A VASCUPP Member Institution
Issued by
Procurement Services
Charlottesville, Virginia
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This Request for Proposal (RFP) has been posted on Procurement Services web site for your convenience. Addenda and attachments are posted if issued. The RFP can be downloaded at this web site: [http://www.procurement.virginia.edu/pagerfp](http://www.procurement.virginia.edu/pagerfp). It is the firm’s responsibility to ensure that the latest version of the entire RFP and related links are reviewed prior to submission of a proposal. We encourage you to check the web site frequently for any changes prior to the due date. Call (434) 924-1346 if you have trouble accessing the RFP from the web. For questions about the content of the RFP, contact the buyer listed in Section VI, Information about this RFP. Additional information can be found on Procurement Services web site: [http://www.procurement.virginia.edu/pagehome](http://www.procurement.virginia.edu/pagehome)

I. Overview of the RFP Process

The Rector and Visitors of the University of Virginia (University), a Virginia public corporation, seeks an experienced firm to provide consulting and advisory services related to the compensation, retirement, and benefits of University employees. This RFP is part of a competitive procurement process which helps to serve the University's best interests. It also provides firms with a fair opportunity for their services to be considered. The process of competitive negotiation being used in this case should not be confused with the different process of competitive sealed bidding. The latter process is usually used where the goods or services being procured can be described precisely and price is generally the determinative factor. With competitive negotiation, however, price is not required to be the determinative factor, although it may be, and the University has the flexibility it needs to negotiate with firms to arrive at a mutually agreeable relationship.

For ease of reference, each firm receiving this RFP is referred to as a "firm" and the firm selected to provide services for the University is referred to as the "Selected Firm." This RFP states the instructions for submitting proposals, the procedure and criteria by which a firm may be selected, and the contractual terms by which the University proposes to govern the relationship between it and the Selected Firm.

It is the policy of the Commonwealth of Virginia and the University to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities, and to encourage their participation in State procurement
activities. The Commonwealth and the University encourage firms to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, or other contractual opportunities.

II. Background Discussion and Goals of the University

When Thomas Jefferson founded the University in 1819, he intended it to be nothing less than a world-class institution of higher learning. Jefferson’s spirit lives on – not only in the Rotunda and Academical Village he designed, and which remain treasures of American architecture, but in the University’s standing as a leader in education, research, and community service.

The over 20,390 students attending the University work within a true meritocracy and live by an Honor Code unique among American universities. Each student is exposed to the widest spectrum of disciplines – from arts and athletics to humanities and technology. Our students also enjoy a unique connection to the world beyond college through the University’s outstanding professional training, exemplified by its nationally ranked schools of Law, Business, and Medicine. The University as a whole has had a consistently high ranking not only among public schools, where it often heads the list, but among all American universities, public and private.

Over 11,960 permanent University faculty and staff are committed to serving both the local and national community. The University makes a real difference in the world, through its invaluable research, a hospital ranked among the nation’s finest, and graduates who have consistently been among the forefront of our nation’s shapers. At the University, our bright future is the direct result of our great history.

The University serves as sponsor and administrator for compensation and benefit programs covering these categories of employees: faculty; classified employees; University staff employees; and Medical Center employees. The University’s oversight also includes compensation and benefit programs covering retired employees from all of
the above categories. While certain of the programs in both the compensation and benefit categories are administered by the State of Virginia, the University is responsible for a significant portion of programs and policies associated with compensation and benefits provided to University employees. The University seeks to develop and maintain compensation, retirement, and benefit programs in a manner that reflects the strategic goals of the University and promotes efficient cost management and program administration.

In support of its mission and in an effort to maintain the highest quality services for its customers, the University seeks an experienced firm to provide consulting and advisory services related to the compensation, retirement, and benefits of University employees in a manner that is consistent with the University’s strategic objectives.

The University reserves the right to award to different Selected Firms to respectively provide any part of the services discussed in this RFP.

III. Scope of Services
It is the University's intent to enter into an Agreement with the Selected Firm for consulting and advisory services related to the compensation, retirement, and benefits of University employees in a manner that is consistent with the University’s strategic objectives to include those services necessary to help the University achieve its goals as outlined in this RFP (the “Services”). In order to achieve this goal, the Selected Firm may be requested to provide those Services outlined in this section. Accordingly, the Selected Firm will serve in an advisory capacity to assist the University in the attainment of University strategic objectives. The scope of such advice, consultation, and services may include, but is not limited to:

A. Periodically review and evaluate the University’s existing compensation retirement, and benefits programs.
B. Track trends in compensation, retirement, and benefits offered by comparable institutions of higher education as well as other private and public sector organizations.

C. Recommend changes to:
   1. Make existing compensation, retirement, and benefits programs more cost effective;
   2. Make necessary enhancements to compensation, retirement, and benefits programs;
   3. Establish new compensation, retirement, and benefits programs where the University is not competitive with peer institutions or where gaps exist in current programs;
   4. Comply with state and federal laws and regulations; and
   5. Perform audits and actuarial analyses of self-insured plans.

D. Provide guidance and assistance to the University in the evaluation and measurement of vendor performance.

E. Conduct audits and provide actuarial analysis for the University’s self-insured plans.

F. Assist in the development of Total Compensation/Reward planning for the University.

G. Provide and/or conduct surveys to determine the competitive standing of the University’s Total Compensation/Reward package.

H. Provide consulting and advisory Services related to all aspects of retirement compensation and benefits as requested by the University.
I. Perform such other related services that the University from time to time may request of the Selected Firm in writing.

J. HIPAA/Change of Law
The Selected Firm and the University will abide by the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder (commonly known as HIPAA). The terms of Attachment 5, HIPAA Business Associate Addendum apply. In the event there is a change in state or federal law, including but not limited to HIPAA, whether by statute, regulation, agency interpretation or judicial decision, that in the reasonable opinion of counsel to the University renders any of the material terms of the Agreement resulting from this RFP unlawful or unenforceable, or does not accommodate the University's aim of complying with changes in such law, or meeting the standard of care that the University adopts in the good faith exercise of its business judgment, then the applicable term(s) of the Agreement will be subject to re-negotiation and either party may request re-negotiation of the affected term or terms of the Agreement, upon written notice to the other party, to remedy such condition and conform the Agreement to the requirements of law. If such re-negotiation is unsuccessful within the 30-day period of time following written notification by the party requesting re-negotiation to the non-notifying party, then either party may terminate the Agreement without penalty.

IV. Basis of Selection
The University will evaluate proposals and, if a firm is to be selected, select the firm on the basis of:

1. The firm's plan to assist the University to meet its goals for providing consulting and advisory services related to the compensation, retirement, and benefits of University employees as discussed in Section II, Background Discussion and Goals of the University, and Section III, Scope of Services;
2. The firm's relevant experience, qualifications and success in providing the Services outlined in this RFP;

3. The firm's references from institutions of higher education, teaching hospitals, and clients which are comparable to the University;

4. The firm's financial proposal including but not limited to fees, discounts, service charges and other charges;

5. The quality of the proposal, specifically, responsiveness to requirements and adequacy of information provided;

6. The contractual terms which would govern the relationship between the University and the Selected Firm;

7. The firm’s plan for the utilization of Small, Women-owned and Minority-owned (SWAM) businesses. (In evaluating the firm’s proposal, the University will assign a minimum of 10 percent of the total selection weight to this individual selection criterion.); and

8. Any other factors relevant to the firm's capacity and willingness to satisfy the University.

Note: The University reserves the right to award the Agreement for all or part of the Services to one or more firms.

V. Contents of the Proposal

Proposals should include information outlined in this section. Copies of proposals must be sent to the Issuing Office, Procurement Services, Carruthers Hall, and not to any other office or department whatsoever at the University.

A. Services

1. Describe how the firm plans to provide consulting and advisory services related to the compensation, retirement, and benefits of University employees which is the primary goal of this RFP.
2. Provide a plan of operation to achieve the objectives set forth in Section III, Scope of Services, specifically responding to each paragraph and subparagraph in the order addressed.

3. Describe how the firm plans to work with the University to provide the Services.

B. Firm Information, Personnel, References

1. Provide a brief history of the firm and its experience in providing consulting and advisory services related to compensation, retirement, and benefits similar to those described by the University in this RFP.

2. Provide information on those individuals assigned to work with the University including a description of their experience in providing similar consulting and advisory services related to compensation, retirement, and benefits. Specifically identify the name and contact information for the individual assigned to act as the coordinator for both the firm’s proposal and any subsequent responses required of the firm as a part of the RFP process.

3. Describe those aspects of the firm and its proposed Services that the firm believes will differentiate its proposal from other competing firms.

4. Provide a list of all of the firm's clients comparable to the University indicating the length of service of each account. The University may contact and/or visit any of these accounts.

5. Provide a list of institutions of higher education with which the firm has signed a term contract.

6. Provide a list of all clients lost within the last three years which includes:
   a. A contact name and telephone number
   b. Length of service at the account
   c. Reason for the loss

7. Provide a copy of the firm's most recent audited financial statements.
8. Provide the amount of annual sales the firm has with each VASCUPP Member Institution. A list of the VASCUPP Members can be found at http://www.vcu.edu/procurement/coopcon.htm

9. Provide the name of the individual responsible for the firm’s supplier diversity program. This individual is responsible for implementing and reporting on the firm’s Small, Women-owned and Minority-owned (SWAM) program as it will relate to this procurement should the firm be selected.

C. Financial Proposal

1. Describe the fees that will be charged for the Services. Ensure that all fees and/or other charges are provided for all Services’ categories proposed by the firm.

2. Describe how the University will be charged. Include any additional discounts available for early payment of invoices.

3. State the firm's willingness to

4. Describe how the University will benefit from cost savings by accepting the firm's proposal.

5. State the firm’s agreement to receive payments electronically. Prior to contract award, the Selected Firm will be required to contact University Procurement Services’ Payment Processor Specialist group to set up its preferred method of receiving electronic payments [Phone: (434) 924-4212 – E-mail: uva-prs-boa@virginia.edu].

D. Contractual Arrangements

1. State the firm's acceptance of Attachment 1, Mandatory Contractual Provisions.

2. State the firm's acceptance, with any proposed modifications, of Attachment 2, Preferred Contractual Provisions.

3. Provide a written statement with the firm’s proposal that its principals or legal counsel has reviewed Attachment 1, Mandatory Contractual
Provisions, and Attachment 2, Preferred Contractual Provisions, and agrees that these provisions will become a part of any final agreement.

4. Provide a list of clients with which the firm has signed a term contract that allows for cooperative procurement and/or if the firm has a General Service Accounting (GSA) schedule contract.

E. Site Visits

It may be necessary or desirable for the University's evaluation team of less than ten people to travel to a site chosen jointly by the firm and the University to view its operation. Each firm will indicate whether it will reimburse the University for the reasonable and actual expenses (travel, lodging, meals, etc.) incurred by the University for its travel.

F. Small, Women-owned and Minority-owned (SWAM) Business

The University is committed to the goal of non-discrimination and to giving fair consideration for all vendors in its procurement programs. The University has set a voluntary goal of doing 5% more business with SWAM firms each year. The University’s 2008 SWAM plan spend goal for firms certified by the Commonwealth of Virginia’s Department of Minority Business Enterprise (DMBE) is 40%. Targets for each business segment are:

<table>
<thead>
<tr>
<th>Business Segment</th>
<th>Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minority Business Enterprises</td>
<td>4.0%</td>
</tr>
<tr>
<td>Women Business Enterprises</td>
<td>5.0%</td>
</tr>
<tr>
<td>Small Business Enterprises</td>
<td>31.0%</td>
</tr>
</tbody>
</table>

This goal does not allow for "set aside" purchases. SWAM firms must compete equally with majority firms and be able to provide the University with quality goods and services at competitive prices. To view the University’s current quarterly achievements, click here (Current SWAM Report). As this report shows, the University is in need of assistance in the Minority-owned and Women-owned categories. Please tailor your firm’s SWAM plan to assist the University in meeting its goal and targets.
Specify whether the firm is a SWAM. Firms can only be considered a Small, Women-owned or a Minority-owned Business Enterprise if certified by DMBE. All certified SWAM firms will be assigned a specific identification number. No SWAM firm is required to certify under this program and no SWAM firm will be excluded from doing business with the Commonwealth because of their failure to certify as a SWAM firm.

If the firm is not a SWAM firm, describe the firm’s partnering relationships with SWAM firms and how it plans to support the University’s goal to increase business annually by 5% with these firms in accordance with Attachment 4, Executive VP and COO’s Request for Commitment letter.

G. Other Information

Provide any other information which the University should consider in evaluating the firm's proposal.

VI. Information about this RFP

A. Procurement Schedule

Here is a brief schedule for this procurement, specifying the important dates and milestones:

- Issue Date of RFP: 05/28/09
- Preproposal Conference: 06/10/09
- Deadline for Receipt of Proposals: 06/22/09
- Oral Presentations and Negotiations: 07/10/09
- Contract Award: 09/01/09

B. Issuance of RFP and Questions

The Issuing Office for this RFP is:
Procurement Services
University of Virginia
1001 North Emmet Street
P.O. Box 400202*
Charlottesville, Virginia 22904-4202

**NOTE: If RFP proposal is sent U. S. Postal Service use the P. O. Box. The University does not take responsibility for lost or misdirected mail.
Attention: Steve Heldreth, Major Procurements Manager  
Telephone:   (434) 924-4217  
Fax :       (434) 982-2690  
TDD:   (434) 982-HEAR  
Email:  heldreth@virginia.edu

Any questions concerning this RFP will be directed to Steve Heldreth as listed above and not to any other person at the University, with the exception of issues directly related to SWAM business and SWAM subcontracting opportunities. Such SWAM issues may be alternately directed to Bill Cooper, the University’s Director of Supplier Diversity, at (434) 924-7174 or wsc6ja@virginia.edu. The University will determine whether any addenda should be issued as a result of any question or other matters raised.

C. Preproposal Conference
A conference for firms receiving this RFP will be held on Wednesday, June 10, 2009 at 10:00 a.m. EDT in Carruthers Hall Conference Room #E, Charlottesville, Virginia (map viewed at this web site: http://www.virginia.edu/Map/). Attendance at this conference is advised if your firm wishes to raise any questions in connection with this RFP. Please print a copy of the RFP and bring it with you as no additional copies will be provided at the conference. The University intends to present general information which may be helpful in the preparation of proposals and to offer firms the opportunity to ask questions concerning this RFP. No firm may have more than two representatives present at the conference.

Firms planning to attend the Preproposal Conference should notify Rebecca Sims by email (pur-rfp@virginia.edu), no later than 12:00 p.m. EDT on Monday, June 8, 2009 of the names, titles, and phone numbers of the individuals who will attend.

D. Proposal Deadline
All proposals must be received at the Issuing Office by 3:00 p.m. EDT on Monday, June 22, 2009. Seven copies of each proposal must be provided in
individual, bound volumes. Firms must also include an electronic copy of the proposal on a CD-ROM, excluding any pre-printed materials such as financial statements. The electronic copy should be formatted as a Microsoft Word document.

E. Oral Presentations and Negotiations
An oral presentation by two or more firms may be required after written proposals are received by the University. If the University requires such a presentation, the Issuing Office will schedule a time and place. Each firm should be prepared to discuss and substantiate any of the areas of the proposal it submitted, its own qualifications for the services required and any other area of interest relative to its proposal. Negotiations with two or more firms will be conducted by the University on the firms' financial proposals and proposed terms and conditions. Oral presentations and negotiations are scheduled for Friday, July 10, 2009.

F. Communications Between the University and the firms Regarding This RFP
Informal Communications

From the date of receipt of this Request for Proposal by each firm until a binding contractual agreement exists with the Selected Firm and all other firms have been notified, or when the University rejects all proposals, informal communications regarding this procurement will cease. Informal communications will include but not be limited to:

1. Requests from the firms to any department at the University, with the exception of Procurement Services for information, comments, speculation, etc.;

2. Requests from any department at the University, or any employee of the University, with the exception of Procurement Services for information, comments, speculation, etc.
Formal Communications

From the date of receipt of this Request for Proposal by each firm until a binding contractual agreement exists with the Selected Firm and all other firms have been notified, or when the University rejects all proposals, all communications between the University and the firms will be formal, or as provided for in this Request for Proposal, or as requested by Procurement Services. Formal communications will include but not be limited to:

1. Preproposal Conference
2. Oral presentations
3. Site visits, Interviews, etc.

Any failure to adhere to the provisions set forth in Informal Communications and the Formal Communications sections above may result in the rejection of any firm's proposal or cancellation of this RFP.

G. Formation of the Agreement with the Selected Firm

All proposals received will first be carefully evaluated by the University, and then the University intends to conduct negotiations with two or more firms. After negotiations have been conducted, if the University chooses to make award, the University will select the firm which, in its opinion, best meets the needs of the University. Alternately, if the University determines in writing and in its sole discretion that only one firm is fully qualified, or that one firm is clearly more highly qualified than the others under consideration, it may decide to negotiate and award an agreement to that single firm. In either event, the University intends to execute a mutually satisfactory written agreement which will reflect and largely incorporate this RFP as reconciled with any pertinent documents, such as the proposal submitted and relevant negotiation correspondence.

Because the University may choose to negotiate and award to a single firm as discussed above, each firm must include in its written proposal all requirements, terms or conditions it may have, and should not assume that
an opportunity will exist to add such matters after the proposal is submitted.

Firms should also note that, as described in Section H, Provisions Deemed Included in the Proposal, certain matters will automatically be deemed part of the proposal.

H. Provisions Deemed Included in the Proposal
The University will consider each proposal to include not only the matters expressly stated in the proposal as requested in Section V, Contents of the Proposal, but also other provisions which consist of two different types: those which are "mandatory" and cannot be changed by a firm in its proposal; and those which are "preferred" by the University, but which a firm may wish to alter by expressly and specifically so stating in its proposal.

The University includes mandatory provisions so that all proposals will be governed by the same basic contractual terms. The University encourages any firm which feels that a mandatory provision is unreasonable to contact the University before proposals are due so the University can consider amending the provision. The University includes preferred provisions so that any difference between the firm and the University's preferred contractual provisions can be considered during the University's evaluation of proposals.

1. Mandatory Provisions
Each proposal received by the University in response to this RFP will automatically be deemed to include the firm's agreement to the provisions of (a) and (b) below. Although such provisions will govern the firm's proposals as submitted, the University and one or more firms may later mutually agree to amend such provisions, such as when additional time is needed to consider proposals, or when contractual negotiations or performance indicate that such amendments are appropriate.
a. The proposal constitutes an offer by the firm which will remain open and irrevocable for a period of 120 days from the deadline for submitting proposals as stated in Section C, Proposal Deadline.
b. If selected by the University, the provisions governing the firm's performance will include all the provisions of Attachment 1, Mandatory Contractual Provisions.


Unless a firm expressly and specifically provides otherwise in its written proposal, the proposal received by the University in response to this RFP will automatically be deemed to include the firm's agreement to these provisions:

a. The firm consents to the University contacting and obtaining any information relevant to this RFP from the references and others identified by the firm in its proposal, as well as from any other persons, firms, or organizations which the University wishes to contact; and

b. If selected by the University, the provisions governing the firm's performance will include all the provisions of Attachment 2, Preferred Contractual Provisions.

I. Rejection of Proposals

The University reserves the right to reject any or all proposals received. Nonacceptance of a firm's proposal will mean that one or more proposals were deemed more advantageous to the University or that all proposals were rejected. Firms whose proposals are not accepted will be notified after a binding contractual agreement between the University and the Selected Firm exists, or when the University rejects all proposals.

J. Virginia Freedom of Information Act

Except as provided below, once an award is announced, all proposals submitted in response to this RFP will be open to the inspection of any interested person, firm
or corporation, in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by firms as part of its proposal will not be subject to public disclosure under the Virginia Freedom of Information Act; however, the firm must invoke the protections of this section prior to or upon submission of its proposal, and must identify the specific data or other materials to be protected and state the reasons why protection is necessary. Firms may not request that its entire proposal be treated as proprietary information.
Attachment 1

Mandatory Contractual Provisions

A. Nondiscrimination
   During the performance of this Agreement, the Selected Firm will comply with the contract provisions contained in Section 2.2-4311 (1) & (2) of the Code of Virginia or any successor provisions which may be applicable to this Agreement. Also, in accordance with Section 2.2-4343.1, the University does not discriminate against faith-based organizations.

B. Conflict of Interests
   The Selected Firm represents to the University that its entering into this Agreement with the University and its performance through its agents, officers and employees does not and will not involve, contribute to nor create a conflict of interest prohibited by the Virginia State and Local Government Conflict of Interests Act (Va. Code 2.2-3100 et seq), the Virginia Ethics In Public Contracting Act (Va. Code 2.2-4367 et seq), the Virginia Governmental Frauds Act (Va. Code 18.2-498.1 et seq) or any other applicable law or regulation.

C. Assignment
   Neither party to this Agreement will have the right to assign this Agreement in whole or in part without the prior written consent of the other.

D. Amendments
   No amendment of this Agreement will be effective unless it is reduced to writing and executed by the University's Director of Procurement Services and by the individual signing the Selected Firm's proposal or by other individuals named by either party as specified in Section E, Notices below. If the Selected Firm deviates from the terms of this Agreement without a written amendment, it does so at its own risk.
E. Notices

Any notice required or permitted to be given under this Agreement will be in writing and will be deemed duly given: (1) if delivered personally, when received; (2) if sent by recognized overnight courier service, on the date of the receipt provided by such courier service; (3) if sent by registered mail, postage prepaid, return receipt requested, on the date shown on the signed receipt; or (4) if sent by facsimile, when received (as verified by sender’s machine) if delivered no later than 4:00 p.m. (receiver’s time) on a business day or on the next business day if delivered (as verified by sender’s machine) after 4:00 p.m. (receiver’s time) on a business day or on a non-business day. All such notices will be addressed to a party at such party’s address or facsimile number as shown below.

If to the University:
Eric N. Denby
Director of Procurement Services
Carruthers Hall
University of Virginia
1001 North Emmet Street
P.O. Box 400202
Charlottesville, Virginia 22904-4202
Fax: (434) 982-2690

If to the Selected Firm:
The person signing the Selected Firm's proposal in response to the University's RFP, at the Selected Firm's address indicated in such proposal; or to such other person or address as either may designate for itself in writing and provide to the other.

F. Independent Contractor

The Selected Firm is not an employee of the University, but is engaged as an independent contractor. The Selected Firm will indemnify and hold harmless the Commonwealth of Virginia, the University, and its employees and agents, with respect to all withholding, Social Security, unemployment compensation and all other taxes or amounts of any kind relating to the Selected Firm's performance of this Agreement. Nothing in this Agreement will be construed as authority for the Selected Firm to make commitments which will bind the University, or to otherwise act on behalf of the University, except as the University may expressly authorize in writing.
G. Workers' Compensation and Employers' Liability
The Selected Firm will (i) maintain Employers Liability coverage of at least $100,000 and (ii) comply with all federal or state laws and regulations pertaining to Workers' Compensation Requirements for insured or self-insured programs.

H. Drug-Free Workplace
The Selected Firm, its agents and employees are prohibited, under the terms of this Agreement, Code of Virginia Section 2.2-4312, and the Commonwealth of Virginia, Department of Human Relations Management Policy Number 1.05, from manufacturing, distributing, dispensing, possessing, or using any unlawful or unauthorized drugs or alcohol while on University property.

During the performance of this Agreement, the Selected Firm agrees to 1) provide a drug-free workplace for the Selected Firm's employees; 2) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Selected Firm's workplace and specifying the actions that will be taken against employees for violations of such prohibition; 3) state in all solicitations or advertisements for employees placed by or on behalf of the Selected Firm that it maintains a drug-free workplace; and 4) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific agreement awarded to a Selected Firm, the employees of whom are prohibited from engaging in the unlawful manufacturing, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the agreement.

I. eVA Business To Government Registration
The eVA Internet electronic procurement solution, web site portal www.eva.virginia.gov, is the Commonwealth of Virginia's comprehensive electronic procurement system. The
portal is the gateway for firms to conduct business with state agencies and public bodies. All agencies and public bodies are expected to utilize eVA. All firms desiring to provide goods and/or services in the Commonwealth are encouraged to participate in the eVA Internet e-procurement solution. The Selected Firm is required to register in the eVA Internet e-procurement solution prior to an award being made.

J. eVA Transaction Fee
The Selected Firm agrees, by accepting an award as a result of this RFP, that it is a registered eVA vendor and will be subject to an eVA transaction fee, for which the Selected Firm will be invoiced by Commonwealth of Virginia, Department of General Services. Additional information is available at www.eva.virginia.gov.

K. License Requirements
State statutes and regulatory agencies require that some firms be properly registered and licensed prior to performing specific types of services. It is the firm’s responsibility to comply with the rules and regulations issued by the appropriate State regulatory agencies. If applicable to the Services described in this RFP and/or resulting Agreement, the Selected Firm must possess and maintain such an appropriate license. A copy of the license must be furnished upon request to the University or VASCUPP member institution.

L. Unauthorized Alien Use.
The Selected Firm warrants that it does not knowingly employ an “unauthorized alien,” as such term is defined in the federal Immigration Reform and Control Act of 1986. The Selected Firm furthermore agrees that, during the term of the Agreement, it will not knowingly employ an unauthorized alien.
Attachment 2
Preferred Contractual Provisions

A. Services
During the term of this Agreement, the Selected Firm will provide for the University the Services offered to the University by the firm in its proposal and/or any addenda to its proposal which has been approved in writing by the University and as may be further specified by the University in writing when it selected the firm.

B. Term of Agreement
The term of this Agreement will be for five years, with the ability to renew on the same terms and conditions, for additional periods totaling five years if mutually agreeable to the University and the Selected Firm. The Selected Firm and the University will mutually agree at least 180 days prior to each renewal period whether to renew the terms of the Agreement.

C. Contract Administrator
The University will identify a Contract Administrator for any Agreement which results from this RFP. The individual will be the point of contact at the University for day-to-day operations but cannot approve amendments to the Agreement or price changes.

D. Waiver
No waiver of any right will be deemed a continuing waiver, and no failure on the part of either party to exercise wholly or in part any right will prevent a later exercise of such or any other right.

E. Indemnification
The Selected Firm will indemnify and hold harmless The Commonwealth of Virginia, The Rector and Visitors of the University of Virginia, and their agents, employees and officials from any and all costs, damage or loss, claims, liability, damages, expenses (including, without limitation, attorneys' fees and expenses) caused by or arising out of
the performance or non-performance of the Agreement by the Selected Firm or its agents or subcontractors, including the provision of any services or products. The Selected Firm warrants that the products, goods and services provided the University may be used by the University without being in violation of any copyright, patent or similar property right or claim by others and will defend, indemnify and save the University (its employees and agents) from and against any such claim.

F. Governing Law
This Agreement will be governed in all respects by the laws of the Commonwealth of Virginia.

G. Termination
If the Selected Firm fails to provide quality goods or services in a professional manner, solely as determined by the University, and, upon receipt of notice from the University, does not correct the deficiency, to the University's satisfaction within a reasonable period of time, not to exceed five calendar days unless otherwise agreed to by both parties in writing, the University reserves the right to terminate this Agreement upon written notice to the Selected Firm.

H. Non-Appropriation
Funding for any Agreement between the University and a Selected Firm is dependent at all times upon the appropriation of funds by the Virginia General Assembly and/or any other organization of the Commonwealth authorized to appropriate such funds. In the event that funding to support this Agreement is not appropriated, whether in whole or in part, then the Agreement may be terminated by the University effective the last day for which appropriated funding is available.

I. Right of Audit
The University reserves the right to audit or cause to be audited the Selected Firm's books and accounts regarding the University's account at any time during the term of this Agreement and for five years thereafter. The Selected Firm will make available to the
University all books and records relating to performance of this Agreement as may be requested during said period.

J. Contractual Claims

This Agreement is subject to the University's policy on Contractual Claims which is provided as Attachment 3, Procedure for Resolution of Contractual Claims.

K. Insurance

Listed below is the insurance the Selected Firm must maintain under any Agreement resulting from this RFP. In no event should the Selected Firm construe these minimum required limits to be their limit of liability to the University. The Selected Firm will maintain insurance which meets or exceeds the requirements of the University with insurance companies that hold at least an A- financial rating with A.M. Best Company. No Agreement will be executed by the University until the Selected Firm satisfies the insurance requirements of the University. The Selected Firm may be required to provide the University with a valid Certificate of Insurance before providing any goods or services to the University. The University reserves the right to approve any insurance proposed by the Selected Firm.

**Commercial General Liability:**

The Selected Firm and any Subcontractor will provide a minimum combined single Limit of Liability for bodily injury and property damage of $1,000,000 per occurrence and a $2,000,000 aggregate with the following coverages:

- [X] Premises/Operations
- [X] Products/Completed Operations
- [X] Contractual
- [X] Personal Injury
- [X] Additional Insured*

**Errors and Omissions:**

The Selected Firm and any Subcontractor will maintain a minimum Limit of Liability of $2,000,000 per claim for professional errors and omissions coverage.
Automobile Insurance:
The Selected Firm and any Subcontractor will provide a minimum combined single Limit of Liability for bodily injury and property damage of $500,000 per occurrence with the following coverages for vehicles operated by their employees.

\[ \{X\} \quad \text{Any Automobile} \quad \{X\} \quad \text{Owned and Non-Owned Automobiles} \]

*Additional Insured:
The University will be named as an Additional Insured, and the proper name is: “The Commonwealth of Virginia, and the Rector and Visitors of the University of Virginia, its officers, employees, and agents.”

L. Use of Agreement by Third Parties

It is the intent of this RFP and any resulting Agreement to allow for cooperative procurement in accordance with Section 2.2-4304 of the Code of Virginia. Accordingly, any public body, public or private health or educational institution, or any University related foundation may access the Agreement if authorized by the Selected Firm.

Participation in this cooperative procurement is strictly voluntary. If authorized by the Selected Firm, the Agreement may be extended to the entities indicated above to purchase at fees in accordance with the Agreement. The Selected Firm will notify the University in writing of any such entities accessing the Agreement. No modification of this Agreement or execution of a separate agreement is required to participate. The Selected Firm will provide semi-annual usage reports for all entities accessing the Agreement. Participating entities will place their own orders directly with the Selected Firm and will fully and independently administer their use of the Agreement to include contractual disputes, invoicing and payments without direct administration from the University. The University will not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by the Selected Firm to extend the Agreement. It is understood and agreed that the University is not responsible for the acts or omissions of any entity, and will not be considered in default of the Agreement no matter the circumstances.
Use of this Agreement does not preclude any participating entity from using other agreements or competitive processes as the need may be.

M. Favored Nations
The Selected Firm represents that the prices, terms, warranties, and benefits specified in its proposal are comparable to or better than the equivalent terms being offered by the firm to any present customer.

N. The University's Authorized Representatives
The only persons who are or will be authorized to speak or act for the University in any way with respect to this Agreement are those whose positions or names have been specifically designated in writing to the Selected Firm by the University's Director of Procurement Services.

O. Purchasing Manual
This Agreement is subject to the provisions of the Commonwealth of Virginia "Purchasing Manual for Institutions of Higher Education and Their Vendors" and any subsequent revisions, which is available at this web site:

P. Small, Women-owned and Minority-owned (SWAM) Business Reporting
The Selected Firm will identify and fairly consider SWAM firms for subcontracting opportunities when qualified SWAM firms are available to perform a given task in performing for the University under the resulting Agreement. The Selected Firm will submit a quarterly SWAM business report to the University by the 8th of the month following each calendar quarter, specifically the months of April, July, October, and January. The Selected Firm will submit the quarterly SWAM business reports to:

Nancy Noblette
Administrative Assistant to the Director of Procurement Services
E-mail: nrr9g@virginia.edu

The quarterly SWAM business reports will contain this information:
• SWAM firm’s name, address and phone number with which the Selected Firm has contracted over the specified quarterly period.
• Contact person at the SWAM firm who has knowledge of the specified information.
• Type of goods and/or services provided over the specified period of time.
• Total amount paid to the SWAM firm as it relates to the University’s account.

The Selected Firm’s failure to provide SWAM reports on a quarterly basis which contain the information required by this section and/or the Selected Firm’s failure to comply with the plan for utilizing SWAM businesses submitted by the Selected Firm as part of its proposal and/or negotiation response may be grounds for debarment pursuant to Section 4.M. of the “Purchasing Manual for Institutions of Higher Education and their Vendors.”

Q. Intellectual Property Rights/Disclosure

Unless expressly agreed to the contrary in writing, all goods, products, materials, documents reports, writings, video images, photographs or papers of any nature including software or computer images prepared or provided by the Selected Firm (or its subcontractors) for the University will not be disclosed to any other person or entity without the written permission of the University. The Selected Firm warrants to the University that the University will own all rights, title and interest in any and all intellectual property rights created in the performance or otherwise arising from any Agreement resulting from this RFP and will have full ownership and beneficial use thereof free and clear of claims of any nature by any third party including without limitation copyright or patent infringement claims. The Selected Firm will execute any assignments or other documents needed for the University to perfect such rights. Notwithstanding the foregoing, for research collaboration pursuant to subcontracts under sponsored research agreements administered by the University's Office of Sponsored Programs, intellectual property rights will be governed by the terms of the grant or contract to the University to the extent such grant or contract requires intellectual property terms to apply to subcontractors.
R. Payment Terms

The Selected Firm may indicate payment terms of less than 30 days so long as those terms also contain a cash discount for early payment. For example: “5% 15/Net 30” would correspond to a 5% discount if paid in 15 days, otherwise net 30. The University will compute discounts from the date of delivery of goods at destination, after final inspection, and acceptance, from the date of completion of services, or from the date the correct invoice is received in Accounts Payable, whichever is later. The University will take the cash discount if payment is made within the specified time frame.

Unless alternate payment terms, with cash discounts, are proposed by the Selected Firm, invoices submitted to the University by the Selected Firm for the Services described in this RFP will be paid on a Net 30 days after receipt of the Services and University receipt and approval of the corresponding invoice.

The Selected Firm agrees to receive payments electronically and provide any additional discounts that may result from paying electronically. The firm will contact the University’s Payment Processor Specialist group in Procurement Services to set up its preferred method of receiving electronic payments prior to award of any agreement resulting from this RFP [Phone: (434) 924-4212 or email: uva-prs-boa@virginia.edu].

S. Confidentiality

Both parties acknowledge that in the negotiation and performance of this Agreement, confidential and proprietary information of each has been and will be made available to the other. The parties agree to use reasonable efforts to maintain the confidentiality of such material, but in no event lesser than was used with like material of the receiving party, and not to make any internal use of such material not required under this Agreement. Neither party will disclose the information to any third party without prior written authorization from the disclosing party, and will not use the information received by it, except to those of its employees, agents, and consultants whose duties justify the need for access to the information provided that such individuals are subject to obligations of secrecy and limited use commensurate in scope with this Agreement.
These obligations will apply to verbal information as well as specific portions of the information that are disclosed in writing or other tangible form and marked to indicate its confidential nature. These obligations will not apply to any of the information which:

1. Was known to the receiving party prior to receipt under this Agreement, as demonstrated by the receiving party's records; or

2. Was publicly known or available prior to receipt under this Agreement, or later becomes publicly known or available through no fault of the receiving party; or

3. Is disclosed to the receiving party without restrictions on disclosure by a third party having the legal right to disclose the same; or

4. Is disclosed to a third party by the disclosing party without an obligation of confidentiality, unless such information must be retained by that party for that party to fulfill its legal or contractual obligations under this Agreement; or

5. Is independently developed by an employee, consultant, or agent of the receiving party without access to the information as received under this Agreement; or

6. The receiving party is obligated to produce as required by law, lawfully issued subpoena, or a court order, provided that the disclosing party has been given notice thereof and an opportunity to waive its rights or to seek a protective order or other appropriate remedy.

Upon written request of a disclosing party, the receiving party will return all information disclosed in written or tangible form, and the receiving party will destroy all of its copies, excerpts, or notes made by it which contain any portions of the information unless otherwise provided for by the parties.

T. Personnel Listings

The Selected Firm will not sell or give the lists of University personnel to third parties or otherwise use such personnel information except as needed to provide the Services listed in this Agreement.

To the extent that particular information is subject to specific statutory confidentiality requirements, the requirements of such statute, rather than this section, shall be controlling.
U. Future Services

The University reserves the right to have the Selected Firm provide additional Services under the same Favored Nations pricing, terms, and conditions across the Selected Firm’s product/service line. Such additional Services may include Services that are newly introduced during the term of this Agreement. Such newly introduced additional Services will be provided to the University at Favored Nations pricing, terms, and conditions.

V. Project Manager

The Selected Firm agrees to provide these named individual(s) to respectively serve as “Project Manager(s)”. The Project Manager(s) will implement, perform, and manage provision of the Services as indicated in Section III, Scope of Services. The University must approve the appointment of the Project Manager(s) prior to execution of any Agreement with the Selected Firm resulting from this RFP. The Project Manager(s) will be the University’s primary contact(s), although the Project Manager(s) will be assisted as needed by other members of the Selected Firm’s staff in completing key activities.

In the event that a Project Manager is no longer employed by the Selected Firm, is unavailable for any reason, or is performing in an unsatisfactory manner as determined by the University’s Contract Administrator, the Selected Firm will propose a replacement for that individual within a reasonable time frame, so as not to significantly delay the provision of the Services to the University. The University reserves the right to approve the replacement, or to cancel the Agreement. If a proposed replacement is accepted by the University, the replacement will be provided as a part of the Services at no additional charge to the University and in accordance with all terms and conditions specified in the Agreement.

W. Ordering Procedures

The University does not place verbal orders for the Services. The University may only place orders for the Services by issuing a formal written purchase order in advance of the Selected Firm’s provision of the Services. Accordingly, at the University’s request, the
Selected Firm will issue a proposal/quotation listing the Services desired by the University and the corresponding fees and/or fee estimates. After any necessary discussions and/or revisions, the University will issue a corresponding purchase order for a specified fee amount. This specified fee amount cannot be exceeded by the Selected Firm unless a new formal written purchase order or purchase order revision is issued by the University authorizing a specific additional fee amount. Under no circumstances does the University authorize the Selected Firm to provide the Services before receipt of a formal written purchase order corresponding to its proposal/quotation. If the Selected Firm provides Services prior to receipt of a formal written purchase order, or incurs costs in excess of authorized purchase order fee amounts, it does so at its own risk.
Attachment 3

Procedure for Resolution of Contractual Claims

The Virginia Acts of Assembly of 2007, Chapter 943, Chapter 3, Exhibit P and its attachments requires contractors with the University to submit any claims, whether for money or other relief, in writing no later than 60 days after final payment; however, written notice of the contractors intention to file such a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based.

The University's procedure for deciding such contractual claims is:

A. The Selected Firm must provide the written claim to:

   Assistant Director of Procurement Services
   University of Virginia
   1001 North Emmet Street
   P. O. Box 400202
   Charlottesville, Virginia  22904-4202

B. Although the Selected Firm may, if it chooses, attempt to resolve its claim by dealing with a University department other than the one stated in Section A above, the Selected Firm must submit any unresolved claim in writing no later than 60 days after final payment to the Assistant Director of Procurement Services if it wishes to pursue its claim.

C. Upon receiving the written claim, the Assistant Director of Procurement Services will review the written materials relating to the claim and decide whether to discuss the merits of the claim with the Selected Firm. If such discussion is to be held, the Assistant Director of Procurement Services will contact the Selected Firm and arrange such discussion. The manner of conducting such discussion will be as the Assistant Director and the Selected Firm mutually agree.
D. The Assistant Director of Procurement Services will mail his or her decision to the
Selected Firm within 60 days after receipt of the claim. The decision will state the reason
for granting or denying the claim.

E. The Selected Firm may appeal the decision to:

Director of Procurement Services
University of Virginia
Carruthers Hall
1001 North Emmet Street
P.O. Box 400202
Charlottesville, Virginia 22904-4202

by providing a written statement explaining the basis of the appeal, within 15 days after
the Selected Firm's receipt of the decision.

F. Upon receiving the written appeal, the Director of Procurement Services will review the
written materials relating to the claim and decide whether to discuss the merits of the
claim with the Selected Firm. If such discussion is to be held, the Director of
Procurement Services will contact the Selected Firm and arrange such discussion. The
manner of conducting such discussion will be as the Director of Procurement Services
and the Selected Firm mutually agree.

G. The Director of Procurement Services will mail his or her decision to the Selected Firm
within 60 days after the Director of Procurement Services receipt of the appeal. The
decision will state the reasons for granting or denying the appeal.

H. Nothing in this Attachment 3 will preclude either party from filing a claim in any court of
the Commonwealth of Virginia to seek legal or equitable remedy if a dispute should
arise, in addition to such other remedies as are expressly provided in this Agreement;
provided, the Selected Firm may not file such claim unless and until it has complied fully
with the procedure set forth in this Attachment 3.
Greetings:

The quality of service the University of Virginia is able to deliver to its customers is directly related to the excellent support we receive from you and many other outstanding suppliers of goods and services. Without you, we would not be able to fulfill our educational, health care and research missions. An important part of our procurement program involves our commitment to doing business with small, women-and minority-owned (SWAM) businesses. As one of our most important vendors, we look to you to help us achieve this objective.

We conduct substantial business with small firms. We have been less effective in securing long-term business relationships with minority-and women-owned businesses. We are determined to improve our record.

I seek your assistance in two areas. First, to the extent practical, I ask that you involve small, women-and minority-owned businesses in the delivery of services you provide to UVa. Second, I seek your help in reporting your results through our quarterly subcontracting reports. The terms and conditions previously provided to your organization outlined this process.

This effort is important to us. We depend on you in so many ways – this is another way that we can partner with your company to make things better.

Sincerely,

Leonard W. Sandridge
Executive Vice President and Chief Operating Officer
LWS:dr
Madison Hall · Post Office Box 400228 · Charlottesville, Virginia 22904-4228
This Business Associate Addendum (the “Addendum”) to the Agreement dated ________, 2009 is made between the Rector and Visitors of the University of Virginia (“Plan Sponsor”), on behalf of the University of Virginia Health Plan (“Plan”), and the Selected Firm (the “Business Associate”) (each a “Party” and collectively the “Parties”), effective this ______ day of ________, 2009. The purpose of this Addendum is to address the measures that the Business Associate shall take to protect the confidentiality of certain health information that the Plan may deliver to the Business Associate or that the Business Associate may create, receive or maintain on behalf the Plan in the performance of the Business Associate’s services.

WHEREAS, the Plan Sponsor and the Business Associate have entered into the above-referenced Agreement;

WHEREAS, the use and disclosure of certain health-related information and the security of certain health-related information is now regulated by the provisions of the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder (collectively referred to as “HIPAA”);

WHEREAS, the Plan, from time to time, discloses Protected Health Information (“PHI”) as defined in this Addendum to the Business Associate, and the Business Associate, from time to time, creates, uses, discloses and/or maintains PHI, and/or electronically transmits PHI; and

WHEREAS, the Parties are committed to complying with the HIPAA Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rule") and the HIPAA Security Standards Regulations (the “Security Rule”), see 45 CFR Parts 160, 162 and 164, and the Parties agree to enter into this mutually acceptable Addendum as necessary to so comply.

NOW, THEREFORE, for and in consideration of the agreements of the Parties set forth in the Agreement and this Addendum and intending to be legally bound hereby, the Parties agree as follows:

1. **DEFINITIONS.**

   1.1 **Business Associate.** The Selected Firm (“CS”) is the Business Associate.

   1.2 **Covered Entity.** The University of Virginia Health Plan (the “Plan”) is the Covered Entity. References to the Plan cover the Plan, as well as the Plan Sponsor acting on behalf of the Plan.

   1.3 **Individual.** “Individual” shall have the same meaning as the term “individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

   1.4 **Privacy Rule.** “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, Subparts A and E.
1.5 **Protected Health Information.** “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR §160.103, limited to the information created or received by the Business Associate from or on behalf of the Plan. PHI that is created, received, maintained or transmitted in electronic media is “electronic PHI.”

1.6 **Required by Law.** “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR §164.501.

1.7 **Secretary.** “Secretary” shall mean the Secretary of Health and Human Services or his/her designee.

1.8 **Security Incident.** “Security Incident” shall have the same meaning as the term “security incident” in 45 CFR §164.304.

1.9 **Security Rule.** “Security Rule” shall mean the Standards for the Security of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C.

1.10 Terms used, but not otherwise defined in this Addendum, shall have the same meaning as those terms in the Privacy Rule and/or the Security Rule.

2. **PERMITTED USES AND DISCLOSURES OF PHI**

2.1 **Use and Disclosure.** The Business Associate shall not use or further disclose PHI other than as permitted or required by this Addendum or as Required By Law.

2.2 **Services.** Except as otherwise limited herein, the Business Associate may use or disclose the PHI necessary to perform the services for, or on behalf of the Plan as specified in the Agreement provided that such use or disclosure would not violate the Privacy Rule if done by the Plan. All other uses not authorized by this Addendum are prohibited.

2.3 **Business Activities of the Business Associate.** Unless otherwise limited herein, the Business Associate may:

a. Use PHI for the Business Associate’s proper management and administration, and to carry out any of its legal responsibilities.

b. Disclose PHI to third parties for the purpose of the Business Associate’s proper management and administration, and to carry out any of its legal responsibilities. However, such disclosures shall only be made if (1) Required by Law, or (2) if the Business Associate obtains reasonable assurances from the third party to whom the information is disclosed that it shall be held confidentially, and be used or further disclosed only as Required by Law or the purpose for which it was disclosed to that third party. Further, the third party shall notify the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

c. Provide data aggregation services related only to the Plan’s Health Care Operations. Under no circumstances shall the Business Associate disclose the Plan’s PHI to
another covered entity to whom the Business Associate also provides data aggregation services without the Plan’s express authorization.

3. **RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

3.1 **Responsibilities of the Business Associate.** With regard to its use and/or disclosure of PHI and the security of electronic PHI, the Business Associate hereby agrees to do the following:

   a. **Appropriate Safeguards.** The Business Associate shall use appropriate safeguards to prevent the use and disclosure of PHI other than as provided by this Addendum and as Required by Law. The Business Associate also shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of the Plan as required by the Security Rule.

   b. **Sanctions.** The Business Associate shall establish and implement procedures to sanction its employees who violate the provisions of this Addendum.

   c. **Mitigation.** The Business Associate shall mitigate, to the greatest extent practicable, any harmful effects from the improper use and/or disclosure of PHI of which it becomes aware.

   d. **Agents and Subcontractors.** The Business Associate shall require all of its agents and subcontractors that receive, use or have access to the Plan’s PHI to agree, in a writing substantially the same as this Addendum, to the same restrictions and conditions that apply to the Business Associate through this Addendum. Business Associate also shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI agrees to implement reasonable and appropriate safeguards to protect that information.

   e. **Reporting.** The Business Associate shall immediately report (within no longer than five (5) business days of becoming aware thereof) to the Plan’s Privacy Officer any use and/or disclosure of PHI that is not permitted by this Addendum of which it becomes aware, including instances in which an agent or subcontractor has improperly used or disclosed PHI. The Business Associate also shall immediately report (within no longer than 5 business days of becoming aware thereof) to the Plan’s Security Officer any Security Incident involving electronic PHI of which it becomes aware.

   f. **Access to Internal Practices.** At the request of, and at the time and in the manner designated by the Plan or the Secretary of the Department of Health and Human Services (“Secretary”), the Business Associate shall make its internal practices, books and records (including policies and procedures, and PHI) relating to the use and/or disclosure of PHI available to (i) the Plan and its representatives for the purpose of assessing the Business Associate’s compliance with this Addendum and/or the Plan’s compliance with the Privacy Rule, or (ii) the Secretary for purposes of the Secretary determining the Plan’s compliance with the Privacy Rule.
g. **Access to PHI.** The Business Associate shall make an Individual’s PHI available for inspection and copying in accordance with 45 CFR §164.524. Further, at the Plan’s request, within ten (10) days of the Plan’s request, the Business Associate shall provide the Plan with the PHI requested by an Individual pursuant to 45 CFR §164.524. Alternatively, at the Plan’s request, the Business Associate shall provide an Individual with access to his/her PHI in the time and manner designated by the Plan.

h. **Amendments to PHI.** The Business Associate shall make an Individual’s PHI available for amendment and shall incorporate any amendments to PHI in accordance with 45 CFR §164.526. Further, at the Plan’s request, within twenty (20) days of the Plan’s request, the Business Associate shall provide the Plan with the PHI that an Individual seeks to amend pursuant to 45 CFR §164.526.

i. **Accounting of Disclosures.** The Business Associate shall make available the information required to provide an accounting of disclosures to an Individual pursuant to 45 CFR §164.528. Further, at the Plan’s request, within twenty (20) days of the Plan’s request, the Business Associate shall provide the Plan with such information. To fulfill this obligation the Business Associate agrees to document those disclosures of PHI and related information that would be necessary for the Plan to respond to an individual’s request for an accounting of disclosures.

j. **Restrictions/Alternatives.** The Business Associate shall abide by any arrangements that the Plan has made with an Individual regarding restricting the use or disclosure of the Individual's PHI, or providing the Individual with confidential communications of PHI by alternative means or at an alternative location pursuant to 45 CFR §164.522.

k. **Minimum Necessary.** The Business Associate shall request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.

l. **Standard Transactions and Code Sets.** Each time the Business Associate conducts in whole or part for or on behalf of the Plan, using Electronic Media, a Transaction for which a Standard has been adopted or established under 45 C.F.R. part 162, the Business Associate shall, and shall require any agent or subcontractor of the Business Associate involved with the conduct of such Transaction to, conduct such Transaction as a Standard Transaction and otherwise comply with 45 C.F.R. part 162. The Parties agree that, if necessary, the Parties shall amend this Addendum to ensure compliance with the Standard Transactions and Code Sets Regulations.

3.2 **Responsibilities of the Plan.**

a. **Notification Requirement.** With regard to the use and/or disclosure of PHI by the Business Associate, the Plan hereby shall:

   (i) Notify the Business Associate of any limitations in its Notice of Privacy Practices (the “Notice”) pursuant to 45 CFR §164.520, to the extent that such limitations may affect the Business Associate’s use or disclosure of PHI.
(ii) Inform the Business Associate of any changes in, or revocation of, an authorization provided to the Plan by Individual pursuant to 45 CFR §164.508, if such changes or revocation may affect the Business Associate’s permitted or required uses and disclosures.

(iii) Inform the Business Associate of any amendments to PHI that the Plan has agreed to under 45 CFR §164.526 that relate to PHI upon which the Business Associate relies to perform the Services.

(iv) Notify the Business Associate of any arrangements the Plan has agreed to that restrict disclosures or provide Individuals with confidential communications pursuant to 45 CFR §164.522 that may impact on the use and disclosure of PHI by the Business Associate.

b. **No Impermissible Requests.** The Plan shall not request that the Business Associate use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Plan, except as permitted by Section 2.3 above.

4. **TERM AND TERMINATION**

4.1 **Term.** This Addendum shall become effective as of ________, 2009 and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided herein. This Addendum shall automatically terminate without any further action of the Parties upon the termination or expiration of the Agreement.

4.2 **Termination for Cause.** If the Plan determines that the Business Associate has breached a material term of this Addendum, the Plan shall:

   a. Provide the Business Associate with 30 days written notice of an alleged material breach, and afford the Business Associate an opportunity to cure the alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within 15 days, the Business Associate shall cure said breach to the satisfaction of the Plan within 15 days or the Plan shall terminate the Addendum and the Agreement. Or,

   b. Immediately terminate this Addendum and the Agreement, if the Business Associate has breached a material term of this Addendum and cure is not possible.

   c. If neither termination nor cure are feasible, the Plan shall report the violation to the Secretary.

4.3 **Effect of Termination.**

   a. Except as provided herein, upon termination of this Addendum, the Business Associate shall return or destroy all PHI and retain no copies of such PHI in any format, if it is feasible to do so.
b. If the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall notify the Plan in writing of the conditions that make return or destruction infeasible.

c. With regard to any PHI that is not returned or destroyed at the termination of this Addendum, the Business Associate shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as the Business Associate maintains such PHI. In addition, the Business Associate shall maintain the PHI in accordance with the records retention requirements under the Privacy and Security Rules and the Employee Retirement Income Security Act of 1974 as amended (“ERISA”).

d. These provisions also apply to PHI that is in the possession of the Business Associate’s subcontractors or agents

5. **INDEMNIFICATION.** The Business Associate agrees to indemnify, defend and hold harmless the Plan and the Plan Sponsor, as well as their respective employees, directors, officers, agents, subcontractors, or other members of its workforce, each of the foregoing hereinafter referred to as “the Plan,” against all actual and direct losses suffered by the Plan and all liability to third parties arising from or in connection with any breach of this Addendum or of any warranty hereunder or from any negligence or wrongful acts or omissions, including failure to perform its obligations under the Privacy Rule or the Security Rule by the Business Associate or its employees, directors, officers, agents, subcontractor, agents or other members of its workforce. Accordingly, on demand, the Business Associate shall reimburse the Plan for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon the Plan by reason of any suit, claim, action, proceeding or demand by any third party which results from the Business Associate’s breach hereunder. The Business Associate’s obligation to indemnify the Plan shall survive the expiration or termination of this Addendum for any reason.

6. **MISCELLANEOUS**

6.1 **Regulatory References.** A reference in this Addendum to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended, and for which compliance is required.

6.2 **Injunctive Relief.** Business Associate expressly agrees that a breach or threatened breach of any provision of this Addendum by Business Associate, any agent of Business Associate or employee of Business Associate is highly likely to cause significant, irreparable harm to the Plan and that the Plan shall be entitled to temporary, preliminary and/or permanent injunctive relief to protect its interests and the interests of affected Individuals; provided, however, that no specification of a particular legal or equitable remedy is to be construed as a waiver, prohibition, or limitation of any legal or equitable remedies in the event of a breach hereof.

6.3 **Survival.** The provisions of this Addendum shall survive the expiration or any termination of the term of the Agreement to the extent that the Business Associate continues to maintain PHI.
6.4 **Interpretation.** Any ambiguity in this Addendum shall be resolved to permit the Plan to comply with the Privacy Rule and the Security Rule.

6.5 **Amendments; Waiver.** This Addendum may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The Parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for the Plan to comply with the requirements of or conform to any changes in the Privacy Rule or the Security Rule. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

6.6 **Relation to Agreement.** With the exception of the terms and conditions set forth in this Addendum, all other terms and conditions of the Agreement shall remain unaltered and in full force and effect. If there is any conflict between the terms of this Addendum and the Agreement, this Addendum shall govern.

6.7 **No Third Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

6.8 **Counterparts; Facsimiles.** This Addendum may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

6.9 **Disputes.** If any controversy, dispute or claim arises between the Parties with respect to this Addendum, the Parties shall make good faith efforts to resolve such matters informally.

6.10 **Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party’s address given below, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed below.

If to the Business Associate, to:

Name
Title
The Selected Firm.
Address
City, State  Zip
Phone:
Fax:

If to the Plan Sponsor, to:
Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner herein-above provided.

IN WITNESS WHEREOF, each of the undersigned has caused this Addendum to be duly executed in its name and on its behalf effective as of ___________, 2009.

The Rector and Visitors of the University Virginia, on behalf of the University of Virginia Health Plan

By: ______________________________
Name: Eric N. Denby
Title: Director of Procurement Services
Date: ____________________________

The Selected Firm

By: ______________________________
Name _____________________________
Title: ______________________________
Date: _____________________________