knowledge, all responses are true, correct and complete.

3.8 ADDITIONAL QUESTIONS SPECIFIC TO RFP: Proposer must completely answer all questions asked in **Section 9** (Additional Questions Specific to RFP). By submitting a proposal, Proposer certifies that, to the best of its knowledge, all responses are true, correct and complete.

3.9 VALIDITY PERIOD: By submitting a proposal in response to this RFP, Proposer accepts that the proposal will remain valid for a minimum of ninety (90) days after the submittal deadline to allow time for evaluation of proposals, award determination, and any unforeseen delays.

Section 4 – Terms & Conditions of Proposal

The items below apply to and become a part of proposal. Exceptions cannot be taken to the RFP document itself, nor can it be redlined. These actions may result in Proposer's disqualification. Only additions / modifications to **APPENDIX ONE** (ref. **Section 10**) will be considered by the System.

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

4.1 PROPOSAL REQUIREMENTS AND GENERAL INSTRUCTIONS:

- 4.1.1 **Rules, Regulations & Statutes:** The System is an agency of the State of Texas. Proposers must comply with all rules, regulations, and statutes relating to purchasing of the State of Texas, The Texas State University System Rules and Regulations, in addition to the Terms and Conditions of this form. Upon engagement, any successful Proposer shall confirm its compliance with all necessary State and/or Federal requirements relative to work performed.
- 4.1.2 **Submittal Deadline Exception:** In the event that the System is closed due to inclement weather and/or emergency situations on the designated Submittal Deadline, the Submittal Deadline will default to the next open business day at the same time.
- 4.1.3 **Late or Unsigned Proposals:** Late and/or unsigned proposals will not be considered under any circumstances. Person signing the proposal must have the authority to bind Proposer's firm in a contract. The Proposer (not the System, the carrier, mail service/courier, or other party) is solely responsible for ensuring that the complete proposal is received by the Point of Contact prior to the specified opening date and time.
- 4.1.4 **FOB Designation:** Shipping terms will be FOB Destination, freight prepaid and allowed unless otherwise stated within the specifications.
- 4.1.5 **Pricing:** Proposal prices are requested to be firm for the System acceptance for 90 days from proposal opening date (unless otherwise stated in specifications). Proposers must price per unit shown. Unit prices shall govern in the event of extension errors. "Discount from list" proposals are not acceptable unless requested. Cash discounts are not considered in determining an award. Cash discounts will be taken if earned. All costs/pricing must be in United States dollars. The System will not recognize or accept any charges or fees to perform Services that are not specifically stated in the Pricing and Delivery Schedule.
- 4.1.6 **Tax Exempt:** Purchases made for State use are exempt from the State Sales tax and Federal Excise tax, per Texas Tax Code, Section 151.309(4). Do not include tax in the proposal.
- 4.1.7 **Right to Accept or Reject:** The System reserves the right to accept or reject all or any part of any proposal, waive minor technicalities and award the proposal to best serve the interests of the System and the State of Texas.
- 4.1.8 **Withdrawal:** Any proposal may be withdrawn prior to the date and time set for receipt of proposals. Any proposal not so withdrawn shall constitute an irrevocable offer, for

a period of 90 days, to provide the commodity or service set forth in the specifications, or until a selection has been made by the System.

- 4.1.9 **Proposal Costs:** Proposers electing to respond to this RFP are responsible for any and all costs of proposal preparation. The System is not liable for any costs incurred by a Proposer in response to this RFP.
- 4.1.10 Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFP in any way; or (iii) contain irregularities of any kind, are subject to disqualification by the System, at the System's sole discretion.
- 4.1.11 Any proposal that fails to comply with the requirements contained in this RFP may be rejected by the System, at the System's sole discretion.

4.2 SPECIFICATIONS:

- 4.2.1 **Brand Name Descriptive:** Catalogs, brand names or manufacturer's references indicate the type and quality required by the System. Proposals on brands of like nature and quality will not be considered unless otherwise stated in the RFP. If proposing other than brand referenced, proposal will show manufacturer, brand or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and complete description of product offered are requested to be made part of the proposal.
- 4.2.2 **New Items:** Unless otherwise specified, items shall be new and unused and of current production.
- 4.2.3 **Samples:** Samples, when requested, must be furnished free of expense to the State. Each sample should be marked with the Proposer's name, address, and RFP number. Do not enclose in or attach proposal to sample. All samples become the property of the System.
- 4.2.4 **Oral Statements:** The System will not be bound by any oral statement or representation contrary to the written specifications of the RFP.
- 4.2.5 **Manufacturer's Warranty:** Manufacturer's standard warranty shall apply unless otherwise stated in the RFP.
- 4.2.6 **Warranty-Product:** Proposer shall not limit or exclude any implied warranties and any attempt to do so shall render any potential contract voidable at the option of the System. Proposer warrants that the goods proposed and furnished will conform to the specifications, drawings, and descriptions listed in the RFP, and to the sample(s) furnished by Proposer, if any. In the event of a conflict between the specifications, drawings, and descriptions, the specifications shall govern.

4.3 NON-DISCLOSURE: No public disclosures or news releases pertaining to this RFP shall be made without prior written approval of the System.

4.4 CONFLICTS: In event of a conflict between standard proposal requirements and conditions and the attached detailed specification, the detailed specification shall govern.

4.5 PROPOSER AFFIRMATION: Submitting a proposal with a false statement is material breach of contract and shall void the submitted proposal or any resulting contracts, and the Proposer shall be removed from all proposal lists. By submitting a proposal, the Proposer herein affirms:

- 4.5.1 **Vendor Ethics - Gratuities:** As an agency of the State of Texas, the System holds the trust of the public. All Proposers and persons doing business with the System must provide the highest level of ethics and service in all business interactions. A Proposer shall not give, offer to give, nor intend to give at any time any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a System employee that might reasonably appear to influence the employee in the discharge of official duties. The System may, by written notice to the Proposer, cancel this contract without incurring liability if it determined that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Proposer, or any agent or representative of the Proposer, to any officer or employee of the System or its Components with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event this contract is cancelled by the System pursuant to this provision, the System shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Proposer in providing such gratuities.
- 4.5.2 If Proposer is a taxable entity as defined by Chapter 171, Texas Tax Code ("Chapter 171"), then Proposer certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Proposer is exempt from the payment of those taxes, or that Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 4.5.3 Neither the Proposer nor the firm, corporation, partnership, or institution represented by the Proposer, or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State or the Federal Antitrust Laws nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
- 4.5.4 Under Section 2155.004, Texas Government Code, a state agency may not accept a proposal or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the proposal or contract is based. By submitting a proposal in response to this RFP, Proposer certifies and affirms that: 1) Proposer has not received compensation for participation in the preparation of the specifications for this RFP; and 2) the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- 4.5.5 If applicable, pursuant to Texas Family Code, Title 5, Subtitle D, Section 231.006(d), regarding child support, the Proposer certifies that the individual or business entity named in this proposal is not ineligible to receive the specified payment and acknowledges that any contract resulting from this RFP may be terminated, and payment may be withheld if this certification is inaccurate. Furthermore, any proposer subject to Section 231.006 must include the names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the proposal. If awarded this RFP, Proposer will provide this information to the System prior to contract execution.
- 4.5.6 Pursuant to Section 2155.004 Government code regarding collection of state and local sales and use taxes, the Proposer certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges

that this contract may be terminated and/or payment withheld if this certification is inaccurate.

4.5.7 Proposer agrees that any payments due under any resulting contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

4.5.8 Proposer certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003 of the Government Code, relating to contracting with the executive head of a State agency. If Section 669.003 applies, Proposer will submit the following information in response to this Section with their response in order for the proposal to be evaluated:

Name of Former Executive: _____

Name of State Agency: _____

Date of separation from State Agency: _____

Position with Proposer: _____

Date of Employment with Proposer: _____

Section 5 – Scope of Work

The purpose of this RFP is to solicit proposals to enter into a contract with a qualified and experienced firm(s) to obtain timely and professional Services as described herein. The successful Proposer, if any, is referred to as the “**Contractor.**” Services described in this RFP will be provided to, and on behalf of, the System which includes the System Administration and the Component Institutions.

Proposers shall submit a complete response to all requirements and specifications set forth in this RFP. Proposers may expand or offer any additional suggestions and/or services that their firm feels may benefit the System in addition to the requirements listed in this RFP (ref. **Section 8.2**).

Definitions:

- A. **Allocated Expense**- Loss adjustment expenses that are assignable or allocable to specific claims.
- B. **Audit** - The detailed examination of financial records and operational performance with respect to claims management by the TPA, resulting in regulator/contract compliance and information that can be used to make improvements or support the continuance of past practices.
- C. **Claim**- Demand by an individual or corporation to recover, under a policy of insurance, for loss that may come within that policy.
- D. **Claimant**- The person making a claim.
- E. **Claim Investigation**- Investigatory efforts that are focused on gathering the evidence, formally and informally, that enables the analysis necessary to help determine such critical issues as the following:
 - The extent to which the insurance coverage applies, if at all;
 - Whom the coverage applies to;
 - The value of the Claim;
 - What the reserve should be to cover the financial obligation;
 - The information that is needed to effectively address elements of the Claim, such as injury payments, medical bill payments, property damage payments, retention of lawyers, paying versus denying and defending, etc.; and
 - The additional information that may be needed to move an open Claim to its final resolution and file closure.
- F. **Loss Deposit Account**- Proposer establishes and manages in order to hold funds for premiums and payment of Claims.
- G. **Overpayments**- Any payments that a reasonable and prudent TPA would not have made or recommended.
- H. **Potential Fraud**- Deception or artifice used to cheat or intentionally mislead.
- I. **Policies**- Identifies general requirements of an insured and the insurer on matters such as loss reporting and settlement, property valuation, other insurance, subrogation rights, and cancellation and nonrenewal.

- J. **Reserve** – The money set aside to pay legitimate **claims** filed under the System’s auto program. The System / TPA use the fund to pay out incurred **claims** that have yet to be settled. The **claims reserve** is also known as the balance sheet **reserve**.
- K. **Subrogation** - The assignment to an insurer by terms of the policy or by law, after payment of a loss, of the rights of the insured to recover the amount of the loss from one legally liable for it.

Contractor will provide the following Services to the System:

5.1 Contactor will comply with all [Texas Department of Insurance](#) (“TDI”) Claims handling requirements and provide Services including but not limited to:

- 5.1.1 Investigate, evaluate, adjust, and manage Property and Casualty Insurance (“**P&C**”) for which System may be legally obligated under the System-wide *Automobile Liability and Physical Damage Plan* and in accordance with established System policies and applicable TDI Rules;
- 5.1.2 Complete and document contact for each Claimant, insured driver, and witnesses, if applicable, within twenty-four (24) business hours of receipt of the Claim;
- 5.1.3 Document (unsuccessful and successful) daily attempts to complete and finalize the Claim investigation and make the appropriate coverage and liability determination;
- 5.1.4 Seek and receive written approval from the System Office of Finance (“**OOF**”) before requesting private investigation and other services where necessary to maintain cost control; take necessary steps to prevent and report Potential Fraud;
- 5.1.5 Use surveillance, following written approval from the OOF, when there are questionable injuries. Subcontracted outside investigation services, such as a private investigator, will be employed where necessary by Contractor with written approval from the OOF. Documentation of assignment will include specific reasons for referral. Direction and control will be exercised by the Contractor over the Claims Investigation activities;
- 5.1.6 Contractor will seek and receive written approval from the OOF prior to assigning outside Subcontractors, if applicable, on any Claim. All subcontracting must comply with [State of Texas HUB Program](#) requirements;
- 5.1.7 Analyze medical documents, property damage estimates and invoices, subrogation demands, and correspondence promptly upon receipt and take appropriate action based on the analysis and its effect on the Claim;
- 5.1.8 Maintain accurate and current documentation on each Claim;
- 5.1.9 Respond to telephone or written inquiries from attorneys, vendors, and System representatives within twenty-four (24) hours from initial contact;
- 5.1.10 Recommend and assign a value for adequate reserves based on best practices for Claims handling procedures;
- 5.1.11 As needed and under the direction of the OOF, assist and cooperate with the System’ Office of General Counsel and the State of Texas Office of the Attorney General on any Claim that is in the dispute resolution process or litigation;
- 5.1.12 Identify third party Claims and pursue subrogation to recover monies spent on System Claims;
- 5.1.13 Schedule and conduct monthly telephone calls with System to discuss Claims handling issues, trends, and reports;
- 5.1.14 Forward reports on Claims in litigation monthly to System;
- 5.1.15 Forward Claim and reserve reports by the 15th day of each month to System;

- 5.1.16 System will set an agreed upon schedule with Contractor that coordinates with any existing run cycles.
- 5.1.17 Report by the 15th day of each month any reserves greater than \$25,000 per occurrence;
- 5.1.18 Report by the 15th day of each month any reserve increases greater than \$10,000 per occurrence;
- 5.1.19 Provide carrier reporting package as required in policy provisions by insurance carrier;
- 5.1.20 Negotiate Claim settlements. Seek and receive approval from the OOF prior to settling any Claims;
- 5.1.21 Obtain releases from Claimants as appropriate using a form approved in writing by System;
- 5.1.22 Provide detailed status reports by the 15th day of each month for Claims reserved in excess of \$50,000 per occurrence;
- 5.1.23 Provide two (2) face to face Claim reviews per calendar year. System will set an agreed upon schedule with Contractor that coordinates with any existing run cycles;
- 5.1.24 All Claim documents and data that are prepared by Contractor will be considered System property and must be available immediately upon request or upon termination of the Contract;
- 5.1.25 Contractor will maintain confidentiality of Claims information except as required by Texas laws;
- 5.1.26 Provide immediate notification to the OOF of any Claims involving catastrophic injuries, death, or severe exposure; and
- 5.1.27 Aid, as requested, in developing guidelines, procedures, and best practices for a System Automobile Liability and Physical Damage Plan (the “Plan”).
- 5.1.28 Work with the System’s broker as needed to perform the Services.
- 5.1.29 Recommended best practices that are known to reduce MVA claims in general and/or best practices that would reduce the types of claims experienced by members of the TSUS.

5.2 Risk Management Information System (“RMIS”)

Contractor will have a Claims reporting system capable of receiving Claim report (First Notice of Loss) forms, twenty-four (24) hours a day, three hundred and sixty-five (365) days per year, and capable of making the appropriate data entry to begin the Claims handling process through an online/electronic portal. Contractor will provide up to seven (7) designated System personnel access to Contractor’s RMIS at no additional cost for review and auditing purposes.

The RMIS will be capable of generating “real time” reports to analyze Claims handling performance. Contractor’s RMIS will provide a data exchange (in format and frequency acceptable to the System) on Claims related data, notes, and financial transactions, including loss payment, expense payments, recovery amounts, financial reserves and component specific identifiers to the System.

5.2.1 Server and Data Center

- A. All externally hosted web sites used in conjunction with providing Services may be subject to restrictions set forth by System regarding advertising content, use of pop-ups, spyware/adware, or other restrictions.

- B. All Services, hardware, and software must be hosted at a Tier 3 (or higher) data center.
- C. All hosted web services must deploy industry standard secure data transmission protocols (for production and maintenance work), such as Secure Socket Layer technology, Hyper Text Transfer Protocol Secure (“**HTTPS**”), and secure file transfer protocol (“**FTP**”).
- D. System reserves the right to inspect the Contractor(s) physical data center and review any certification credentials.
- E. Data must back-up weekly, with the servers on a Disaster Recover and Business Continuity Plan.
- F. Servers must be monitored proactively by Contractor to ensure the adequate allocation of system resources, anticipating growth.

5.2.2 Data Security and Compliance Requirements

- A. Data storage, transfer, and collection, as well as delivery of the Services must be in compliance with the System’s [Rules and Regulations](#), [FERPA 34 CFR Part 99](#), and applicable Texas and federal laws, including but not limited to the following:
 - [Texas Administrative Code Title 1, Part 10](#)
 - All applications and Services provided through hosted or locally managed services contracts, must comply with the provisions of [Chapter 206, State Web Sites](#), and [Chapter 213, Electronic and Information Resources](#), of the Texas Administrative Code, as applicable.
 - [Section 508 of the Rehabilitation Act of 1973](#), as amended (29 U.S.C. 794d) for accessibility by disabled persons.
 - Shareable Content Object Reference Model (“**SCORM**”) compliant; and
 - Compliance with Federal American Disability Act (“**ADA**”) and State of Texas Accessibility regulations will be evidenced by a [Voluntary Product Accessibility Template \(“VPAT”\)](#) or formal statement of accessibility.
- B. Prior to Service acceptance, the System IT Security Team reserves the right to conduct a full application security scan. The Service will not be accepted by System until all medium and high vulnerabilities are corrected. Application corrections must be done at the expense of the Contractor. Failure to correct identified vulnerabilities constitutes a breach of pending Agreement, and System reserves the right to cancel the Agreement.

- 5.2.3 Contractor will facilitate the transfer of any System data to another RMIS at any time during the life of the Agreement if the System decides to no longer utilize Contractor’s RMIS.

5.3 Claims Payment Services

- 5.3.1 Services Contractor will provide include, but are not limited to:
 - A. Provision of an integrated digital imaging system;

- B. Issue Claim and Allocated Expense payment checks on behalf of the System as appropriate and in accordance with the Plan using a Loss Deposit Account or as mutually agreed in writing;
- C. System will be responsible to reimburse Contractor for Claims and Allocated Expense payments made on behalf of System as appropriate and in accordance with the Plan using the Loss Deposit Account that the Contractor establishes and manages exclusively for System Claims;
- D. The Contractor must demonstrate appropriate controls are in place to monitor all financial transactions and protect the integrity of the Loss Deposit Account;
- E. System will deposit an agreed amount in the Loss Deposit Account within ten (10) days of the execution of the Contract to fund anticipated Claim and expense payments. System will place additional funds in an amount mutually agreed upon in writing at intervals to be determined by the parties. This funding will be contingent upon provision of detailed supporting information and will be separated by indemnity payment and expense payment. Contractor will invoice System additional loss fund requests and System agrees to pay such loss fund invoices within an agreed amount of days of request. Contractor will not be required to advance its own funds to pay System Claims. To the extent allowed by Texas law, System will be responsible for fines and penalties issued because of System's failure to fund losses;
- F. Contractor will represent and certify that all request for funding of the Loss Deposit Account are for legitimate System Claims that have been thoroughly investigated and approved by the Contractor and that all amounts and supporting documentation are true and correct as stated. Contractor will assume full responsibility for disbursement errors including, but not limited to, payments for erroneous amounts, payments to erroneous payees, and duplicate payments. Contractor will rectify such errors by immediate deposit into the Loss Deposit Account funds in the amount erroneously expended from the account, or as otherwise directed by the duly authorized representative of System; and
- G. Funds in the Loss Deposit Account are System property and any such funds remaining at the conclusion of applicable Services will be returned to System immediately upon request, but in no event later than three (3) business days after request for the funds is sent to Contractor.

5.3.2 Allocated Expenses

Allocated Expenses will include, but are not limited to:

- A. Professional photographs, travel made at System's request; costs for witness statements court reports; medical records; accident reconstruction; expert's rehabilitation costs; chemist; fees for service of process; collection cost payable to third parties on subrogation; architects, contractors, engineers; any other similar cost, fee, or expense reasonably chargeable to the investigation, negotiation, settlement, or defense of a Claim of loss which must have the explicit prior approval of System, including police, fire, coroner, weather, or other such reports; property damage appraisals; special fraud investigations ("SIU"); surveillance and subrogation investigation's official documents and transcripts; pre- and post-judgment interest paid; outside investigation; subrogation at 8%

- of gross recovery; index bureau reporting; second injury fund recovery; and data intelligence self-service reports;
- B. Balance and reconcile the account and provide reconciliation reports to System monthly;
- C. Identify, report, and reimburse overpayments and duplicate payments to System;
- D. Produce IRS Forms 1099-Misc for all Claimants and mail the forms to the appropriate Claimants; and
- E. Contractor shall not add fees or profit sharing to the actual cost for Subcontractor Services, if any are ever used.

5.4 Other Related Services

Contractor will provide the following other related services to System to include, but not be limited to:

- A. Keep the System apprised of changes in TDI rules and regulations that affect Claims handling and make necessary adjustments in operating procedures to promptly comply with these changes;
- B. Submit to and cooperate with onsite visits by System staff and Claims and operational audits performed by third-party consultants, the insurance carrier, or System staff;
- C. Provide information to and cooperate with the System's actuarial service provider;
- D. Provide annual audited financial statements within 60 days following the end of the System's fiscal year (August 31);
- E. Provide relevant data as requested by OOF;
- F. Provide a designated account manager and staff for Services;
- G. Provide Services from a Texas-based office;
- H. Provide ad hoc reporting through the RMIS;
- I. Provide loss run reports monthly which must include: losses by Component Institution, Claim number, accident date, status, report date, set up date, close date, Claimant name, System driver name, accident type, accident cause, accident source code, vehicle make, model, year, component division, total Claim paid, total reserved, total incurred, total recovered, and total expenses;
- J. Transmit Claim and payment information monthly to the System at no additional cost;
- K. Respond to and be financially responsible for any penalties and related administrative and or defense costs resulting from TDI administrative violation or alleged administrative violation as a result of the Contractor's actions or failure to act;
- L. Be financially responsible for any penalties or costs resulting from a cyber- security breach;
- M. Assume responsibility for all Services described in this RFP, including payments of Contractor's subcontractors' fees, if any, in accordance with Texas laws.
- N. Contractor shall, if required by law, allow the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives to have access, during and for a period of not less than four (4) years after the expiration or earlier termination or cancellation of any awarded Contact, to (1) the Scope of Work detailed in awarded Contract and Contractor's books, documents, and records related to the Contract; and (2) all agreements between Contractor and its Subcontractors or agents, including books, documents, and records relating to same.

5.5 System Rights & Responsibilities

- A. System will have the right to inspect all information created or maintained by the Contractor or its subcontractors during the term of any awarded Contract, including but not limited to all correspondence, books, records, documents, and electronic data. Such information shall be available and open to review, inspection, and audit by System or its representatives at any place(s) where such information is kept or at System' place of business, if requested by System. Access to these records shall be provided at no expense to System. The Contractor and its subcontractors shall keep all such records during the term of any awarded Contract and then for a minimum of forty-eight (48) months thereafter. The Contractor shall provide in all of its agreements and subcontracts a written statement indicating that System will have the right to audit and inspect all such information under the conditions set forth herein.

In the event such an audit reveals any overpayments by System, Contractor shall refund to System the full amount of such overpayments within thirty (30) days of such audit findings, or System, at its option, shall have the right to deduct such amounts owed to System from any payments due Contractor. Contractor will be given a notice of at least five (5) working days in the event an audit shall be performed under this section. System will identify overpayments and notify Contractor in writing. Contractor shall respond in writing to any notice of overpayment within thirty (30) days after notice is given. If Contractor is unable to justify the payment, then the Contractor will either credit the overpayment to System or will refund the money.

- B. Should System incur any administrative fines and/or penalties imposed on System by TDI caused by or resulting from the acts, omissions of, or information supplied by Contractor, its employees, Subcontractors, or agents in the performance of duties related to this Contract, System agrees to submit such requests for reimbursement to Contractor and Contractor agrees to review such requests and make payment where required.

- 5.6** Contractor and its employees, subcontractors, or agents performing the Services will maintain all necessary licenses to comply with TDI and any other State laws and requirements.
- 5.7** Perform additional duties, tasks or services not specifically identified but related to the Services described in this RFP if needed and when mutually agreed upon in writing by both parties.

Section 6 – Pricing & Delivery

6.1 PRICING FOR SERVICES AND EXPENSES: Proposer shall include in response to this Section any and all costs associated with the Services (at a firm fixed price) as requested in **Section 5** or any other part of this solicitation. Pricing must be in United States Dollars and is considered all inclusive. Any fees Proposer anticipates charging the System that are not included below, must be submitted with Proposer’s proposal on a separate sheet labeled as “**Section 6 Rider.**” System reserves the right to reduce points related to Proposer’s pricing score if excessive charges are included in a Rider to this Section.

In the table below, indicate fees to be charged to the System for provision of Services. Add the subtotals for the **Base Services Claim Type** and the **Administrative Services Type** together for the “**Annual Total**” cost.

- A. Base Services: Provide the “cost per claim” fee, which will include reasonably expected administrative expenses directly related to adjusting a Claim. Use the estimated number of annual claims provided and the cost per claim to project the total annual cost.
- B. Administrative Services: Provide the annual fees for additional administrative support required to provide Services will be provided.

Base Services Claim Type	Est. # Claims	Cost per Claim	Projected Annual Cost
Auto Liability Bodily Injury	10	\$	\$
Auto Liability Property Damage	32	\$	\$
Auto Physical Damage	15	\$	\$
Subtotal:			\$
Administrative Services Type	Cost per Year		
Administration / Data Management	\$		
Designated Account Management	\$		
Banking Administration	\$		
New Claims Reporting (Online)	\$		
Subtotal:	\$		
Annual Total: \$			

- C. Additional Users / Optional Services: Provide rates for additional users (more than 7) for RMIS system. In addition, if System submits, in advance, a written request for additional services not contemplated or reasonably inferred by the Agreement,

Contractor will be paid for actual hours, in fifteen (15) minute increments, incurred by Contractor's personnel directly and solely in support of the additional services at the rates Contractor sets forth below:

RMIS Access (additional users/quarter): \$_____per person

Consulting Services \$_____per hour

Loss Control Consulting Services: \$_____per hour

Pricing will be held firm for the initial term of the Agreement. Price adjustments may be requested when exercising available contract term renewal options. Any such price adjustments will follow the changes in the Consumer Price Index for Urban and Clerical Workers ("CPI-W") up to a maximum five percent (5%) cap per renewal term.

The System will *not* reimburse Contractor for expenses.

6.2 DELIVERY: Indicate number of calendar days needed to commence performance of the Services after contract execution:

_____ Calendar Days

6.3 INVOICING: Contractor will invoice the System each year for administrative services (ref. **Section 6.1 B**) and each quarter for base and optional services (ref. **Section 6.1 A** and **6.1 C**) completed during the prior quarter. Invoices must reference the valid contract number, description and date range of Services and itemize claims / optional services provided. Invoices will be submitted via email to: finance@tsus.edu

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

Indicate below the prompt payment discount that Proposer offers:

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

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

Section 7 – Execution of Offer

Proposer shall complete, sign, and submit this Execution of Offer with their proposal response. The Execution of Offer must be signed by an authorized officer of Proposer duly authorized to bind the Proposer to its proposal. Failure to sign the Execution of Offer will result in the rejection of proposal.

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

7.2 By signature hereon, the offeror hereby certifies that he/she is not currently delinquent in payment of any franchise taxes owed the State of Texas under Chapter 11, Tax Code.

7.3 By executing this offer, offeror affirms that he/she has not given, offered, or intends to give at any time hereafter, any economic opportunity, future employment, gift loan, gratuity, special discount, trip, favor, or service to public servant in connection with the submitted offer. Failure to sign the offer, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the offeror shall be removed from all proposal lists.

7.4 By the signature hereon affixed, the offeror hereby certifies that neither the offeror or the firm, corporation, partnership, or institution represented by the offeror or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State, codified in Section 15.01, et. seq., Texas Business and Commerce Code, or the Federal anti-trust laws, nor communicated directly or indirectly the offer made to any competitor or any other person engaged in such line of business. By signing this offer, offeror certifies that if a Texas address is shown as the address of the offeror, offeror qualified as a Texas Resident Proposer as defined in Rule 1 TAC 113.8.

7.5 Acknowledgement of Addenda: The undersigned Proposer hereby acknowledges receipt of the following Addenda issued as a part of this solicitation (initial only if applicable).

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

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

Federal Employer Identification Number (FEIN): _____

Proposer/Company: _____

Signature: _____ Date: _____

Name (typed/printed): _____

Title: _____

Address: _____

Telephone Number: _____ E-mail: _____

Section 8 – Proposer’s Questionnaire

The Proposer recognizes that in selecting a Contractor, The System will rely in part on the answers provided in response to this Section. Accordingly, Proposer certifies that to the best of its knowledge, all responses are true, correct and complete.

All Proposals submitted must contain full and complete responses to each of the following questions about Proposer’s firm (“**Company**”). Proposer must demonstrate the ability to successfully provide the Services. If a Proposer cannot meet any qualifications or responsibilities, it must state that, and when appropriate, offer an alternative response. Failure to respond to any item listed may disqualify the Proposal.

8.1 COMPANY PROFILE:

8.1.1 Legal name of company: _____

Federal Tax ID #: _____

Address of principal place of business: _____

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

Number of years in Business: _____

State of incorporation: _____

Number of Employees: _____

Annual Revenues Volume: _____

Name of Parent Corporation, if any _____

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

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

- 8.1.3 Provide financial rating of Company and any related documentation (such as a Dunn and Bradstreet analysis) that indicates the financial stability of Proposer.
- 8.1.4 Provide a brief history of the Company. Indicate the number of years the Company has provided the type of services for which this proposal is submitted.
- 8.1.5 Present evidence that the Company is licensed to solicit business in the State of Texas. Include a copy of the license(s).
- 8.1.6 Identify the organizational status of the Company, i.e., corporation, partnership, or sole proprietorship. Include the date of incorporation, name of corporate president/principals, and federal employment identification number (corporations) or social security number (sole proprietorship).
- 8.1.7 Does any relationship exist by relative, business associate, capital-funding agreement, or any other such kinship between the Company and any employee, officer or Regent of the System, including Component Institutions? If so, please explain.
- 8.1.8 Is the Company currently for sale or involved in any transaction to expend or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.
- 8.1.9 Is the Company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specify date(s), details, circumstances, and prospects for resolution.
- 8.1.10 Provide any details of all past or pending litigation or claims filed against the Company that would negatively impact the Company's performance under any agreement with the System.
- 8.1.11 Provide the name, title, email and telephone number of the individual who will serve as the primary day-to-day contact for the System should a contract be awarded to Company.
- 8.1.12 Check any of the other preferences, as defined in 34 TAC §20.38, that are applicable to Company:
- Supplies, materials, equipment, or services produced in TX/ offered by TX bidders
 - Agricultural products produced or grown in TX
 - Agricultural products and services offered by TX bidders
 - USA produced supplies, materials, or equipment
 - Products of persons with mental or physical disabilities
 - Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
 - Energy efficient products
 - Rubberized asphalt paving material
 - Recycled motor oil and lubricants

- Products produced at facilities located on formerly contaminated property
- Products and services from economically depressed or blighted areas

8.2 ADDITIONAL CONSIDERATIONS: Describe any additions or changes to the Scope of Work that Company would suggest in order to successfully meet the objective of this RFP or that may be of benefit to the System. Any additions, changes or suggestions should be clearly described and defined for the System's consideration. The System reserves the right to incorporate any such additions, changes or suggestions into the Agreement.

Section 9 – Additional Questions Specific to RFP

The Proposer recognizes that in selecting a Contractor, The System will rely in part on the answers provided in response to this Section. Accordingly, Proposer certifies that to the best of its knowledge, all responses are true, correct and complete. The System reserves the right to contact each and every reference or contact name listed in response to this RFP at any time and shall be free from any liability to Proposer for conducting such inquiry. To be considered, Proposer must address and include a response to each question in this Section in their proposal in the order asked and following the same numbering format.

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

9.1 VENDOR EXPERIENCE (15%)

- 9.1.1 Provide references from three (3) of Proposer's customers from the past five (5) years for services that are similar in scope, size, and complexity to the Services described in this RFP.

Provide the following information for each customer:

- Customer name and address;
- Contact name with email address and phone number;
- Time period in which work was performed;
- Short description of work performed.

- 9.1.2 Has Proposer worked with the System or one of the Component Institutions in the past five (5) years? If "yes," provide the System (or Component Institution) contact name and provide a brief description of work performed.

9.2 QUALITY OF SERVICE (40%)

- 9.2.1 Discuss how Proposer maintains relationships with clients and provides high-level customer service to clients.
- 9.2.2 Describe the Proposer's plan to maintain effective communication with the System.
- 9.2.3 Will Proposer provide a yearly performance review to the System including suggested improvements and future roadmaps? If so, explain.
- 9.2.4 Describe Proposer's service support philosophy, how it's implemented, and how success in maintaining the philosophy is measured.
- 9.2.5 Describe service approach Proposer will use and how quality of service will be measured for this project.
- 9.2.6 Describe the training afforded Proposer's employees.

- 9.2.7 Describe any discounts available to System if System employees successfully complete Proposer's available recommended training, approved by TSUS, at 50, 75 and 100 percent of approved drivers.
- 9.2.8 Describe the types of reports or other written documents Proposer will provide and the frequency of reporting, if more frequent than required in this RFP. Provide samples of reports and documents as appropriate.
- 9.2.9 Describe Proposer's disaster preparedness, contingency and disaster recovery plans to ensure TSUS data integrity and that contracted services are not interrupted during a disaster affecting only the Proposer.
- 9.2.10 Provide high-level description of Proposer's RMIS system including, but not limited to: key functionality, improvement roadmaps, readily available reports, limitations on number of System users, etc.
- 9.2.11 Describe the average caseload per adjuster.
- 9.2.12 Advise System of the average lifespan of claims managed.
- 9.2.13 Provide the process used to determine when subrogation is triggered and how it is executed.

9.3 PROVISION OF SERVICES (5%)

- 9.3.1 Provide a list of any additional services or benefits not otherwise identified in this RFP that Proposer would propose to provide to the System. Additional services or benefits must be directly related to the goods and services solicited under this RFP.
- 9.3.2 Provide details describing any unique or special services or benefits offered or advantages to be gained by the System from doing business with Proposer. Additional services or benefits must be directly related to the goods and services solicited under this RFP.
- 9.3.3 Describe any difficulties Proposer anticipates in performing its duties under the Agreement with the System and how Proposer plans to manage these difficulties. Describe any assistance Proposer would require from the System to provide Services.

SECTION 10 – General Terms & Conditions of Contract

The terms and conditions contained in the attached Agreement (ref. **APPENDIX ONE**) or, in the sole discretion of The System, terms and conditions substantially similar to those contained in the Agreement, will constitute and govern any agreement that results from this RFP. If Proposer agrees with the terms and conditions set forth in **APPENDIX ONE**, Proposer will submit a written statement acknowledging it.

If Proposer has additional terms and conditions that it proposes to include in any contract or agreement resulting from this RFP (such as software license terms and conditions) or if Proposer takes exception to any terms or conditions set forth in the Agreement, Proposer will submit a redlined **APPENDIX ONE** (in an editable format, i.e. Microsoft Word) as part of its proposal in accordance with **Section 3.3.4** of this RFP. Proposer's additions and exceptions will be reviewed by The System and may result in disqualification of Proposer's proposal as non-responsive to this RFP. If Proposer's additions and exceptions do not result in disqualification of Proposer's proposal, then The System may consider Proposer's additions and exceptions when The System evaluates the Proposer's proposal. The System will not be bound by or required to accept or agree to any terms and conditions that a Proposer includes (or fails to include) in its Proposal.

Exceptions cannot be taken to the RFP document itself, nor can it be redlined. These actions may result in Proposer's disqualification.

AGREEMENT BETWEEN
THE TEXAS STATE UNIVERSITY SYSTEM
AND
PROPOSER, INSERT COMPANY NAME

This non-exclusive Agreement (**Agreement**) is entered into between [REDACTED] (**Contractor**), Federal Tax Identification Number [REDACTED], and **The Texas State University System (The System)**, an agency and institution of higher education established under the laws of the State of Texas, and located in Austin, Texas. The number associated with this Agreement (**Agreement Number**) is: _____.

The System and its component institutions (**Component Institutions**) are:

- The Texas State University System Administration, Austin, Texas
- Lamar University, Beaumont, Texas
- Sam Houston State University, Huntsville, Texas
- Sul Ross State University, Alpine, Texas
- Texas State University, San Marcos, Texas
- Lamar Institute of Technology, Beaumont, Texas
- Lamar State College - Orange, Orange, Texas
- Lamar State College - Port Arthur, Port Arthur, Texas

In consideration of the mutual promises and covenants contained in the Agreement, The System and Contractor agree as follows:

1. Services

Contractor will perform the services (**Services**) set forth in **Exhibit A**, Scope of Work, to the satisfaction of The System and in accordance with The System's Request for Proposal (RFP) **#758-19-00068 Third Party Administrator for Auto Claims** and Contractor's response to said RFP. Services will be provided to, and on behalf of, The System and the Component Institutions. Time is of the essence in connection with this Agreement. The System will have no obligation to accept late performance or waive timely performance by Contractor.

Contractor will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local, laws, statutes, regulations and ordinances (collectively, **Applicable Laws**), for the performance of the Services.

GROUP PURCHASING AUTHORITY. Texas law authorizes institutions of higher education (defined by Section 61.003, Education Code) to use the group purchasing procurement method (ref. Sections 51.9335, 73.115, and 74.008, Education Code). Contractor agrees that other Texas institutions of higher education may enter into an agreement or contract with Contractor for the purchase of the services described herein based on the terms, conditions, and process of this Agreement.

2. Term

This Agreement is effective as of the later of November 1, 2019, or the date Agreement is fully executed by both parties (**Effective Date**). The term (**Initial Term**) of this Agreement will begin on the Effective Date and expire on October 31, 2022 unless earlier terminated in accordance with **Section 7**. The System will have the option to renew this Agreement for two (2) additional one (1) year terms (each a **Renewal Term**). The Initial Term and each Renewal Term are collectively referred to as the **Term**.

3. Compensation

The System will compensate Contractor for services in accordance with **Exhibit B**, Pricing for Services. Total compensation to Contractor will not exceed the Contract Amount (ref. **Exhibit B**, **Section 1.5**) inclusive of all fees and expenses during the life of the Agreement.

The Agreement will not be effective for amounts exceeding one million dollars (\$1,000,000) unless preapproved by the Board of Regents of The Texas State University System.

4. Payment Terms

- 4.1 **Payments.** So long as Contractor has provided The System with its current and accurate Federal Tax Identification Number in writing and Contractor is not in default under this Agreement, The System will pay Contractor for goods and services in accordance with the Prompt Payment Provisions of Chapter 2251, [Texas Government Code](#). If The System disapproves any invoice amount, The System will give Contractor specific reasons for its disapproval in writing.
- 4.2 **Sales Tax.** The System, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with §151.309, [Texas Tax Code](#), and Title 34 [Texas Administrative Code](#) (“TAC”) §3.322. Pursuant to [34 TAC §3.322\(c\)\(4\)](#), The System is not required to provide a tax exemption certificate to establish its tax exempt status.
- 4.3 **Electronic Funds Transfer.** [Section 51.012, Education Code](#), authorizes System to make payments through electronic funds transfer methods. Contractor agrees to accept payments from System through those methods, including the automated clearing house system (ACH). Contractor agrees to provide Contractor’s banking information and taxpayer identification number to System, in the format requested by System, prior to the first payment. Changes to Contractor’s information must be communicated to System in the same manner at least fourteen (14) days before the effective date of the change.
- 4.4 **Invoices.** Contractor will submit invoices by electronic means to The System at finance@tsus.edu. Each invoice must contain the Agreement Number and supporting documentation for the invoiced amounts as described in **Exhibit B**. The System will incur no penalty for late payment, if payment is made in accordance with the Prompt Payment Act. Regardless of the invoice date, the payment process will begin when

The System receives the authorization/acceptance from the awarding department, or system components.

- 4.5 Notwithstanding any provision of this Agreement to the contrary, The System will not be obligated to make any payment to Contractor if Contractor is in default under this Agreement.
- 4.6 No payment made by The System will (a) be construed to be final acceptance or approval of that part of the Services to which the payment relates, or (b) relieve Contractor of any of its duties or obligations under this Agreement.

5. Contractor's Obligations.

- 5.1 Contractor will perform Services in compliance with (a) all Applicable Laws, and (b) the Board of Regents of The Texas State University System Rules and Regulations, the policies of The Texas State University System; and the institutional rules, regulations and policies of Component Institutions (collectively, **The System Rules**). 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 The 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.
- 5.2 Contractor represents and warrants that (a) it will use commercially reasonable efforts to perform Services in a good and workmanlike manner and in accordance with commercially reasonable standards of Contractor's profession or business, and (b) all Services to be performed will be of the quality that prevails among similar businesses engaged in providing similar services in major United States urban areas under the same or similar circumstances.
- 5.3 Contractor will call to The System's attention in writing all information in any materials supplied to Contractor (by The System or any other party) that Contractor regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.
- 5.4 The System at all times is relying on Contractor's skill and knowledge in performing Services. Contractor represents and warrants that Services will be accurate and free from any material defects. Contractor's duties and obligations under this Agreement will not be in any way diminished by reason of any approval by The System. Contractor will not be released from any liability by reason of any approval by The System.
- 5.5 Contractor will, at its own cost, correct all material defects in Services as soon as practical after Contractor becomes aware of the defects. If Contractor fails to correct material defects in Services within a reasonable time, then The System may correct the defective Services at Contractor's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Services that The System may have at law or in equity.

- 5.6 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will cause all persons connected with Contractor directly in charge of Services to be duly registered and licensed under all Applicable Laws. Contractor will assign to the Project a designated representative who will be responsible for administration and coordination of Services. Contractor will furnish efficient business administration and coordination and perform Services in an expeditious and economical manner consistent with the interests of The System.
- 5.7 **Representations and Warranties by Contractor.** If Contractor is a corporation or a limited liability company, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 5.8 **Premise Rules.** If this Agreement requires Contractor's presence on The System's premises or in The System's facilities, Contractor agrees to cause its employees, representatives, agents, or subcontractors to become aware of, fully informed about, and in full compliance with all applicable The System Rules, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.
- Contractor represents and warrants that all of Contractor's Personnel contributing to Work Material (ref. **Section 6.1**) under this Agreement will be required to (i) acknowledge in writing the ownership of Contractor (for the benefit of The System) of Work Material produced by Personnel while performing services pursuant to this Agreement, and (ii) make all assignments necessary to effectuate such ownership. **Personnel** means any and all persons associated with Contractor who provide any work or work product pursuant to this Agreement, including officers, managers, supervisors, full-time employees, part-time employees, and independent contractors.
- 5.9 Contractor represents and warrants that: (i) Services will be performed solely by Contractor, its full-time or part-time employees during the course of their employment, or independent contractors who have assigned in writing all right, title and interest in their work to Contractor (for the benefit of The System); (ii) The System will receive free, good and clear title to all Work Material developed under this Agreement; (iii) Work Material and the intellectual property rights protecting Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges and other restrictions; (iv) Work Material will not infringe upon or violate any patent, copyright, trade secret, trademark, service mark or other property right of any former employer, independent contractor, client or other third party; and (v) the use, reproduction, distribution, or modification of Work Material will not violate the rights of any third parties in Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.

6. Ownership and Use of Work Material

- 6.1 **Work Material.** All tools, software, programs, renderings, drawings, specifications, plans, computations, data, photographs, records, models, statements, reports, studies, and other deliverables or materials prepared or produced by Contractor Parties in connection with the Services (collectively, Work Material), whether or not accepted or rejected by The System, are the property of The System and for The System's exclusive use and re-use at any time without further compensation and without any restriction. Contractor grants and assigns to The System all rights in and claims to the Work Material and will cooperate with The System in obtaining or enforcing The System's rights and claims. Contractor will not use the Work Material except as expressly authorized by this Agreement.
- 6.2 **Patents or Copyrights.** Contractor will not apply for any copyright, patent or other property right related to the Work Material. Contractor agrees to protect The System from claims involving infringement of patents or copyrights.
- 6.3 Contractor will deliver all Work Material to The System upon expiration or termination of this Agreement. The System will have the right to use Work Material for the completion of Work or otherwise. The System may, at all times, retain the originals of Work Material. Work Material will not be used by any person other than The System on other projects unless expressly authorized by The System in writing.
- 6.4 Work Material will not be used or published by Contractor or any other party unless expressly authorized by The System in writing. Contractor will treat all Work Material as confidential.
- 6.5 All title and interest in Work Material will vest in The System and will be deemed to be work made for hire and made in the course of Work rendered under this Agreement. To the extent that title to any Work Material may not, by operation of law, vest in The System or Work Material may not be considered works made for hire, Contractor irrevocably assigns, conveys and transfers to The System and its successors, licensees and assigns, all rights, title and interest worldwide in and to Work Material and all proprietary rights therein, including all copyrights, trademarks, service marks, patents, trade secrets, moral rights, all contract and licensing rights and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known. In the event Contractor has any rights in Work Material which cannot be assigned, Contractor agrees to waive enforcement worldwide of the rights against The System, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to The System with the right to sublicense. These rights are assignable by The System.

7. Default and Termination

- 7.1 In the event of a material failure by a party to this Agreement to perform in accordance with its terms (**default**), the other party may terminate this Agreement upon thirty (30) 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 thirty-day (30-day) period.

- 7.2 The System may, without cause, terminate this Agreement at any time upon giving thirty (30) days' written notice to Contractor. Upon termination pursuant to this Section, Contractor will be entitled to payment of an amount that will compensate Contractor for Services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement; provided, that, Contractor has delivered all Work Material to The System. Notwithstanding any provision in this Agreement to the contrary, The 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.
- 7.3 The System may terminate this Agreement immediately with no further notice if Contractor: (a) petitions for reorganization under the Bankruptcy Code or is adjudged bankrupt; (b) becomes insolvent; or (c) makes a general assignment or sale of Contractor's assets or business for the benefit of creditors.
- 7.4 Termination under this Section does not relieve Contractor or any of its employees, subcontractors or agents from liability for any default or breach under this Agreement or any other act or omission of Contractor.

8. Indemnification

CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY THE SYSTEM, AND HOLD HARMLESS THE SYSTEM AND THEIR 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, IN CONNECTION WITH, OR RESULTING FROM THIS AGREEMENT OR THE GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT, TO THE EXTENT CAUSED, IN WHOLE OR IN PART, BY THE ACTS, OMISSIONS, OR WILLFUL MISCONDUCT OF CONTRACTOR, OR IT AGENTS, EMPLOYEES, SUBCONTRACTORS, SUPPLIERS OR ANYONE DIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAYBE LIABLE. IN ADDITION, CONTRACTOR WILL INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY THE SYSTEM, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THIS AGREEMENT OR THE GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT. 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. IN THE EVENT OF LITIGATION, THE SYSTEM AGREES TO COOPERATE REASONABLY WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

9. Relationship of the Parties

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venturer, or agent of The System or Component Institution. Contractor will not bind nor

attempt to bind The System or Component Institution to any agreement or contract. As an independent contractor, Contractor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance.

10. Insurance Requirements

Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance in the form, with companies admitted to do business in the State of Texas and having an A.M. Best Rating of A-VII or better, and in amounts (unless otherwise specified), as The System may require:

- 10.1 Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than:

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

Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation and other rights in favor of The System;

- 10.2 Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit - \$1,000,000
 Damage to Rented Premises - \$300,000
 Medical Expenses (any one person) - \$10,000
 Personal & Advertising Injury - \$1,000,000
 General Aggregate - \$2,000,000
 Products - Completed Operations Aggregate - \$2,000,000

Policy will include independent contractor's liability, covering, but not limited to, the liability assumed under the indemnification provision of this contract, fully insuring Contractor's (or Subcontractor's) liability for bodily injury (including death) and property damage.

- 10.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Combined Single Limit Bodily Injury and Property Damage. If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

- 10.4 Errors and Omissions Insurance with limits of not less than \$1,000,000 per claim. Such insurance will cover all Work performed by or on behalf of Contractor and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement.

- 10.5 Contractor will maintain Cyber Liability insurance with limits of not less than \$2,000,000 for each wrongful act, that provides coverage for:
- Liability for security or privacy breaches, including loss or unauthorized access to University Data, whether by Contractor or any of subcontractor or cloud service provider used by Contractor;
 - Costs associated with a privacy breach, including consumer notification, customer support/crisis management, and costs of providing credit monitoring services;
 - Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
 - Costs of restoring, updating or replacing University data;
 - Privacy liability losses connected to network security, privacy, and media liability.
- 10.6 Contractor's Employee Dishonesty Insurance will be endorsed with a University's Property Endorsement (or equivalent) to protect the assets and property of University with limits of not less than \$1,000,000 per claim. If Contractor has property of University in its care, custody or control away from University's premises, Contractor will provide bailee coverage for the replacement cost of the property. Contractor's Employee Dishonesty policy will name University as Loss Payee.

Contractor will deliver to The System:

- 10.7 Evidence satisfactory to The System in its sole discretion, evidencing the existence of all insurance after the execution and delivery of this Contract and prior to the performance or continued performance of any services to be performed by Contractor under this Contract.
- 10.8 Additional evidence, satisfactory to The System in its sole discretion, of the continued existence of all insurance not less than five (5) days prior to the expiration of any insurance. Insurance policies, with the exception of Workers' Compensation and Employer's Liability, shall be endorsed and name The System as an Additional Insured for on-going and completed operations. All policies will be endorsed to provide a waiver of subrogation in favor of The System. All policies with the exception of Workers' Compensation and Employer's Liability will be endorsed to provide primary and non-contributory coverage. Notice of Cancellation shall be provided by the carrier to The System in accordance with policy provisions, however no policy shall be canceled until after thirty (30) days' unconditional written notice to The System. All policies shall be endorsed requiring the insurance carrier providing coverage to send notice to The System 30 days prior to any cancellation, material change, or non-renewal (60 days for non-renewal) relating to any insurance policy required herein.

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

- 10.9 Commercial General Liability Insurance, Business Automobile Liability Insurance; will be kept in force until receipt of Final Payment by The System to Contractor.
- 10.10 Workers' Compensation Insurance and Employer's Liability Insurance will be kept in force until Services have been fully performed and accepted by The System in writing.
- 10.11 Errors and Omissions Insurance will be kept in force an additional two (2) years after the Services have been fully performed and accepted by The System in writing.

11. Miscellaneous

- 11.1 **Assignment and Subcontracting.** 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 The System; and (b) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Applicable Laws, including [Chapter 2161, Texas Government Code](#), and [34 TAC §§20.285\(g\)\(5\), 20.585 and 20.586](#). The benefits and burdens of this Agreement are assignable by The System.
- 11.2 **Texas Family Code Child Support Certification.** Pursuant to [§231.006, Texas Family Code](#), Contractor certifies it is not ineligible to receive the award of or payments under this Agreement, and acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 11.3 **Tax Certification.** If Contractor is a taxable entity as defined by [Chapter 171, Texas Tax Code](#), then Contractor certifies it is not currently delinquent in the payment of any taxes due under Chapter 171, Contractor is exempt from the payment of those taxes, or Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 11.4 **Payment of Debt or Delinquency to the State.** Pursuant to [§§2107.008 and 2252.903, Texas Government Code](#), Contractor agrees any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency Contractor owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until paid in full.
- 11.5 **Loss of Funding.** Performance by The System under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (**Legislature**) and/or allocation of funds by the Board of Regents of The Texas State University System (**Board**). If the Legislature fails to appropriate or allot necessary funds, or the Board fails to allocate necessary funds, then The System will issue written notice to Contractor and The System may terminate this Agreement without further duty or obligation. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond The System's control.
- 11.6 **Entire Agreement; Modifications.** The Agreement (including all exhibits, schedules, supplements and other attachments (collectively, **Exhibits**) supersedes all prior agreements, written or oral, between Contractor and The System and will constitute the entire Agreement and understanding between the parties with respect to the

- subject matter hereof. The Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except in writing signed by The System and Contractor.
- 11.7 **Eligibility Certifications.** Pursuant to Sections 2155.004 and 2155.006, [Texas Government Code](#), Contractor certifies that the individual or business entity named in the Agreement is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if these certifications are inaccurate.
- 11.8 **Force Majeure.** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (**force majeure occurrence**). Provided, however, in the event of a force majeure occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that The System may continue to provide during the occurrence.
- 11.9 **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.
- 11.10 **Venue; Governing Law.** The Agreement and all claims arising from the Agreement shall be interpreted and construed in accordance with the laws of the State of Texas, without regard to its conflict of laws principles. Any judicial action or proceeding between the parties relating to the Agreement and all claims arising from the Agreement shall be brought in the federal or state courts serving Travis County in the State of Texas.
- 11.11 **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.
- 11.12 **Products and Materials Produced in Texas.** If Contractor will provide services under the Agreement, Contractor covenants and agrees that in accordance with Section 2155.4441, [Texas Government Code](#), in performing its duties and obligations under the Agreement, Contractor will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
- 11.13 **Title and Risk of Loss.** Title to and risk of loss to any goods to be delivered under this Agreement will not pass to The System until The System actually receives and takes possession of such goods at the point of delivery.
- 11.14 **Exclusivity.** This Agreement is not exclusive, and The System may engage other vendors or use its own employees to perform Services.
- 11.15 **Confidentiality and Safeguarding of The System Records; Press Releases; Public Information.** Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of The System or Component Institution, or (3) have access to,

records or record systems (collectively, **The System Records**). Among other things, The System Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws, including student records and protected health information as defined by the [Health Insurance Portability and Accountability Act 45 Code of Federal Regulations \(CFR\) Part 160 and subparts A and E of Part 164](#) (collectively, **HIPAA**). Additional mandatory confidentiality and security compliance requirements with respect to The System Records subject to the Family Educational Rights and Privacy Act, [20 United States Code \(USC\) §1232g \(FERPA\)](#) are addressed in **Section 11.37** Contractor represents, warrants, and agrees that it will: (1) hold The System or Component Institution Records in strict confidence and will not use or disclose The System or Component Institution Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by The System in writing; (2) safeguard The System or Component Institution Records according to reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security) that are no less rigorous than the standards by which Contractor protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that The System or Component Institution Records are safeguarded and the confidentiality of The System or Component Institution Records is maintained in accordance with all Applicable Laws and the terms of this Agreement; and (4) comply with the Information Security Policy detailed in Appendix A-3, *The Texas State University System Rules and Regulations* at <https://gato-docs.its.txstate.edu/jcr:34a3f1a1-48af-4b2b-9abb-42921fb9ae23/Rules%20and%20Regulations%20May%202018.pdf>. At the request of The System, Contractor agrees to provide The System within ten (10) calendar days with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of The System or Component Institution Records.

- 11.15.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any The System or Component Institution Records occurs, Contractor will provide written notice to The System or Component Institution within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide The System or Component Institution with all information requested by The System regarding the impermissible use or disclosure.
- 11.15.2 **Return of The System Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all The System or Component Institution Records created or received from or on behalf of The System will be (1) returned to The System, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any The System or Component Institution Records, Contractor will provide The System or Component Institution with written notice of Contractor's intent to destroy The System or Component Institution Records. Within five (5) days after destruction, Contractor will confirm to The System or Component Institution in writing the destruction of The System or Component Institution Records.

- 11.15.3 **Disclosure.** If Contractor discloses any The System or Component Institution 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.
- 11.15.4 **Press Releases.** Except when defined as part of Covered Services, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of The System in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of The System or Component Institution.
- 11.15.5 **Public Information.** The 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 (TPIA)*, [Chapter 552, Texas Government Code](#). In accordance with §§[552.002](#) and [2252.907](#), *Texas Government Code*, and at no additional charge to The System, Contractor will make any information created or exchanged with The System pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by The System that is accessible by the public.
- 11.15.6 **Termination.** In addition to any other termination rights in this Agreement and any other rights at law or equity, if The System reasonably determines that Contractor has breached any of the restrictions or obligations in this Section, The System may immediately terminate this Agreement without notice or opportunity to cure.
- 11.15.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.
- 11.16 **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.
- 11.17 **Records.** Records of Contractor's costs, reimbursable expenses pertaining to the Covered Services and payments will be available to The System or its authorized representative during business hours and will be retained for four (4) years after final Payment or abandonment of the Covered Services, unless The System or Component Institution otherwise instructs Contractor in writing.
- 11.18 **Notices.** Except as otherwise provided by this Section, notices, consents, approvals, demands, requests or other communications required or permitted under this Agreement, will be in writing and sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is provided below), or email (to the extent an email address is provided below) as indicated below, and notice will be deemed given (i) if delivered by certified mailed, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier,

facsimile (to the extent a facsimile number is provided below) or email (to the extent an email address is provided below), when received:

If to The System: The Texas State University System
Attention: Vice Chancellor and CFO
601 Colorado Street
Austin, TX 78701

Or via email: finance@tsus.edu

If to Contractor: **PROPOSER, PLEASE INSERT CONTACT INFORMATION**

Or via email:

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

- 11.19 **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.
- 11.20 **State Auditor's Office.** Contractor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the State of Texas Auditor's Office or any successor agency ("Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), [Texas Education Code](#). Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of the Services as requested. Contractor's failure to comply with this requirement shall constitute a material breach of Agreement and shall authorize The System and the State of Texas to assess immediately appropriate damages for such failure. Contractor acknowledges and understands that the acceptance of funds under Agreement shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.
- 11.21 **LIMITATION OF LIABILITY.** EXCEPT FOR THE SYSTEM'S AND COMPONENT INSTITUTION'S OBLIGATION (IF ANY) TO PAY CONTRACTOR CERTAIN FEES AND EXPENSES THE 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 THE SYSTEM AND COMPONENT INSTITUTION 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 SYSTEM, OR THE TEXAS STATE UNIVERSITY SYSTEM, OR ANYONE CLAIMING UNDER THE SYSTEM AND COMPONENT INSTITUTION HAS OR WILL HAVE ANY PERSONAL LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.
- 11.22 **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.
- 11.23 **Breach of Contract Claims.** To the extent that Chapter 2260, [Texas Government Code](#), is applicable to the Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by The System and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief business officer of The System will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties specifically agree that (i) neither the execution of the Agreement by The System nor any other conduct, action or inaction of any representative of The System relating to the Agreement constitutes or is intended to constitute a waiver of The System's or the state's sovereign immunity to suit; and (ii) The System has not waived its right to seek redress in the courts.
- 11.24 **Sovereign Immunity.** Notwithstanding any provision of the Agreement, nothing herein shall be construed as a waiver by The System of its constitutional, statutory or common law rights, privileges, immunities or defenses. To the extent the terms of this paragraph conflicts with any other provision in the Agreement and this Addendum, the terms of this paragraph shall control.
- 11.25 **Undocumented Workers:** The *Immigration and Nationality Act* ([8 USC §1324a](#)) (**Immigration Act**) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the [Form I-9 Employment Eligibility Verification Form \(I-9 Form\)](#) as the document to be used for employment eligibility verification ([8 CFR §274a](#)). Among other things, 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 Applicable Laws. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship

- status. If 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 Applicable Laws, The System may terminate this Agreement in accordance with **Section 7**. 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.
- 11.26 **Limitations.** THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF THE SYSTEM (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIENS ON THE 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 THE SYSTEM EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
- 11.27 **Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand The System's Conflicts of Interest Policy and Code of Ethics at <https://gato-docs.its.txstate.edu/jcr:34a3f1a1-48af-4b2b-9abb-42921fb9ae23/Rules%20and%20Regulations%20May%202018.pdf> and applicable state ethics laws and rules, including Senate Bill 20 (84th Texas Legislature, 2015). Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause The System employees to violate The System's Conflicts of Interest Policy. 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. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause The System employees to violate The System's Conflicts of Interest Policy, The System's Ethics Code, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.
- 11.28 **Enforcement.** Contractor agrees and acknowledges that The System is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to performing Services. Contractor's services provide a peculiar value to The System. The System cannot be reasonably or adequately compensated in damages for the loss of Contractor's services. Accordingly, Contractor acknowledges and agrees that a breach by Contractor of the provisions of this Agreement will cause The System irreparable injury and damage. Contractor, therefore, expressly agrees that The System will be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.
- 11.29 **Expansion of Services.** If The System expands the scope of Services through a change order or any other amendment, The System will determine if the additional Services

contains probable subcontracting opportunities *not* identified in the initial solicitation for Services. If The 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 §20.285](#) before (a) this Agreement may be amended to include the additional Services; or (b) Contractor may perform the additional Services. If Contractor subcontracts any of the additional subcontracting opportunities identified by The System without prior authorization and without complying with [34 TAC §20.285](#), Contractor will be deemed to be in breach of this Agreement under **Section 11.1** and will be subject to any remedial actions provided by Applicable Laws, including [Chapter 2161, Texas Government Code](#), and [34 TAC §20.285](#). The System may report nonperformance under this Agreement to the TPSS in accordance with [34 TAC §§20.285\(g\)\(5\), 20.585](#) and [20.586](#).

- 11.30 **Responsibility for Individuals Performing Services.** Each individual who is assigned to perform the Services under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing Services under this Agreement.

Contractor will determine on a case-by-case basis whether each individual assigned to perform the Services is qualified to provide the Services. Contractor will not knowingly assign any individual to provide services on The System or Component Institution's premises who has a history of criminal conduct unacceptable for a the System campus or healthcare center, including violent or sexual offenses.

Prior to commencing performance of Services under this Agreement, Contractor will provide The System a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will be responsible for providing The System an updated certification letters each time there is a change in the individuals assigned to perform the Services.

- 11.31 **Debarment.** Contractor confirms that neither Contractor nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States (**U.S.**) federal government procurement or non-procurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs (<http://www.sam.gov/>) issued by the U.S. General Services Administration. "**Principals**" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Contractor will provide immediate written notification to The System if, at any time prior to award, Contractor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when The System executes this Agreement. If it is later determined that Contractor knowingly rendered an

erroneous certification, in addition to the other remedies available to The System, The System may terminate this Agreement for default by Contractor.

- 11.32 **Office of Inspector General Certification.** Contractor acknowledges that The System is prohibited by federal regulations from allowing any employee, representative, agent or subcontractor of Contractor to work on site at The System's premises or facilities if that individual is not eligible to work on federal healthcare programs including Medicare, Medicaid, or other similar federal programs. Therefore, Contractor will not assign any employee, representative, agent or subcontractor that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General (**OIG**) to work on site at The System's premises or facilities. Contractor will perform an OIG sanctions check quarterly on each of its employees, representatives, agents, and subcontractors during the time the employees, representatives, agents, or subcontractors are assigned to work on site at The System's premises or facilities. Contractor acknowledges that The System will require immediate removal of any employee, representative, agent, or subcontractor of Contractor assigned to work at The System's premises or facilities if the employee, representative, agent, or subcontractor is found to be on the OIG's List of Excluded Individuals. The OIG's List of Excluded Individuals may be accessed through the following Internet website: <http://exclusions.oig.hhs.gov/>
- 11.33 **Access to Documents.** To the extent applicable to this Agreement, in accordance with §1861(v)(l)(i) of the Social Security Act ([42 USC §1395x](#)) as amended, and the provisions of [42 CFR §420.300 et seq.](#), Contractor will allow, during and for a period of not less than four (4) years after the expiration or termination of this Agreement, access to this Agreement and its books, documents, and records; and contracts between Contractor and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.
- 11.34 **OSHA Compliance.** To the extent applicable to the services to be performed under this Agreement, Contractor represents and warrants, that all articles and services furnished under this Agreement meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law ([Public Law 91-596](#)) and its regulations in effect or proposed as of the date of this Agreement.
- 11.35 **Nondiscrimination.** In their execution of the Agreement the parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of the Agreement.
- 11.36 **External Terms.** This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor's performance or provision of goods or services under this Agreement (**External Terms**).

External Terms are null and void and will have no effect under this Agreement, even if The System or its employees, contractors, or agents express assent or agreement to External Terms. External Terms include any shrinkwrap, clickwrap, browsewrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that The System or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Contractor.

- 11.37 **FERPA Compliance.** Some of The System Records Contractor receives, creates or maintains for or on behalf of the Component Institution may constitute **Education Records** (as defined by [FERPA](#)), or **Personally Identifiable Information from Education Records** (as defined by [FERPA](#)) (collectively, **FERPA Data**). Contractor will hold The System FERPA Records in strict confidence. Contractor will not use or disclose FERPA Records received from or on behalf of The System, except as permitted or required by this Agreement in order to execute required Services to the Component Institution. Contractor will use the administrative, technical and physical security measures, including secure encryption in the case of electronically maintained or transmitted FERPA Records, approved by The System and that are at least as stringent as the requirements of Title 34, Part 99 – Family Educational Rights and Privacy noted at <https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=34:1.1.1.1.33> to preserve the confidentiality and security of all FERPA Records received from, or on behalf of The System, its students or any third party pursuant to this Agreement. Contractor agrees that no later than 30 days after expiration or termination of the Services to Component Institution, or any reason, or within thirty (30) days after The System’s written request, Contractor will halt all access, use, or processing of FERPA Records and will return to The System all FERPA Records, including any copies created by Contractor or any subcontractor; and Contractor will certify in writing to The System that all FERPA records have been returned to The System. Contractor will restrict disclosure of FERPA Records solely to those employees, subcontractors, or agents of Contractor that have a need to access the FERPA Records in order for Contractor to perform its obligations under this Agreement. If Contractor discloses any FERPA Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with restrictions and obligations that align with the restrictions and obligations imposed on Contractor by this Agreement, including requiring each subcontractor or agent to agree to the same restrictions and obligations in writing.
- 11.38 In accordance with Texas Education Code, Section 51.9335 (h), any Contract for the acquisition of goods and services to which an institution of higher education is a party, any provision required by applicable law to be included in the Agreement or Contract is considered to be a part of the executed Agreement or Contract without regard to:
- (1) Whether the provision appears on the face of the Agreement or Contract; or
 - (2) Whether the Agreement or Contract includes any provision to the contrary.

12. Certifications

- 12.1 **Contractor Certification regarding Boycotting Israel.** If Contractor is required to make a certification pursuant to [Chapter 2270.002, Texas Government Code](#), Contractor certifies that Contractor does not boycott Israel and will not boycott Israel during the term of the Agreement.
- 12.2 **Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 12.3 **Eligibility Certifications.** Pursuant to Sections 2155.004 and 2155.006, [Texas Government Code](#), Contractor certifies that the individual or business entity named in the Agreement is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if these certifications are inaccurate.

13. Access by Individuals with Disabilities. Contractor represents and warrants (the “EIR Accessibility Warranty”) that the electronic and information resources and all associated information, documentation, and support that it provides to The System under the Agreement (collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1, Chapter 213 of the [Texas Administrative Code](#) and Title 1, Chapter 206, Rule §206.70 of the [Texas Administrative Code](#) (as authorized by Chapter 2054, Subchapter M of the [Texas 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 The System, 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 The System may terminate the Agreement and Contractor will refund to The System all amounts The System has paid under the Agreement within thirty (30) days after the termination date.

Contractor must provide The System with all Voluntary Product Accessibility Templates (VPAT), Information Technology Industry Council (ITIC) and General Services Administration (GSA), that describes compliance with Section 508. Updated VPAT documents should be provided on an annual basis at each invoice period.

THE FOLLOWING LIST OF EXHIBITS ARE INCORPORATED INTO THE AGREEMENT BY REFERENCE. IN THE CASE OF ANY DISCREPANCIES BETWEEN EXHIBITS AND AGREEMENT, THE AGREEMENT WILL PREVAIL.

EXHIBIT A – Scope of Work

EXHIBIT B – Pricing for Services

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

THE SYSTEM:

CONTRACTOR:

THE TEXAS STATE UNIVERSITY SYSTEM

By: _____

Name: _____

Title: _____

Date: _____

PROPOSER, INSERT COMPANY NAME

By: _____

Name: _____

Title: _____

Date: _____

Approved as to legal form:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

SCOPE OF WORK

Contractor will provide timely and professional Services as described herein and in accordance with Contractor's response to The System RFP #758-19-00068.

Insert scope of work as presented in posted RFP document and add item at end to address any additional items Contractor will provide per the proposal:

The Services will be provided per the following excerpt from The System's RFP 758-19-00068:

Contractor will provide the following additional Services as described in Contractor's RFP response:

5.X.....Proposer will insert any additional services that will be provided that were described in response to the RFP.....

EXHIBIT B

PRICING FOR SERVICES

1. Pricing for Services and Expenses: The System will compensate Contractor for successful completion of Services outlined in **Exhibit A**, Scope of Work, as follows.

1.1 Pricing for Services. The System will pay the following prices for Services:

Base Services Claim Type	Cost per Claim
Auto Liability Bodily Injury	\$
Auto Liability Property Damage	\$
Auto Physical Damage	\$
Administrative Services Type	Cost per Year
Administration / Data Management	\$
Designated Account Management	\$
Banking Administration	\$
New Claims Reporting (Online)	\$

Additional Users / Optional Services: Provide rates for additional users (more than 7) for RMIS system. In addition, if System submits, in advance, a written request for additional services not contemplated or reasonably inferred by the Agreement, Contractor will be paid for actual hours, in fifteen (15) minute increments, incurred by Contractor’s personnel directly and solely in support of the additional services at the rates set forth below:

RMIS Access (additional users/quarter): \$ _____ per person

Consulting Services \$ _____ per hour

Loss Control Consulting Services: \$ _____ per hour

Pricing will be held firm for the initial term of the Agreement. Price adjustments *may be requested* when exercising available contract term renewal options. Any such price adjustments will follow the changes in the Consumer Price Index for Urban and Clerical Workers (“CPI-W”) up to a maximum five percent (5%) cap per renewal term.

1.2 Expenses. The System will *not* reimburse Contractor for expenses.

- 1.3 **Fee Cap.** Notwithstanding the foregoing, the cumulative amount of Service Fees remitted by The System to Contractor will not exceed \$_____ (**Fee Cap**) without the prior written approval of The System.
- 1.4 **Contract Amount.** The Fee Cap and the Expense Cap are sometimes collectively referred to as the **Contract Amount**. The total Contract Amount will not exceed \$_____.
3. **INVOICING.** Contractor will invoice The System each quarter and include any approved expenses incurred during the prior quarter. Invoices must reference the valid contract number, description of Services provided, date range of Services and itemize any approved expenses. Invoices will be submitted via email to: finance@tsus.edu
4. **PAYMENT TERMS.** The System's standard payment terms are "net 30 days" as mandated by the *Texas Prompt Payment Act* (ref. [Chapter 2251, Government Code](#)).