

REQUEST FOR PROPOSAL

by

**The University of Texas System,
acting through The University of Texas System Supply Chain Alliance,**

for

**Selection of a Preferred Supplier
to Provide a**

MEDICAL BILLING CODE SYSTEM

RFP No. UTS/A19

**Submittal Deadline: November 12, 2010,
@ 3:00 PM, CST**

Issued: October 8, 2010

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SECTION 1

INTRODUCTION

1.1 Description of The University of Texas System

The University of Texas System is comprised of 15 institutions of higher education with campuses across the State of Texas whose missions are devoted to world class healthcare, teaching, research, and public service (collectively, “**UT System**”). UT System currently has six health institutions and nine academic facilities, making it one of the larger education systems in the United States. With an operating budget of \$12.8 billion, UT System has a current student enrollment exceeding 202,000. UT System employs more than 84,000 faculty and staff, making UT System one of the largest employers in the State of Texas.

UT System is comprised of the following institutions:

- The University of Texas Medical Branch at Galveston (UTMB)
- The University of Texas Southwestern Medical Center at Dallas (UTSW)
- The University of Texas Health Center at Tyler (UTHCT)
- The University of Texas Health Science Center at Houston (UTHSCH)
- The University of Texas Health Science Center at San Antonio (UTHSCSA)
- The University of Texas M.D. Anderson Cancer Center (UTMDACC)
- The University of Texas at Austin (UT Austin)
- The University of Texas at Arlington (UT Arlington)
- The University of Texas at San Antonio (UTSA)
- The University of Texas at Dallas (UTD)
- The University of Texas – Pan American (UTPA)
- The University of Texas of the Permian Basin (UTPB)
- The University of Texas at El Paso (UTEP)
- The University of Texas at Brownsville (UTB)
- The University of Texas at Tyler (UTTY)

UT System has established the University of Texas System Supply Chain Alliance (the “**Alliance**”) to conduct and coordinate strategic purchasing initiatives across UT System. UTMB, UTSW, UTHCT, UTHSCH, UTHSCSA and UTMDACC are members of the Alliance. The Alliance is also affiliated with UT System academic campuses and Baylor College of Medicine, Texas Tech University, and Texas Tech University Health Sciences Center. Through a collaborative relationship, the Alliance seeks to combine the supply chain and contracting activities and efforts to obtain best value goods, services, and equipment, while reducing total acquisition costs.

The Alliance has created a team of supply chain professionals (the “**Strategic Sourcing Team**”) that has been tasked with executing Alliance purchasing initiatives. The Strategic Sourcing Team assembles a team of subject matter experts (“**SMEs**”) from each participating institution to assist in the development of each sourcing event and the evaluation of suppliers during the procurement process. SMEs are involved from the sourcing event’s initial inception and work with the Alliance and UT System to select the best value supplier(s).

By participating in this Request for Proposal (“**RFP**”), proposer(s) (collectively, “**Proposer**”) agrees to extend all goods, services and pricing to any Alliance member or affiliate (collectively, “**Institutional Participants**”) that wishes to participate in any contract entered into with Proposer.

1.2 Objective of this Request for Proposal

UT System, acting through the Alliance, is soliciting proposals in response to this Request for Proposal, RFP No. UTS/A19 (this “**RFP**”), for Selection of a Preferred Supplier to provide a medical billing code system, including the software and services more specifically described in **Section 5.4** (Scope of Work) of this RFP (collectively, the “**Services**”).

UT System, acting through the Alliance, seeks to identify a potential supplier or suppliers that will provide the most practical and cost effective business model to serve the needs of Institutional Participants. The successful Proposer will be referred to and designated as “**Preferred Supplier.**”

The goal of this RFP is to work toward solutions that will minimize cost, while maintaining or improving current service levels for all participating UT System institutions. Proposers should provide solutions involving HUB suppliers, where possible. UT System will work through the Alliance to team with one or more Preferred Suppliers and develop a relationship that will produce a win-win for all parties and establish practical business processes and procedures that will foster a strong working relationship.

Proposer is invited to submit a proposal to establish a strategic business alliance with UT System that will maximize the resources of both organizations to most effectively meet the requirements specified in this RFP document. Specifically this RFP process should:

- Provide a comprehensive and guaranteed pricing structure for the Services;
- Leverage the aggregate purchasing volumes of Institutional Participants;
- Achieve cost savings for Institutional Participants;
- Improve overall customer satisfaction; and
- Enhance relationships between Preferred Supplier and Institutional Participants.

SECTION 2 **NOTICE TO PROPOSER**

2.1 Submittal Deadline

UT System will accept proposals submitted in response to this RFP until **3:00 PM**, Central Standard Time on **November 12, 2010** (the “**Submittal Deadline**”).

2.2 UT System Contact Person

Proposers will direct all questions or concerns regarding this RFP to the following UT System contact person (the “**UT System Contact**”):

Chris Gross, Contract Manager
UT System Supply Chain Alliance
Strategic Sourcing Team
Phone: 713.745.8339
Email: cgross@mdanderson.org

UT System specifically instructs all interested parties to restrict all contact and questions regarding this RFP to written communications forwarded to the UT System Contact. The UT System Contact

must receive all questions or concerns no later than **November 4, 2010**. UT System will use a reasonable amount of time to respond to questions or concerns. It is UT System's intent to respond to all appropriate questions and concerns; however, UT System reserves the right to decline to respond to any question or concern.

2.3 Criteria for Selection

Successful Proposer, if any, selected by UT System in accordance with the requirements and specifications set forth in this RFP, will be the Proposer that submits a proposal in response to this RFP, on or before the Submittal Deadline, that is most advantageous to UT System.

Proposer is encouraged to propose terms and conditions offering the maximum benefit to UT System in terms of (1) software and services provided to UT System, (2) total overall cost to UT System, and (3) project management expertise. Proposers should describe all educational, state and local government discounts, as well as any other applicable discounts that may be available to UT System in a contract for the Services.

An evaluation team from UT System will evaluate proposals. The evaluation of proposals and the selection of Preferred Supplier will be based on the information provided by Proposer in its proposal. UT System may give consideration to additional information if UT System deems such information relevant.

The criteria to be considered by UT System in evaluating proposals and selecting Preferred Supplier, will be those factors listed below:

2.3.1 Threshold Criteria Not Scored

- 2.3.1.1 Ability of UT System to comply with laws regarding Historically Underutilized Businesses; and
- 2.3.1.2 Ability of UT System to comply with laws regarding purchases from persons with disabilities.

2.3.1 Scored Criteria

- 2.3.2.1 cost of the goods and services;
- 2.3.2.2 reputation of Proposer and of Proposer's goods or services;
- 2.3.2.3 quality of Proposer's goods or services;
- 2.3.2.4 extent to which the goods or services meet UT System's needs;
- 2.3.2.5 Proposer's past relationship with UT System;
- 2.3.2.6 the total long-term cost to UT System of acquiring Proposer's goods or services ; and
- 2.3.2.6 Proposer's exceptions to the terms and conditions set forth in **Section 4** of this RFP.

2.4 Key Events Schedule

Issuance of RFP	October 8, 2010
Pre-Proposal Conference (ref. Section 2.6 of this RFP)	October 18, 2010

Deadline for Questions/Concerns (ref. Section 2.2 of this RFP)	November 4, 2010
Submittal Deadline (ref. Section 2.1 of this RFP)	3:00 PM, Central Standard Time on November 12, 2010
Selection of Finalists	December 2010
Finalists Interviews	Early January 2011
Anticipated Contract Award(s)	Late January 2011

IMPORTANT NOTICE: The Key Events Schedule represents many sourcing and contracting activities occurring within a short period of time. Proposer is asked in advance to make the following resources available to expedite the selection and contracting process:

1. If selected as a finalist, Proposer may be required to attend an interview session that includes a face-to-face meeting with an advance notice of no more than one week. The anticipated location of this activity is Houston, Texas.
2. If selected for contract award, Proposer should have its chief legal and business officers available for commencement of contract negotiations with 72 hours of notice of award. Such negotiations may take place face-to-face in order to expedite the contracting phase. The anticipated location of this activity is Austin, Texas. Proposer is requested to reference **Section 5.3** of this RFP and provide any exceptions as part of Proposer's RFP response.

Proposer should not underestimate the necessity of complying with the Key Events Schedule and critical activities listed above. UT System reserves the right to revise the Key Events Schedule at any time.

2.5 Historically Underutilized Businesses

2.5.1 All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (each a "**HUB**") in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP, Preferred Supplier subcontracts any of the Services, Preferred Supplier must make a good faith effort to utilize HUBs certified by the Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency. Proposals that fail to comply with the requirements contained in this **Section 2.5** will constitute a material failure to comply with advertised specifications and will be rejected by UT System as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP. Proposer acknowledges that, if selected by UT System, its obligation to make a good faith effort to utilize HUBs when subcontracting any of the Services will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of the Services by Proposer is subject to review by UT System to ensure compliance with the HUB program.

- 2.5.2 UT System has reviewed this RFP in accordance with Title 34, *Texas Administrative Code*, Section 20.13 (a), and has determined that subcontracting opportunities are probable under this RFP.
- 2.5.3 A HUB Subcontracting Plan (“**HSP**”) is required as part of Proposer’s proposal. The HSP will be developed and administered in accordance with UT System’s Policy on Utilization of Historically Underutilized Businesses attached as **APPENDIX TWO** and incorporated herein for all purposes.

*Each Proposer must complete and return the HSP in accordance with the terms and conditions of this RFP, including **APPENDIX TWO**. Proposals that fail to do so will be considered non-responsive to this RFP in accordance with Section 2161.252, Texas Government Code.*

Preferred Supplier will not be permitted to change its HSP unless: (1) Preferred Supplier completes a newly modified version of the HSP in accordance with the terms of **APPENDIX TWO** that sets forth all changes requested by Preferred Supplier, (2) Preferred Supplier provides UT System with such modified version of the HSP, (3) UT System approves the modified HSP in writing, and (4) all agreements or contractual arrangements resulting from this RFP are amended in writing by UT System and Preferred Supplier to conform to the modified HSP.

- 2.5.4 Proposer must submit one (1) signed copy of the HSP to UT System at the same time as it submits its proposal to UT System (ref. **Section 3.1** of this RFP). The signed copy of the HSP (the “**HSP Packet**”) must be submitted electronically utilizing the Ariba® e-sourcing tool as more particularly described in **Section 3.1** of this RFP. Proposer must ensure that the HSP Packet is submitted according to the electronic instructions provided in this RFP.

Any proposal submitted in response to this RFP that is not accompanied by an HSP Packet meeting the above requirements will be rejected by UT System and remain unopened, as that proposal will be considered non-responsive due to material failure to comply with advertised specifications. Furthermore, UT System will open a Proposer’s HSP Packet prior to opening the proposal submitted by Proposer, in order to ensure that Proposer has submitted a signed copy of the Proposer’s HSP Packet as required by this RFP. A Proposer’s failure to submit a signed copy of the completed HSP Packet as required by this RFP will result in UT System’s rejection of the proposal submitted by that Proposer as non-responsive, due to material failure to comply with advertised specifications; such a proposal will remain unopened and will be disqualified and not reviewed by UT System (ref. **Section 1.5 of Appendix One** to this RFP).

Note: The requirement that Proposer provide a signed and completed HSP Packet under this **Section 2.5.4** is separate from and does not affect Proposer’s obligation to provide UT System with its proposal as specified in **Section 3.1** of this RFP.

2.6 Pre-Proposal Conference

UT System will hold a pre-proposal conference at 2:00 PM, Central Standard Time, on October 18, 2010. Proposers may attend the conference in one of the following two formats:

in person attendance located in the Bank of America Building at 1020 Holcombe Blvd. Suite 1450, Houston, TX, 77030 (located in the Texas Medical Center); or

webinar broadcast via the Internet utilizing the “Go-to-Meeting” webinar conference service.

The Pre-Proposal Conference will allow all Proposers an opportunity to ask the Alliance, the Strategic Sourcing Team, and UT System HUB representatives relevant questions and clarify provisions of this RFP. Proposer should notify the UT System Contact no later than October 14, 2010, whether it will attend the Pre-Proposal Conference, by emailing the UT System Contact at cgross@mdanderson.org. Proposers must clearly state in which format it will attend. If the Proposer elects to attend the Pre-Proposal Conference in the webinar format, UT System will provide complete details and instructions (including personal computer requirements). If Proposer elects to attend the Pre-Proposal Conference in person, there will be a strict limit of two (2) in-person individuals per Proposer.

SECTION 3 **SUBMISSION OF PROPOSAL**

3.1 Electronic Submission Notice

Submittal of proposals in response to this RFP will be conducted entirely electronically, utilizing The University of Texas MD Anderson Cancer Center’s Ariba® e-sourcing tool. To register for participation in this RFP, please email or call the UT System Contact for further instruction. An original signature by an authorized officer of Proposer must appear on the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) and electronically uploaded as instructed. Proposals must be completed and received by UT System on or before the Submittal Deadline (ref. **Section 2.1** of this RFP).

3.2 Proposal Validity Period

Each proposal must state that it will remain valid for UT System’s acceptance for a minimum of one hundred eighty (180) days after the Submittal Deadline, to allow time for evaluation, selection, and any unforeseen delays.

3.3 Terms and Conditions

3.3.1 Proposer must comply with the requirements and specifications contained in this RFP, the General Terms and Conditions (ref. **Section 4** of this RFP), the Notice to Proposer (ref. **Section 2** of this RFP), Proposal Requirements (ref. **APPENDIX ONE**) and the Specifications, Additional Questions and Scope of Work (ref. **Section 5** of this RFP). If there is a conflict among the provisions in this RFP, the provision requiring Proposer to supply the better quality or greater quantity of goods and services will prevail, or if such conflict does not involve quality or quantity, then interpretation will be in the following order of precedence:

- 3.3.1.1 Specifications, Additional Questions and Scope of Work (ref. **Section 5** of this RFP);
- 3.3.1.2 General Terms and Conditions (ref. **Section 4** of this RFP);
- 3.3.1.3. Proposal Requirements (ref. **APPENDIX ONE**); and
- 3.3.1.4 Notice to Proposer (ref. **Section 2** of this RFP).

3.4 Submittal Checklist

Proposer is instructed to complete, sign, and upload into the Ariba® e-Sourcing tool, the following documents as a part of its proposal. If Proposer fails to return each of the following items with its proposal, UT System may reject the proposal:

- 3.4.1 Signed and Completed Execution of Offer (ref. **Section 2** of **APPENDIX ONE**).
- 3.4.2 Responses to questions and requests for information in the Specifications, Additional Questions and Scope of Work Section (ref. **Section 5** of this RFP).
- 3.4.3 Signed and Completed Pricing and Service Affirmation (ref. **Section 6** of this RFP).
- 3.4.4 Signed and completed copy of the HUB Subcontracting Plan or other applicable documents (ref. **Section 2.5** of this RFP and **APPENDIX TWO**).
- 3.4.5 Responses to Proposer’s Survey (ref. **Section 5.5** of this RFP).
- 3.4.6 Proposer’s Price Schedule (ref. **Section 6.1** and **Attachment A** of this RFP).

SECTION 4 **GENERAL TERMS AND CONDITIONS**

4.1 General Information regarding Structure of Transaction and Terms and Conditions

The structure of the transaction UT System intends to enter into as a result of this RFP will be substantially similar to the following: (1) one Preferred Supplier Agreement (“**PSA**”) between UT System and Preferred Supplier; (2) several Institutional Participation Agreements (each an “**IPA**”) signed by participating Alliance members and affiliates; and (3) any other transaction-specific documents (collectively, the “**Agreement**”).

The terms and conditions contained in this **Section 4** or, in the sole discretion of UT System, terms and conditions substantially similar to these terms and conditions, will be included in any Agreement that results from this RFP (ref. **Section 1.4** of **APPENDIX ONE**). If Proposer takes exception to any terms or conditions set forth in this **Section 4**, Proposer will submit a list of the exceptions as part of its proposal, in accordance with **Section 5.3.3** of this RFP. Proposer’s exceptions will be reviewed by UT System and may result in disqualification of Proposer’s proposal as non-responsive to this RFP. If Proposer’s exceptions do not result in disqualification of Proposer’s proposal, then UT System may consider Proposer’s exceptions when UT System evaluates Proposer’s proposal.

As indicated in **Section 1.2** of this RFP, the successful Proposer is referred to as the “**Preferred Supplier.**”

4.2 Definitions.

“**Institutional Participant**” means, collectively, any Alliance member or affiliate that has executed an IPA in connection with the Agreement.

“**UT Party**” means, collectively, UT System and Institutional Participant.

“**Services**” means, collectively, the goods and related services to be acquired under the Agreement.

4.3 Payment

Institutional Participant agrees to pay fees due under the Agreement in accordance with the Texas Prompt Payment Act (“**Act**”), Chapter 2251, *Texas Government Code*. Pursuant to the Act, payment will be deemed late on the 31st day after the later of: 1) the date the performance of the Services is completed, or 2) the date Institutional Participant receives an invoice for the Services. Institutional Participant will be responsible for interest on overdue payments equal to the sum of: 1) one percent, plus 2) the prime rate as published in the *Wall Street Journal* on the first day of July of the preceding fiscal year (Institutional Participant's fiscal year begins September 1) that does not fall on a Saturday or Sunday. Institutional Participant will have the right to verify the details set forth in Preferred Supplier's invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Preferred Supplier at mutually convenient times; (b) examining any reports with respect to the Services; and (c) other reasonable action.

4.4 Tax Exemption

UT Party, an agency of the State of Texas, is exempt from certain state taxes under various exemption statutes, including Texas Sales & Use Tax in accordance with Section 151.309, *Tax Code*, and Title 34 *Texas Administrative Code* (“**TAC**”) Section 3.322. Notwithstanding its exemption from certain state taxes, UT Party will be responsible for any taxes (except corporate income taxes, franchise taxes, and taxes on Preferred Supplier's personnel, including personal income tax and social security taxes) from which UT Party is not exempt. Preferred Supplier will provide reasonable cooperation and assistance to UT Party in obtaining any tax exemptions to which UT Party is entitled.

4.5 Prompt Payment Discount

Notwithstanding any other provision of the Agreement, Institutional Participant is entitled to a “**Prompt Payment Discount**” of ____% off of each payment that Institutional Participant submits within ____ days after Institutional Participant's receipt of Preferred Supplier's invoice for that payment.

4.6 Preferred Supplier's Obligations.

4.6.1 Preferred Supplier will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance of the Services. Preferred Supplier will cause all persons connected with the Preferred Supplier directly in charge of the performance of the Services to be duly registered and/or licensed under all applicable federal, state, and municipal, laws, regulations, codes, ordinances and orders, including the *Rules and Regulations* (the “**Regents' Rules**”) promulgated by the Board, as well as with those of any other body or authority having jurisdiction (collectively, the “**Applicable Laws**”). Preferred Supplier will furnish efficient

business administration and coordination and perform the Services in an expeditious and economical manner consistent with the interests of UT Party.

- 4.6.2 Preferred Supplier represents, warrants and agrees that (a) it will perform the Services in a good and workmanlike manner and in accordance with commercially reasonable standards of Preferred Supplier's profession or business, and (b) all Services will be of the quality that prevails among similar businesses engaged in providing similar products and services in major United States urban areas under the same or similar circumstances.
- 4.6.3 Preferred Supplier warrants and agrees that the Services will be accurate and free from any material defects. Preferred Supplier's performance of the Services will at no time be in any way diminished by reason of any approval by UT Party nor will Preferred Supplier be released from any liability by reason of any approval by UT Party, it being agreed that UT Party at all times is relying upon Preferred Supplier's skill and knowledge in performing the Services. Preferred Supplier will, at its own cost, correct all material defects in performance of the Services, as soon as practical after Preferred Supplier becomes aware of the defects. If Preferred Supplier fails to correct material defects in the Services within a reasonable time, then UT System may correct the defect at Preferred Supplier's expense. This remedy is in addition to, and not in substitution for, any other remedy for the defect that UT Party may have at law or in equity.
- 4.6.4 Preferred Supplier will call to the attention of UT Party, in writing, all information in any materials supplied to Preferred Supplier (by UT Party or any other party) that Preferred Supplier regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.
- 4.6.5 Preferred Supplier represents that if (i) it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Preferred Supplier has been duly authorized to act for and bind Preferred Supplier; or (ii) if it is a partnership, limited partnership, limited liability partnership, or limited liability company then it has all necessary power and has secured all necessary approvals to execute and deliver the Agreement and perform all its obligations hereunder, and the individual executing the Agreement on behalf of Preferred Supplier has been duly authorized to act for and bind Preferred Supplier.
- 4.6.6 Notwithstanding any other provision in the Agreement to the contrary, Preferred Supplier hereby transfers, conveys and assigns all its right, title and interest in any and all warranties related to Services provided by third parties to the UT Party.
- 4.6.7 Preferred Supplier represents and warrants that neither the execution and delivery of the Agreement by Preferred Supplier nor the performance of the Services will (a) result in the violation of any provision [i] if a corporation, of Preferred Supplier's articles of incorporation or by-laws, [ii] if a limited liability company, of its articles of organization or regulations, or [iii] if a partnership, of any partnership agreement by which Preferred Supplier is bound; (b) result in the violation of any provision of any agreement by which Preferred Supplier is bound; or (c) to the best of Preferred Supplier's knowledge and belief, conflict with any order or decree of any court or other body or authority having jurisdiction.
- 4.6.8 Preferred Supplier represents and warrants that all of Preferred Supplier's Personnel contributing to the Work Material (ref. **Section 4.27**) under the Agreement will be required to (i)

acknowledge in writing the ownership of Preferred Supplier (for the benefit of UT System) of the Work Material and each element thereof produced by the Personnel while performing services pursuant to the Agreement and (ii) make all assignments necessary to effectuate such ownership. “**Personnel**” means any and all persons associated with Preferred Supplier who provide any work or work product pursuant to the Agreement, including officers, managers, supervisors, full-time employees, part-time employees, and independent contractors.

4.6.9 Preferred Supplier represents and warrants that: (i) the Services will be performed solely by Preferred Supplier, 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 Preferred Supplier for the benefit of UT System; (ii) UT System will receive free, good and clear title to all Work Material developed under the Agreement; (iii) the Work Material and the intellectual property rights protecting the Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges or other restrictions; (iv) the 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 the Work Material will not violate the rights of any third parties in the Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.

4.6.10 If the Agreement requires Preferred Supplier’s presence on the premises or facilities of UT Party, Preferred Supplier agrees to cause its representatives, agents, employees and subcontractors to become aware of, fully informed about, and in full compliance with all applicable rules and policies, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.

4.7 Family Code Child Support Certification

Pursuant to Section 231.006, *Family Code*, Preferred Supplier certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

4.8 Eligibility Certifications

Pursuant to Sections 2155.004 and 2155.006, *Texas Government Code*, Preferred Supplier certifies that Preferred Supplier 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 the certifications are inaccurate.

4.9 Tax Certification

If Preferred Supplier is a taxable entity as defined by Chapter 171, *Tax Code* (“Chapter 171”), then Preferred Supplier certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Preferred Supplier is exempt from the payment of those taxes, or that Preferred Supplier is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

4.10 Payment of Debt or Delinquency to the State

Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Preferred Supplier agrees that any payments owing to Preferred Supplier under the Agreement may be applied directly toward any debt or delinquency that Preferred Supplier owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

4.11 Products and Materials Produced in Texas

If Preferred Supplier will provide services under the Agreement, Preferred Supplier covenants and agrees that in accordance with Section 2155.4441, *Texas Government Code*, in performing the Services, Preferred Supplier 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.

4.12 Loss of Funding

Performance by UT Party under the Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "**Legislature**") and/or allocation of funds by the Board of Regents of The University of Texas System (the "**Board**"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then UT Party will issue written notice to Preferred Supplier and UT Party may terminate the Agreement without further duty or obligation hereunder. Preferred Supplier acknowledges that appropriation, allotment, and allocation of funds are beyond the control of UT Party.

4.13 Notices

Except as otherwise provided in this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of the Agreement will be in writing and will be sent via registered or certified mail, overnight courier, confirmed facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below), and notice will be deemed given (i) if mailed, when deposited, postage prepaid, in the United States mail, (ii) if sent by overnight courier, one business day after delivery to the courier, (iii) if sent by facsimile (to the extent a facsimile number is set forth below), when transmitted, and (iv) if sent by email (to the extent an email address is set forth below), when received:

If to UT System:

Office of Business Affairs
The University of Texas System
201 W. 7th Street
Attn: Executive Vice Chancellor for Business Affairs
Austin, Texas 78701-2982
Fax: 512-499-4289
Email: LegalNotices@utsystem.edu

with copy to:

The University of Texas System Supply Chain Alliance
1020 Holcombe Blvd., Suite 1450
Houston, TX 77030
Attention: Director
Fax: 713-792-8084
Email:jfjoshua@mdanderson.org

If to Preferred Supplier: _____

Attn: _____
Fax: _____
Email: _____

If to an Institutional Participant: The contact information for Institutional Participant as set forth in its IPA.

with copy to: Office of Business Affairs
The University of Texas System
201 W. 7th Street
Attn: Executive Vice Chancellor for Business Affairs
Austin, Texas 78701-2982
Fax: 512-499-4289
Email: LegalNotices@utsystem.edu

and

The University of Texas System Supply Chain Alliance
1020 Holcombe Blvd., Suite 1450
Houston, TX 77030
Attention: Director
Fax: 713-792-8084
Email:jfjoshua@mdanderson.org

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

4.14 State Auditor’s Office

Preferred Supplier understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, “**Auditor**”), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), *Education Code*. Preferred Supplier agrees to cooperate with Auditor in the conduct of the audit or investigation including providing all records requested. Preferred Supplier will include this provision in all contracts with subcontractors.

4.15 Venue; Governing Law

Travis County, Texas, will be the proper place of venue for suit on or in respect of the Agreement. The Agreement and all of the rights and obligations of the parties thereto and all of the terms and conditions thereof will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

4.16 Breach of Contract Claims

To the extent that Chapter 2260, *Texas Government Code*, as it may be amended from time to time (“**Chapter 2260**”), is applicable to the Agreement, and is not preempted by other Applicable Laws, the dispute resolution process provided for in Chapter 2260 will be used, as further described

herein, by UT Party and Preferred Supplier to attempt to resolve any claim for breach of contract made by Preferred Supplier:

- 4.16.1 Preferred Supplier's claims for breach of the Agreement that the parties cannot resolve pursuant to other provisions of the Agreement or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Preferred Supplier will submit written notice, as required by subchapter B of Chapter 2260, to the UT Party in accordance with the notice provisions in the Agreement. Preferred Supplier's notice will specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific agreement and contract provision that the UT Party allegedly breached, the amount of damages Preferred Supplier seeks, and the method used to calculate the damages. Compliance by Preferred Supplier with subchapter B of Chapter 2260 is a required prerequisite to Preferred Supplier's filing of a contested case proceeding under subchapter C of Chapter 2260. The UT Party chief business officer, or another officer of the UT Party as may be designated from time to time by UT Party by written notice to Preferred Supplier in accordance with the notice provisions in this, will examine Preferred Supplier's claim and any counterclaim and negotiate with Preferred Supplier in an effort to resolve the claims.
- 4.16.2 If the parties are unable to resolve their disputes under Section 4.16.1, the contested case process provided in subchapter C of Chapter 2260 is Preferred Supplier's sole and exclusive process for seeking a remedy for any and all of Preferred Supplier's claims for breach of the Agreement by UT Party.
- 4.16.3 Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, *Texas Civil Practices and Remedies Code*. The parties specifically agree that (i) neither the execution of the Agreement by UT Party nor any other conduct, action or inaction of any representative of UT Party relating to the Agreement constitutes or is intended to constitute a waiver of UT Party's or the state's sovereign immunity to suit and (ii) UT Party has not waived its right to seek redress in the courts.
- 4.16.4 The submission, processing and resolution of Preferred Supplier's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted or subsequently amended.
- 4.16.5 UT Party and Preferred Supplier agree that any periods set forth in the Agreement for notice and cure of defaults are not waived.

4.17 Compliance with Law

Preferred Supplier will perform the Services in compliance with all Applicable Laws. Preferred Supplier represents and warrants that neither Preferred Supplier nor any firm, corporation or institution represented by Preferred Supplier, nor anyone acting for such 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 Preferred Supplier's response to UT System's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for the Services.

4.18 Records

Records of Preferred Supplier's costs, any reimbursable expenses pertaining to the Services and payments will be available to UT Party or its authorized representatives during business hours and will be retained for four (4) years after final payment or abandonment of the Services, unless UT System otherwise instructs Preferred Supplier in writing.

4.19 Insurance

4.19.1 Preferred Supplier, 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 having an A.M. Best Rating of A-:IV or better, and in amounts (unless otherwise specified), as UT System may require:

- 4.19.1.1 Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

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 UT System;

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

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 100,000
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

- 4.19.1.3 Commercial Automobile Liability Insurance covering all owned, non-owned or hired automobiles, with coverage for at least \$1,000,000 Combined Single Limit Bodily Injury and Property Damage.

4.19.2 Preferred Supplier will deliver to UT System:

- 4.19.2.1 Evidence satisfactory to UT System in its sole discretion, evidencing the existence of all insurance promptly after the execution and delivery of the Agreement and prior to the performance or continued performance of any services to be performed by Preferred Supplier under the Agreement.

- 4.19.2.2 Additional evidence, satisfactory to UT System in its sole discretion, of the continued existence of all insurance not less than thirty (30) days prior to the expiration of any insurance. Insurance policies, with the exception of Workers' Compensation, and Employer's Liability, will name and the evidence will reflect UT Party as Additional Insured and will provide that the policies will not be canceled until after thirty (30) days' unconditional written notice to UT System.

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

4.19.3.1 Commercial General Liability Insurance and Commercial Automobile Liability Insurance will be kept in force from the Effective Date of this Agreement until receipt of final payment by Preferred Supplier from UT Party for performance of the scope of work under this Agreement; and

4.19.3.2 Workers' Compensation Insurance and Employer's Liability Insurance will be kept in force until the Scope of Work has been fully performed and accepted by UT Party in writing.

4.20 Indemnification

4.20.1 TO THE FULLEST EXTENT PERMITTED BY LAW, PREFERRED SUPPLIER WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UT SYSTEM, AND HOLD HARMLESS UT PARTY AND ITS AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "**INDEMNITEES**") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "**CLAIMS**") BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM PREFERRED SUPPLIER'S PERFORMANCE UNDER OR BREACH OF THE AGREEMENT, AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF PREFERRED SUPPLIER, ANYONE DIRECTLY EMPLOYED BY PREFERRED SUPPLIER OR ANYONE FOR WHOSE ACTS PREFERRED SUPPLIER MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

4.20.2 IN ADDITION, PREFERRED SUPPLIER WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UT SYSTEM, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY PREFERRED SUPPLIER, OR THE USE BY INDEMNITEES, AT THE DIRECTION OF PREFERRED SUPPLIER, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UT PARTIES WILL PROMPTLY NOTIFY PREFERRED SUPPLIER AND PREFERRED SUPPLIER WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UT PARTIES AGREE TO REASONABLY COOPERATE WITH PREFERRED SUPPLIER. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

4.21 Ethics Matters; No Financial Interest

Preferred Supplier and its employees, agents, representatives and subcontractors have read and understand UT System's Conflicts of Interest Policy, which is available at <http://www.utsystem.edu/policy/policies/int160.html>, UT System's Standards of Conduct Guide, which is available at <http://www.utsystem.edu/systemcompliance/>, and applicable state ethics laws and rules, which are available at www.utsystem.edu/ogc/ethics. Neither Preferred Supplier nor its employees, agents, representatives or subcontractors will assist or cause UT Party's employees to violate UT System's Conflicts of Interest Policy, provisions described by UT System's Standards of Conduct Guide, or applicable state ethics laws or rules. Preferred Supplier represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of the Agreement.

4.22 Undocumented Workers. The *Immigration and Nationality Act* (8 *United States Code* 1324a) ("**Immigration Act**") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form ("**I-9 Form**") as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Preferred Supplier is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country 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 Preferred Supplier employs unauthorized workers during performance of the Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, UT Party may terminate the Agreement in accordance with **Section 4.31**. Preferred Supplier represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

4.23 Force Majeure

None of the parties to the Agreement will be liable or responsible to another 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, Preferred Supplier will use its best efforts to mitigate the impact of the occurrence so that UT Party may continue to provide healthcare services during the occurrence.

4.24 Entire Agreement; Modifications

The Agreement supersedes all prior agreements, written or oral, between Preferred Supplier and UT Party and will constitute the entire agreement and understanding between the parties with respect to the subject matter of the Agreement. The Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by UT Party and Preferred Supplier.

4.25 Captions

The captions of sections and subsections in the Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

4.26 Waivers

No delay or omission in exercising any right accruing upon a default in performance of the Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under the Agreement will not be construed to be a waiver of any subsequent default under the Agreement.

4.27 Ownership and Use of Work Material

- 4.27.1 All drawings, specifications, plans, computations, sketches, data, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by Preferred Supplier or any subcontractors in connection with the Work (collectively, "**Work Material**"), not including any proprietary software, whether or not accepted or rejected by UT System or Institutional Participant, are the sole property of UT Party and for their exclusive use and re-use at any time without further compensation and without any restrictions.
- 4.27.2 Preferred Supplier grants and assigns to UT Party all rights and claims of whatever nature and whether now or hereafter arising in and to the Work Material and will cooperate fully with UT Party in obtaining and enforcing patent, copyright, trademark or like protections with respect to the Work Material.
- 4.27.3 Upon request, Preferred Supplier will deliver all Work Material to UT Party. Preferred Supplier will provide Work Material in an electronic format acceptable to UT Party. UT Party will have the right to use the Work Material. UT Party may, at all times, retain the originals of the Work Material. Work Material will not be used by any person other than UT Party on other projects unless expressly authorized by UT Party in writing.
- 4.27.4 The Work Material will not be used or published by Preferred Supplier or any other party unless expressly authorized by UT Party in writing. Preferred Supplier will treat all Work Material as confidential.
- 4.27.5 All title and interest in the Work Material will vest in UT Party and will be deemed to be a work made for hire and made in the course of the Services rendered under the Agreement. To the extent that title to any Work Material may not, by operation of law, vest in UT Party or Work Material may not be considered works made for hire, Preferred Supplier hereby irrevocably assigns, conveys and transfers to UT Party and its successors, licensees and assigns, all rights, title and interest worldwide in and to the 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 Preferred Supplier has any rights in the Work Material which cannot be assigned, Preferred Supplier agrees to waive enforcement worldwide of the rights against UT Party, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to UT Party with the right to sublicense. These rights are assignable by UT Party.

4.28 Confidentiality and Safeguarding of University Records; Press Releases; Public Information

Under the Agreement, Preferred Supplier may (1) create, (2) receive from or on behalf of UT Party, or (3) have access to UT Party records or record systems (collectively, “**University Records**”). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by applicable federal, state and local, laws, regulations, and ordinances, including the Gramm-Leach-Bliley Act (Public Law No: 106-102) and the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (“**FERPA**”). If University Records are subject to FERPA, (1) UT Party designates Preferred Supplier as a university official with a legitimate educational interest in University Records, and (2) Preferred Supplier acknowledges that its improper disclosure or redisclosure of personally identifiable information from University Records may result in Preferred Supplier’s exclusion from eligibility to contract with UT Party for at least five (5) years. Preferred Supplier represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by Agreement, (b) required by law, or (c) otherwise authorized by UT Party in writing; (2) safeguard University Records according to reasonable administrative, physical and technical standards (such as standards established by (i) the National Institute of Standards and Technology and (ii) the Center for Internet Security, as well as the Payment Card Industry Data Security Standards) that are no less rigorous than the standards by which Preferred Supplier protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all applicable federal, state and local, laws, regulations, and ordinances, including FERPA and the Gramm-Leach Bliley Act, and the terms of the Agreement; and (4) comply with the UT Party rules, policies, and procedures regarding access to and use of UT Party computer systems. At the request of UT Party, Preferred Supplier agrees to provide UT Party with a written summary of the procedures Preferred Supplier uses to safeguard and maintain the confidentiality of University Records.

4.28.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any University Records occurs, Preferred Supplier will provide written notice to UT Party within one (1) business day after Preferred Supplier’s discovery of that use or disclosure. Preferred Supplier will promptly provide UT Party with all information requested by UT Party regarding the impermissible use or disclosure.

4.28.2 **Return of University Records.** Preferred Supplier agrees that within thirty (30) days after the expiration or termination of the Agreement, for any reason, all University Records created or received from or on behalf of UT Party will be (1) returned to UT Party, with no copies retained by Preferred Supplier; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Preferred Supplier will provide UT Party with written notice of Preferred Supplier’s intent to destroy University Records. Within five (5) days after destruction, Preferred Supplier will confirm to UT Party in writing the destruction of University Records.

4.28.3 **Disclosure.** If Preferred Supplier discloses any University Records to a subcontractor or agent, Preferred Supplier will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Preferred Supplier by this Section.

4.28.4 **Press Releases.** Preferred Supplier will not make any press releases, public statements, or advertisement referring to Agreement, or the engagement of Preferred Supplier as an independent contractor of UT Party, or release any information relative to the Agreement for publication, advertisement or any other purpose without the prior written approval of UT Party.

- 4.28.5 **Public Information.** UT Party strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act*, Chapter 552, *Texas Government Code*.
- 4.28.6 **Termination.** In addition to any other termination rights set forth in the Agreement, and any other rights at law or equity, if UT Party reasonably determines that Preferred Supplier has breached any of the restrictions or obligations set forth in this Section, UT Party may immediately terminate the Agreement without notice or opportunity to cure.
- 4.28.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of the Agreement for any reason.

NOTICE TO PROPOSER:

Depending on the details of how the Services will be provided, additional provisions may need to be included to safeguard the security and privacy of data, in compliance with UT System policies on Information Resources Use and Security Policy (Policy UTS165, accessible at <http://www.utsystem.edu/policy/policies/uts165.html>) and Information Resources Acceptable Use and Security Policy (Policy INT124), accessible at <http://www.utsystem.edu/policy/policies/int124.html>).

4.29 HIPAA Compliance.

Preferred Supplier agrees that it will execute a HIPAA Business Associate Agreement (“**BAA**”) with UT Party, and the BAA will be in a form substantially similar to that set forth in **Rider _____**, HIPAA Business Associate Agreement, attached and incorporated for all purposes.

4.30 Termination

- 4.30.1 UT System may terminate the PSA, without cause, upon written notice to the Preferred Supplier; provided, however, the PSA will not terminate until the later of (1) ninety (90) days after receipt of notice of termination, or (2) the date that performance is complete under all purchase orders issued by Institutional Participant to Preferred Supplier prior to receipt of notice of termination. Institutional Participant may not issue any purchase orders after receipt of notice of termination. Termination of the PSA will not relieve any party from liability for its default under or breach of the PSA or any other act or omission of that party. Preferred Supplier will deliver all Work Material to UT System on or before the termination date. In the event that the PSA is terminated, then within thirty (30) days after termination, Preferred Supplier will reimburse UT System for all fees paid by UT System to Preferred Supplier that were (a) not earned by Preferred Supplier prior to termination, or (b) for goods or services that UT System did not receive from Preferred Supplier prior to termination.
- 4.30.2 UT System or Institutional Participant may terminate an IPA, without cause, upon written notice to Preferred Supplier; provided, however, the IPA will not terminate until the later of (1) thirty (30) days after written notice of termination, or (2) the date that performance is complete under any purchase orders issued by Institutional Participant to Preferred Supplier prior to the date of notice of termination. Institutional Participant may not issue any purchase orders after the date of notice of termination. Termination of an IPA will not relieve any party from liability for its default under or breach of the IPA or any other act or omission of that party. Preferred Supplier will deliver all Work Material to Institutional Participant on or before the termination date. In the event that the PSA or an IPA is terminated, then within thirty (30) days after termination, Preferred Supplier will reimburse Institutional Participant for all fees

paid by Institutional Participant to Preferred Supplier that were (a) not earned by Preferred Supplier prior to termination, or (b) for goods or services that Institutional Participant did not receive from Preferred Supplier prior to termination.

4.30.3 Institutional Participant may terminate a purchase order, without cause, upon written notice to Preferred Supplier; provided, however, the purchase order will not terminate until five (5) days after written notice of termination. Termination of a purchase order will not relieve any party from liability for its default under or breach of the Agreement or any other act or omission of that party. In the event that a purchase order is terminated, then within thirty (30) days after termination, Preferred Supplier will reimburse Institutional Participant for all fees paid by Institutional Participant to Preferred Supplier that were (a) not earned by Preferred Supplier prior to termination, or (b) for goods or services that Institutional Participant did not receive from Preferred Supplier prior to termination.

4.31 Binding Effect

The Agreement will be binding upon and inure to the benefit of the parties thereto and their respective permitted assigns and successors.

4.32 Severability

In case any provision of the Agreement is, for any reason, held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of the Agreement, and the Agreement will be construed as if the invalid or unenforceable provision had not been included.

4.33 Limitation of Liability

EXCEPT FOR UT PARTY'S OBLIGATION (IF ANY) TO PAY PREFERRED SUPPLIER CERTAIN FEES AND EXPENSES, UT PARTY WILL HAVE NO LIABILITY TO PREFERRED SUPPLIER OR TO ANYONE CLAIMING THROUGH OR UNDER PREFERRED SUPPLIER BY REASON OF THE EXECUTION OR PERFORMANCE OF THE AGREEMENT. NOTWITHSTANDING ANY DUTY OR OBLIGATION OF UT PARTY TO PREFERRED SUPPLIER OR TO ANYONE CLAIMING THROUGH OR UNDER PREFERRED SUPPLIER, NO PRESENT OR FUTURE AFFILIATED ENTERPRISE, SUBCONTRACTOR, AGENT, OFFICER, DIRECTOR, EMPLOYEE, REPRESENTATIVE, ATTORNEY OR REGENT OF UT PARTY, OR ANYONE CLAIMING UNDER UT PARTY HAS OR WILL HAVE ANY PERSONAL LIABILITY TO PREFERRED SUPPLIER OR TO ANYONE CLAIMING THROUGH OR UNDER PREFERRED SUPPLIER BY REASON OF THE EXECUTION OR PERFORMANCE OF THE AGREEMENT.

4.34 Assignment and Subcontracting

Except as specifically provided in **Rider ____**, Historically Underutilized Business Subcontracting Plan, attached and incorporated for all purposes, Preferred Supplier's interest in the Agreement (including Preferred Supplier's duties and obligations under the Agreement, and the fees due to Preferred Supplier under the 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 UT Party; and (b) be a breach of the Agreement for which Preferred Supplier will be subject to all remedial actions provided by Texas law, including Chapter 2161, *Texas Government Code*, and 34 TAC Sections 20.101 through 20.108. The benefits and burdens of the Agreement are assignable by UT Party.

4.35 Historically Underutilized Business Subcontracting Plan

Preferred Supplier agrees to use good faith efforts to subcontract the Services in accordance with the Historically Underutilized Business Subcontracting Plan (“HSP”) (ref. **Rider** ____). Preferred Supplier agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to UT Party in the format required by Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, “TPSS”). Submission of compliance reports will be required as a condition for payment under the Agreement. If UT Party determines that Preferred Supplier has failed to subcontract as set out in the HSP, UT Party will notify Preferred Supplier of any deficiencies and give Preferred Supplier an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Preferred Supplier. If UT Party determines that Preferred Supplier failed to implement the HSP in good faith, UT Party, in addition to any other remedies, may report nonperformance to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108. UT Party may also revoke the Agreement for breach and make a claim against Preferred Supplier.

4.35.1 **Changes to the HSP.** If at any time during the term of the Agreement, Preferred Supplier desires to change the HSP, before the proposed changes become effective (a) Preferred Supplier must comply with 34 TAC Section 20.14; (b) the changes must be reviewed and approved by UT Party; and (c) if UT Party approves changes to the HSP, the Agreement must be amended in accordance with **Section 4.24** to replace the HSP with the revised subcontracting plan.

4.35.2 **Expansion of the Services.** If UT Party expands the scope of the Services through a change order or any other amendment, UT Party will determine if the additional Services contains probable subcontracting opportunities *not* identified in the initial solicitation for the Services. If UT Party determines additional probable subcontracting opportunities exist, Preferred Supplier will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34 TAC Section 20.14 before (a) the Agreement may be amended to include the additional Services; or (b) Preferred Supplier may perform the additional Services. If Preferred Supplier subcontracts any of the additional subcontracting opportunities identified by UT Party without prior authorization and without complying with 34 TAC Section 20.14, Preferred Supplier will be deemed to be in breach of the Agreement and will be subject to any remedial actions provided by Texas law including Chapter 2161, *Texas Government Code* and 34 TAC Section 20.14. UT Party may report nonperformance under the Agreement to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108.

4.36 Limitations

THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UT PARTY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THE AGREEMENT, INCLUDING THOSE TERMS AND CONDITIONS RELATING TO LIENS ON UT PARTY’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 UT PARTY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

4.37 Survival of Provisions

No expiration or termination of the Agreement will relieve either party of any obligations under the Agreement that by their nature survive such expiration or termination.

4.38 Relationship of the Parties

For all purposes of the Agreement and notwithstanding any provision of the Agreement to the contrary, Preferred Supplier is an independent contractor and is not a state employee, partner, joint venturer, or agent of UT Party. Preferred Supplier will not bind nor attempt to bind UT Party to any agreement or contract. As an independent contractor, Preferred Supplier is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance.

4.39 Premises Rules

If the Agreement requires Preferred Supplier's presence on UT Party premises or facilities, Preferred Supplier agrees to cause its representatives, agents, employees and permitted subcontractors (if any) to become aware of, fully informed about, and in full compliance with all applicable UT Party rules and policies, including those related to personal health; security; environmental quality; safety; fire prevention; noise; smoking; access restrictions; consideration for students, patients and their families as well as employees; parking; and security.

4.40 Quality Assurance

Preferred Supplier will (a) comply with all applicable standards of the Joint Commission (ref. <http://www.jointcommission.org/>, the "**Joint Commission**"); (b) implement and monitor a quality assurance process that complies with Joint Commission standards; (c) comply with applicable Joint Commission privileging standards for licensed independent practitioners; (d) upon request, provide assurance to UT Party of a licensed independent practitioner's privileging file; and (e) provide UT Party with periodic reports of its quality assurance indicators and/or permit UT Party to conduct periodic quality assurance audits of the Services.

4.41 Time for Commencement and Completion of Preferred Supplier Agreement

The term of the PSA will begin on the Effective Date and expire on _____, 20____. UT System will have the option to renew the PSA for _____ (____) additional _____ (____) year terms. ***[NOTICE TO PROPOSER: UT System anticipates an initial contract term in the range of three to five years.]***

4.42 External Terms

The Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, ("**External Terms**") concerning Preferred Supplier's performance under the Agreement. Such External Terms are null and void and will have no effect under the Agreement, regardless of whether UT Party or any of its employees, contractors, or agents consents or agrees 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 UT Party, 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 solely by Preferred Supplier. External Terms also include legal terms and conditions in any purchase order; however,

External Terms do *not* include non-conflicting commercial terms in a purchase order such as order quantity, delivery schedule, delivery address and billing address.

4.43 Authority

The individuals executing the Agreement on behalf of each party have been duly authorized to act for and bind their respective parties.

4.44 Conflicts

The Agreement supersedes any prior agreements or understandings, whether written or oral, between the parties with respect to the Services.

In the event of a conflict between the terms and conditions of the PSA and those of an IPA, the terms of the PSA will control and govern.

4.45 Affirmative Action

Preferred Supplier agrees that either a written copy of Preferred Supplier's Civil Rights "Affirmative Action Compliance Program" or, if Preferred Supplier is not required to have such a written program, the reason Preferred Supplier is not subject to such requirement, will be attached to the Agreement as **Rider** ____ and incorporated for all purposes.

4.46 OSHA Compliance

Preferred Supplier represents and warrants that all Services furnished under the Agreement meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-598) and its regulations in effect or proposed as of the date of the Agreement.

4.47 Certifications of Nonsegregated Facilities and Equal Employment Opportunities Compliance

Preferred Supplier certifies that, except for restrooms and wash rooms and one (1) or more lactation rooms each of which is segregated on the basis of sex: (1) it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained; (2) it will not maintain or provide for its employees any segregated facilities at any of its establishments; and (3) it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. A breach of this certification is a violation of the Equal Opportunity clause. The term "**segregated facilities**" means any waiting rooms, work areas, rest rooms and wash rooms, entertainment areas, and transportation or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise. Preferred Supplier further agrees that, except where it has contracts prior to the award with subcontractors exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, Preferred Supplier will retain the certifications for each one of its subcontractors in Preferred Supplier's files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES - A Certification on Nonsegregated Facilities must be

submitted prior to the award of any subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Preferred Supplier understands that the penalty for making false statements regarding the subject matters of this Section is prescribed in 18 U.S.C. 1001.

4.48 Debarment

Preferred Supplier confirms that neither Preferred Supplier 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 nonprocurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs (<http://www.epls.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). Preferred Supplier will provide immediate written notification to UT Party if, at any time, Preferred Supplier 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 UT Party executes the Agreement. If it is later determined that Preferred Supplier knowingly rendered an erroneous certification, in addition to the other remedies available to UT Party, UT Party may terminate the Agreement for default by Preferred Supplier.

4.49 Office of Inspector General Certification

Preferred Supplier acknowledges that UT Party may be prohibited by federal regulations from allowing any employee, representative, subcontractor, or agent of Preferred Supplier to work on site at certain UT Party premises or facilities if that individual is not eligible to work on federal healthcare programs such as Medicare, Medicaid, or other similar federal programs. Therefore, Preferred Supplier will not assign any employee, subcontractor or agent that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General ("**OIG**") to work on site at UT Party premises or facilities. Preferred Supplier will perform an OIG sanctions check quarterly on each of its employees, subcontractors and agents during the time such employees, subcontractors and agents are assigned to work on site at UT Party premises or facilities. Preferred Supplier acknowledges that UT Party will require immediate removal of any employee, subcontractor or agent of Preferred Supplier assigned to work at UT Party premises or facilities if such employee, subcontractor or agent 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://www.oig.hhs.gov/fraud/exclusions/exclusions_list.asp.

4.50 Access to Documents

To the extent applicable to the Agreement, in accordance with Section 1861(v)(1)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Preferred Supplier will allow, during and for a period of not less than four (4) years after the expiration or termination of the Agreement, access to the Agreement and its books, documents, and records; and contracts between Preferred Supplier 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.

4.51 Placeholder for Further Software-Related Terms that may be appropriate, such as

- *terms of any software licensing that may be required;*
- *roles of Preferred Supplier and UT System (or its contractor) to maintain the software; and*
- *ability to discontinue use of unnecessary modules or functions of any licensed software, with corresponding fee reductions.*

4.52 Riders to Preferred Supplier Agreement

Various Riders, compiled in **APPENDIX FIVE**, would be attached to the PSA.

SECTION 5 **SPECIFICATIONS, ADDITIONAL QUESTIONS AND SCOPE OF WORK**

5.1 General

The minimum requirements and the specifications for the products and services, as well as certain requests for information to be provided by Proposer as part of its proposal, are set forth below. As indicated in **Section 1.2** of this RFP, the successful Proposer(s) is referred to as the “**Preferred Supplier.**”

5.2 Minimum Requirements

Each Proposal must include information that clearly indicates that Proposer meets each of the following minimum qualification requirements:

- 5.2.1 Proposer must pay to the Alliance a quarterly administrative fee of 1% of the Total Net Sales made under the Agreement (ref. **Section 6.2** of this RFP).
- 5.2.2 Proposer must have experience providing medical billing audit software in a hospital or other healthcare setting.
- 5.2.3 Proposer would provide secure data transmissions to and from each participating UT institution.
- 5.2.4 Proposer must offer a software solution that provides International Statistical Classification of Diseases and Health Related Problems - 9th Revision (ICD-9) code medical billing compliance.
- 5.2.5 Proposer must offer a software solution that provides International Statistical Classification of Diseases and Health Related Problems – 10th Revisions (ICD-10) code medical billing compliance, which includes ICD-10 CM (clinical modification) and ICD-10 PCS (procedural coding system).
- 5.2.6 Proposer must offer a software solution that provides Current Procedural Terminology (CPT) code medical billing compliance.

- 5.2.7 Proposer must offer a software solution that provides Healthcare Common Procedure Coding System (HCPCS) code medical billing compliance.
- 5.2.8 Proposer's software solution must be HIPAA compliant.

5.3 Additional Questions Specific to this RFP and Scope of Work

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

- 5.3.1 In its proposal, Proposer must indicate whether it will consent to include in the Agreement the "Access by Individuals with Disabilities" language that is set forth in **APPENDIX THREE, Access by Individuals with Disabilities**. If Proposer objects to the inclusion of the "Access by Individuals with Disabilities" language in the Agreement, Proposer must, as part of its proposal, specifically identify and describe in detail all of the reasons for Proposer's objection. NOTE THAT A GENERAL OBJECTION IS NOT AN ACCEPTABLE RESPONSE TO THIS QUESTION.
- 5.3.2 Subchapter M, Chapter 2054, *Texas Government Code*, and 1 *Texas Administrative Code* Chapters 206 and 213, require UT institutions to develop, purchase, maintain, and use accessible electronic and information resources (EIR) that conform to the Texas Department of Information Resources (DIR) Accessibility Rules. EIR includes software applications and operating systems, web sites, telecommunications products, video and multimedia products, desktop and portable computers and self contained/closed equipment that includes EIR. For a more comprehensive listing of EIR see UTS150 *Access by Persons with Disabilities to Electronic and Information Resources Procured or Developed by The University of Texas System Administration and The University of Texas System Institutions* <http://www.utsystem.edu/policy/policies/uts150.html> . In addition to Proposer's submission of a completed Voluntary Accessibility Product Template <http://www.itic.org/index.php?submenu=resources&src=gendocs&ref=vpat&category=resources>, UT System reserves the right to perform real-world testing of a supplier's product or service in order to validate supplier's claims regarding conformance with DIR Accessibility Rules. UT System, in its sole discretion, will determine the level of compliance with DIR Accessibility Rules on all products being reviewed.

In its proposal, Proposer must respond to each item listed in **APPENDIX FOUR, Electronic and Information Resources ("EIR") Environment Specifications**. **APPENDIX FOUR** will establish specifications, representations, warranties and agreements related to the EIR that Proposer is offering to provide to University. Responses to **APPENDIX FOUR** will be incorporated into the Agreement and will be binding on Preferred Supplier.

- 5.3.3 If Proposer takes exception to any terms or conditions set forth in **Section 4** of this RFP, Proposer must submit a list of the exceptions.
- 5.3.4 Proposers will provide answers to the questions listed in the Proposer's Survey ("**Proposer's Survey**") (ref. **Section 5.5** of this RFP) to the best of Proposer's knowledge, as responses may be incorporated into the Preferred Supplier Agreement. The questions in the Proposer's Survey will provide UT System with additional information about Proposer and various efficiencies and economies of scale that Proposer may provide to Institutional Participants.

5.3.5 Although Proposer may only offer a portion of the services listed in the Price Schedule (ref. **Attachment A** to this RFP) and within the Proposer's Survey (ref. **Section 5.5** of this RFP), Proposer should submit pricing for as many of the identified items as possible.

5.3.6 Proposer should submit information regarding Proposer's account management, service capabilities, competitive advantage, value-added offerings, and other information requested in the Proposer's Survey (ref. **Section 5.5** of this RFP).

5.4 Scope of Work

Objectives and Project Overview

UT System is looking to achieve significant increases in the efficiency with which UT System's institutions handle patient interactions, both in rendering medical services and in conducting related business operations, including billing and collection. To this end, UT System is seeking to identify a Preferred Supplier to provide to UT System's institutions an automated software system that would read and analyze complex and highly variable medical charts and assign appropriate billing codes to the services recorded in the charts (in either physician or hospital practice). The software, which UT System anticipates would use natural language processing technology, must be highly accurate and cost-effective and must not require extensive training of institution personnel regarding use of the software.

Restriction on Nature of Expenditures for Billing Code Technology

The Board of Regents of UT System has appropriated funds for the procurement of technology and services that would enhance the revenue cycle operations of UT System's medical institutions. Under the Texas Constitution, these appropriated funds, having originated from Permanent University Fund (PUF) bond proceeds, may be used only to fund "capital and equipment items" related to the educational mission of UT System and UT System institutions. As a result, the institutions' use of the funds to purchase code-billing services would not be permitted, since payments under such an arrangement would be characterized as operating expenses, not capital expenditures.

With this background in mind, it may be necessary for Preferred Supplier to grant a multi-year license of its software, on the terms outlined below, since this arrangement would help characterize certain expenditures by UT System and UT System institutions as capital in nature. UT System invites Proposer to offer alternative suggestions for structuring a business relationship with UT System in ways that would accomplish the objectives of UT System within the restrictions imposed on use of the appropriated funds. In particular, UT System would welcome other ideas for qualifying at least some of the costs as "capital" expenditures within the meaning of applicable Government Accounting Standards Board (GASB) rules.

Key Aspects of Proposed Business Relationship

1. UT System and Preferred Supplier would enter into a multi-year agreement for Preferred Supplier's provision of the above-described medical billing code system to Institutional Participants.
2. Preferred Supplier would grant to UT System and all Institutional Participants a multi-year license to use the software for the duration of the agreement.
3. UT System would pay to Preferred Supplier a software license fee, payable in installments according to a formula to be determined, as well as an agreed portion of Preferred Supplier's fees and expenses for implementing the software system and developing appropriate interfaces on the Institutional Participants' computers.

4. The Institutional Participants would pay to Preferred Supplier (a) the remaining balance (not already paid by UT System) of Preferred Supplier's fees and expenses for implementing the system; and (b) agreed fees for Preferred Supplier's ongoing maintenance of the software and for technical assistance in operating the software interfaces.
5. **Section 4** and **Section 5** of this RFP summarize other key terms that would apply, including terms governing Preferred Supplier's access to sensitive data during its performance under the agreement (compliance with HIPAA, e.g.); ownership of work material resulting from development work undertaken by Preferred Supplier as part of its performance; and Preferred Supplier's compliance with EIR accessibility requirements.

5.5 Proposer's Survey

The Proposer's Survey contains a list of additional questions the Proposer will answer when responding to this RFP. If Proposer needs to submit additional supporting information, refer to the supporting information in responses to the Proposer's Survey and attach supporting materials in a logical and clear manner. Any supporting information must be included in electronic form via the Ariba® e-Sourcing tool and must follow the following naming convention: (<Proposer Name> - <Question Number> - Response - <File Name>).

SECTION 6 **PRICING AND SERVICE AFFIRMATION**

THE FOLLOWING FORM MUST BE COMPLETED, SIGNED AND SUBMITTED WITH THE PROPOSER'S PROPOSAL. FAILURE TO DO SO WILL RESULT IN THE REJECTION OF YOUR PROPOSAL.

Proposal of: _____
(Proposer Company Name)

To: The University of Texas System

Ref.: Address Verification and Quality Assurance System

RFP No.: UTS/A19

Ladies and Gentlemen:

Having carefully examined all the specifications and requirements of this RFP and any attachments thereto, the undersigned proposes to furnish the Services required pursuant to the above-referenced Request for Proposal upon the pricing terms quoted below.

6.1 Pricing

The prices quoted in **Attachment A**, Price Schedule, to this RFP will be Proposer's guaranteed pricing for the Services.

6.2 Administrative Fees

Proposer agrees that if Proposer is awarded an agreement under this RFP, it will provide to UT System a quarterly administrative fee of 1% of the Total Net Sales made by Preferred Supplier under the agreement. **“Total Net Sales”** means the total dollar amount of all sales of Services that are made by Preferred Supplier to an Institutional Participant, less credits, returns, taxes, and unpaid invoices. The administrative fee will be used by UT System to provide support for implementation, administration, monitoring, and management of the agreement.

6.3 Payment Terms

The Institutional Participants’ standard payment term for goods and services is “Net 30 days.”

Indicate below the prompt payment discount that Proposer will provide to UT System:

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

Proposer certifies and agrees that all prices, rebates, and incentives proposed in Proposer’s proposal have been reviewed by Proposer’s executive management.

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

APPENDIX ONE

PROPOSAL REQUIREMENTS

SECTION 1 GENERAL INFORMATION

1.1 Purpose

UT System is soliciting competitive sealed proposals from Proposers having suitable qualifications and experience providing goods and services in accordance with the terms, conditions and requirements set forth in this RFP. This RFP provides sufficient information for interested parties to prepare and submit proposals for consideration by UT System.

By submitting a proposal, Proposer certifies that it understands this RFP and has full knowledge of the scope, nature, quality, and quantity of the goods and services to be performed, the detailed requirements of the goods and services to be provided, and the conditions under which such goods and services are to be performed. Proposer also certifies that it understands that all costs relating to preparing a response to this RFP will be the sole responsibility of Proposer.

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.

1.2 Inquiries and Interpretations

UT System may in its sole discretion respond in writing to written inquiries concerning this RFP and post its response as an Addendum to all parties recorded by UT System as participating in this RFP. Only UT System's responses that are made by formal written Addenda will be binding on UT System. Any verbal responses, written interpretations or clarifications other than Addenda to this RFP will be without legal effect. All Addenda issued by UT System prior to the Submittal Deadline will be and are hereby incorporated as a part of this RFP for all purposes.

Proposers are required to acknowledge receipt of each Addendum by selecting "acknowledge" in the Addendum section of the RFP in Ariba. Each Addendum must be acknowledged by Proposer prior to the Submittal Deadline and should accompany Proposer's proposal.

1.3 Public Information

Proposer is hereby notified that UT System strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information.

UT System may seek to protect from disclosure all information submitted in response to this RFP until such time as a final agreement is executed.

Upon execution of a final agreement, UT System will consider all information, documentation, and other materials requested to be submitted in response to this RFP, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the *Texas Public Information Act (Government Code, Chapter 552.001, et seq.)*. Proposer will be advised of a request for public information that implicates their materials and will have the opportunity to raise

any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under Sections 552.101, 552.110, 552.113, and 552.131, *Government Code*.

1.4 Type of Agreement

Preferred Supplier, if any, will be required to enter into an agreement with UT System in a form that (i) includes terms and conditions substantially similar to those set forth in **Section 4** of this RFP, and (ii) is otherwise acceptable to UT System in all respects.

1.5 Proposal Evaluation Process

UT System will select Preferred Supplier by using the competitive sealed proposal process described in this Section. UT System will open the HSP Packet submitted by a Proposer prior to opening Proposer's proposal in order to ensure that Proposer has submitted the completed and signed HUB Subcontracting Plan (also called the HSP) that is required by this RFP (ref. **Section 2.5.4** of the RFP). All proposals submitted by the Submittal Deadline accompanied by the completed and signed HSP required by this RFP will be opened. Any proposals that are not submitted by the Submittal Date or that are not accompanied by the completed and signed HSP required by this RFP will be rejected by UT System as non-responsive due to material failure to comply with advertised specifications. After the opening of the proposals and upon completion of the initial review and evaluation of the proposals, UT System may invite one or more selected Proposers to participate in oral presentations. UT System will use commercially reasonable efforts to avoid public disclosure of the contents of a proposal prior to selection of Preferred Supplier.

UT System may make the selection of Preferred Supplier on the basis of the proposals initially submitted, without discussion, clarification or modification. In the alternative, UT System may make the selection of Preferred Supplier on the basis of negotiation with any of Proposers. In conducting such negotiations, UT System will avoid disclosing the contents of competing proposals.

At UT System's sole option and discretion, UT System may discuss and negotiate all elements of the proposals submitted by selected Proposers within a specified competitive range. For purposes of negotiation, UT System may establish, after an initial review of the proposals, a competitive range of acceptable or potentially acceptable proposals composed of the highest rated proposal(s). In that event, UT System will defer further action on proposals not included within the competitive range pending the selection of Preferred Supplier; provided, however, UT System reserves the right to include additional proposals in the competitive range if deemed to be in the best interests of UT System.

After submission of a proposal but before final selection of Preferred Supplier is made, UT System may permit a Proposer to revise its proposal in order to obtain Proposer's best and final offer. In that event, representations made by Proposer in its revised proposal, including price and fee quotes, will be binding on Proposer. UT System will provide each Proposer within the competitive range with an equal opportunity for discussion and revision of its proposal. UT System is not obligated to select Proposer offering the most attractive economic terms if that Proposer is not the most advantageous to UT System overall, as determined by UT System.

UT System reserves the right to (a) enter into an agreement for all or any portion of the requirements and specifications set forth in this RFP with one or more Proposers, (b) reject any and all proposals and re-solicit proposals, or (c) reject any and all proposals and temporarily or permanently abandon this selection process, if deemed to be in the best interests of UT System. Proposer is hereby notified that UT System will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by UT System.

1.6 Proposer's Acceptance of Evaluation Methodology

By submitting a proposal, Proposer acknowledges (1) Proposer's acceptance of [a] the Proposal Evaluation Process (ref. **Section 1.5** of **APPENDIX ONE**), [b] the Criteria for Selection (ref. **2.3** of this RFP), [c] the Specifications, Additional Questions and Scope of Work (ref. **Section 5** of this RFP), [d] the terms and conditions set forth in **Section 4** of this RFP, and [e] all other requirements and specifications set forth in this RFP; and (2) Proposer's recognition that some subjective judgments must be made by UT System during this RFP process.

1.7 Solicitation for Proposal and Proposal Preparation Costs

Proposer understands and agrees that (1) this RFP is a solicitation for proposals and UT System has made no representation written or oral that one or more agreements with UT System will be awarded under this RFP; (2) UT System issues this RFP predicated on UT System's anticipated requirements for the Services, and UT System has made no representation, written or oral, that any particular scope of services will actually be required by UT System; and (3) Proposer will bear, as its sole risk and responsibility, any cost that arises from Proposer's preparation of a proposal in response to this RFP.

1.8 Proposal Requirements and General Instructions

- 1.8.1 Proposer should carefully read the information contained herein and submit a complete proposal in response to all requirements and questions as directed.
- 1.8.2 Proposals and any other information submitted by Proposer in response to this RFP will become the property of UT System.
- 1.8.3 UT System will not provide compensation to Proposer for any expenses incurred by Proposer for proposal preparation or for demonstrations or oral presentations that may be made by Proposer, unless otherwise expressly agreed in writing. Proposer submits its proposal at its own risk and expense.
- 1.8.4 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 UT System, at UT System's sole discretion.
- 1.8.5 Proposals should be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet the requirements and specifications of this RFP. Emphasis should be on completeness, clarity of content, and responsiveness to the requirements and specifications of this RFP.
- 1.8.6 UT System makes no warranty or guarantee that an award will be made as a result of this RFP. UT System reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP when deemed to be in UT System's best interest. UT System reserves the right to seek clarification from any Proposer concerning any item contained in its proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to UT System, at UT System's sole discretion. Representations made by Proposer within its proposal will be binding on Proposer.

1.8.7 Any proposal that fails to comply with the requirements contained in this RFP may be rejected by UT System, in UT System's sole discretion.

1.9 Preparation and Submittal Instructions

1.9.1 Specifications and Additional Questions

Proposals must include responses to the questions referenced in Specifications, Additional Questions and Scope of Work (ref. **Section 5** of this RFP).

1.9.2 Execution of Offer

Proposer must complete, sign and return the attached Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) as part of its proposal. The Execution of Offer must be signed by a representative of Proposer duly authorized to bind Proposer to its proposal. Any proposal received without a completed and signed Execution of Offer may be rejected by UT System, in its sole discretion.

1.9.3 Pricing and Service Affirmation

Proposer must complete and return the Pricing and Service Affirmation (ref. **Section 6** of this RFP), as part of its proposal.

UT System will not recognize or accept any charges or fees to perform the Services that are not specifically stated in the Pricing and Service Affirmation.

1.9.4 Submission

Proposer should submit all proposal materials via UTMDACC's Ariba® e-sourcing tool. Proposer should ensure that all documents are submitted electronically in accordance with the instructions in **Section 3.1** of this RFP.

Proposer must also submit the HUB Subcontracting Plan (also called the HSP) as required by this RFP (ref. **Section 2.5** of the RFP.)

UT System will not, under any circumstances, consider a proposal that is received after the Submittal Deadline or which is not accompanied by the completed and signed HSP that is required by this RFP.

UT System will not accept proposals submitted by telephone, proposals submitted by Facsimile ("**FAX**") transmission, or proposals submitted by hard copy (i.e., paper form) in response to this RFP.

Except as otherwise provided in this RFP, no proposal may be changed, amended, or modified after it has been submitted to UT System. However, a proposal may be withdrawn and resubmitted at any time prior to the Submittal Deadline. No proposal may be withdrawn after the Submittal Deadline without UT System's consent, which will be based on Proposer's submittal of a written explanation and documentation evidencing a reason acceptable to UT System, in UT System's sole discretion.

By signing the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) and submitting a proposal, Proposer certifies that any terms, conditions, or documents attached to or referenced in its proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP and (b) do not place any requirements on UT System that are not set forth in this RFP or in the Appendices to this RFP. Proposer further certifies that the submission of a proposal is Proposer's good faith intent to enter into the Agreement with UT System as specified herein and that such intent is not contingent upon UT System's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.

SECTION 2 **EXECUTION OF OFFER**

THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED AND RETURNED WITH PROPOSER'S PROPOSAL. FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH PROPOSER'S PROPOSAL MAY RESULT IN THE REJECTION OF THE PROPOSAL.

- 2.1** By signature hereon, Proposer represents and warrants the following:
- 2.1.1 Proposer acknowledges and agrees that (1) this RFP is a solicitation for a proposal and is not a contract or an offer to contract; (2) the submission of a proposal by Proposer in response to this RFP will not create a contract between UT System and Proposer; (3) UT System has made no representation or warranty, written or oral, that one or more contracts with UT System will be awarded under this RFP; and (4) Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
 - 2.1.2 Proposer is a reputable company that is lawfully and regularly engaged in providing the Services.
 - 2.1.3 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform the Services.
 - 2.1.4 Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances.
 - 2.1.5 Proposer understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in Section 4 of this RFP, under which Proposer will be required to operate.
 - 2.1.6 If selected by UT System, Proposer will not delegate any of its duties or responsibilities under this RFP or the Agreement to any sub-contractor, except as expressly provided in the Agreement.
 - 2.1.7 If selected by UT System, Proposer will maintain any insurance coverage as required by the Agreement during the term thereof.
 - 2.1.8 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. Proposer acknowledges that UT System will rely on such statements, information and representations in selecting Preferred Supplier. If selected by UT System, Proposer will notify UT System immediately of any material change

in any matters with regard to which Proposer has made a statement or representation or provided information.

2.1.9 PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UT SYSTEM, INDEMNIFY, AND HOLD HARMLESS UT SYSTEM, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF PROPOSER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROPOSER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.

2.1.10 Pursuant to Sections 2107.008 and 2252.903, *Government Code*, any payments owing to Proposer under any contract or agreement resulting from this RFP may be applied directly to any debt or delinquency that Proposer owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

2.2 By signature hereon, Proposer offers and agrees to furnish the Services to UT System and comply with all terms, conditions, requirements and specifications set forth in this RFP.

2.3 By signature hereon, Proposer affirms that it has not given or offered to give, nor does Proposer intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its submitted proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting contracts, and Proposer may be removed from all proposal lists at UT System.

2.4 By signature hereon, Proposer certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, *Tax Code*, 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. A false certification will be deemed a material breach of any resulting contract or agreement and, at UT System's option, may result in termination of any resulting contract or agreement.

2.5 By signature hereon, Proposer hereby certifies that neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, or anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in Section 15.01, et seq., *Business and Commerce Code*, 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.

2.6 By signature hereon, Proposer certifies that the individual signing this document and the documents made a part of this RFP, is authorized to sign such documents on behalf of Proposer and to bind Proposer under any agreements and other contractual arrangements that may result from the submission of Proposer's proposal.

2.7 By signature hereon, Proposer certifies as follows:

"Under Section 231.006, *Family Code*, relating to child support, Proposer certifies that the individual or business entity named in Proposer's proposal is not ineligible to receive the specified contract

award and acknowledges that any agreements or other contractual arrangements resulting from this RFP may be terminated if this certification is inaccurate."

- 2.8** By signature hereon, Proposer certifies that (i) no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Proposer that is a sole proprietorship, the officers or directors of any Proposer that is a corporation, the partners of any Proposer that is a partnership, the joint venturers of any Proposer that is a joint venture or the members or managers of any Proposer that is a limited liability company, on one hand, and any member of the Board of Regents of the University of Texas System or an employee of any component of The University of Texas System, on the other hand, other than the relationships which have been previously disclosed to UT System in writing; (ii) Proposer has not been an employee of any component institution of The University of Texas System within the immediate twelve (12) months prior to the Submittal Deadline; and (iii) no person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in Proposer's proposal or any contract resulting from this RFP (ref. Section 669.003, *Government Code*). All disclosures by Proposer in connection with this certification will be subject to administrative review and approval before UT System enters into a contract or agreement with Proposer.
- 2.9** By signature hereon, Proposer certifies that in accordance with Section 2155.004, *Government Code*, no compensation has been received for its participation in the preparation of the requirements or specifications for this RFP. In addition, Proposer certifies that an award of a contract to Proposer will not violate Section 2155.006, *Government Code*, prohibiting UT System from entering into a contract that involves financial participation by a person who, during the previous five years, has been convicted of violating federal law or assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Pursuant to Sections 2155.004 and 2155.006, *Government Code*, Proposer certifies that Proposer 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.
- 2.10** By signature hereon, Proposer certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 2.11** By signature hereon, Proposer represents and warrants that all products and services offered to UT System in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and the *Texas Hazard Communication Act*, Chapter 502, *Health and Safety Code*, and all related regulations in effect or proposed as of the date of this RFP.
- 2.12** Proposer will and has disclosed, as part of its proposal, any exceptions to the certifications stated in this Execution of Offer. All such disclosures will be subject to administrative review and approval prior to the time UT System makes an award or enters into any contract or agreement with Proposer.
- 2.13** If Proposer will sell or lease computer equipment to UT System under any agreements or other contractual arrangements that may result from the submission of Proposer's proposal then, pursuant to Section 361.965(c), *Health & Safety Code*, Proposer certifies that it is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in Chapter 361, Subchapter Y, *Health & Safety Code* and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in Title 30,

Chapter 328, Subchapter I, *Texas Administrative Code*. Section 361.952(2), *Health & Safety Code* states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term "computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.

2.14 Proposer should complete the following information:

If Proposer is a Corporation, then State of Incorporation: _____

If Proposer is a Corporation then Proposer's Corporate Charter Number: _____

RFP No.: UTS/A19

NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER SECTIONS 552.021 AND 552.023, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 559.004, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED AND RETURNED WITH PROPOSER'S PROPOSAL. FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH PROPOSER'S PROPOSAL MAY RESULT IN THE REJECTION OF THE PROPOSAL.

Submitted and Certified By:

(Proposer Institution's Name)

(Signature of Duly Authorized Representative)

(Printed Name/Title)

(Date Signed)

(Proposer's Street Address)

(City, State, Zip Code)

(Telephone Number)

(FAX Number)

APPENDIX TWO

UT SYSTEM POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES

[Note: Alliance should include the most recent edition, obtained from the UT System HUB Office, of the System's Policy on Utilization of Historically Underutilized Businesses.]

APPENDIX THREE

ACCESS BY INDIVIDUALS WITH DISABILITIES

Access by Individuals with Disabilities. Preferred Supplier represents and warrants (“**EIR Accessibility Warranty**”) that the electronic and information resources and all associated information, documentation, and support that it provides to UT System under the Agreement (collectively, the “**EIRs**”) comply with the applicable requirements set forth in Title 1, Chapter 213, *Texas Administrative Code* and Title 1, Chapter 206, Rule §206.70, *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M, *Government Code*.) To the extent Preferred Supplier becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Preferred Supplier represents and warrants that it will, at no cost to UT 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 Preferred Supplier is unable to do so, then UT System may terminate the Agreement and Preferred Supplier will refund to UT System all amounts UT System has paid under the Agreement within thirty (30) days after the termination date.

APPENDIX FOUR

ELECTRONIC AND INFORMATION RESOURCES ENVIRONMENT SPECIFICATIONS

The specifications, representations, warranties and agreements set forth in Proposer's responses to this **APPENDIX FOUR** will be incorporated into the Agreement.

Basic Specifications

1. If the EIR will be hosted by University, please describe the overall environment requirements for the EIR (size the requirements to support the number of concurrent users, the number of licenses and the input/output generated by the application as requested in the application requirements).
 - A. Hardware: If Proposer will provide hardware, does the hardware have multiple hard drives utilizing a redundant RAID configuration for fault tolerance? Are redundant servers included as well?
 - B. Operating System and Version:
 - C. Web Server: Is a web server required? If so, what web application is required (Apache or IIS)? What version? Are add-ins required?
 - D. Application Server:
 - E. Database:
 - F. Other Requirements: Are any other hardware or software components required?
 - G. Assumptions: List any assumptions made as part of the identification of these environment requirements.
 - H. Storage: What are the space/storage requirements of this implementation?
 - I. Users: What is the maximum number of users this configuration will support?
 - J. Clustering: How does the EIR handle clustering over multiple servers?
 - K. Virtual Server Environment: Can the EIR be run in a virtual server environment?

2. If the EIR will be hosted by Proposer, describe in detail what the hosted solution includes, and address, specifically, the following issues:
 1. Describe the audit standards of the physical security of the facility; and
 2. Indicate whether Proposer is willing to allow an audit by University or its representative.

3. If the user and administrative interfaces for the EIR are web-based, do the interfaces support Firefox on Mac as well as Windows and Safari on the Macintosh?

4. If the EIR requires special client software, what are the environment requirements for that client software?

5. Manpower Requirements: Who will operate and maintain the EIR? Will additional University full time employees (FTEs) be required? Will special training on the EIR be required by Proposer's technical staff? What is the estimated cost of required training.

6. Upgrades and Patches: Describe Proposer's strategy regarding EIR upgrades and patches for both the server and, if applicable, the client software. Included Proposer's typical release schedule, recommended processes, estimated outage and plans for next version/major upgrade.

Security

1. Has the EIR been tested for application security vulnerabilities? For example, has the EIR been evaluated against the Open Web Application Security Project ("**OWASP**") Top 10 list that includes flaws like cross site scripting and SQL injection? If so, please provide the scan results and specify the tool used. University will not take final delivery of the EIR if University determines there are serious vulnerabilities within the EIR.
2. Which party, Proposer or University, will be responsible for maintaining critical EIR application security updates?
3. If the EIR is hosted, indicate whether Proposer's will permit University to conduct a penetration test on University's instance of the EIR.
4. If confidential data, including HIPAA or FERPA data, is stored in the EIR, will the data be encrypted at rest and in transmittal?

Integration

5. Is the EIR authentication Security Assertion Markup Language ("**SAML**") compliant? Has Proposer ever implemented the EIR with Shibboleth authentication? If not, does the EIR integrate with Active Directory? Does the EIR support SSL connections to this directory service?
6. Does the EIR rely on Active Directory for group management and authorization or does the EIR maintain a local authorization/group database?
7. What logging capabilities does the EIR have? If this is a hosted EIR solution, will University have access to implement logging with University's standard logging and monitoring tools, RSA's Envision?
8. Does the EIR have an application programming interface ("**API**") that enables us to incorporate it with other applications run by the University? If so, is the API .Net based? Web Services-based? Other?
9. Will University have access to the EIR source code? If so, will the EIR license permit University to make modifications to the source code? Will University's modifications be protected in future upgrades?
10. Will Proposer place the EIR source code in escrow with an escrow agent so that if Proposer is no longer in business or Proposer has discontinued support, the EIR source code will be available to University?

Accessibility Information

11. Please complete the Voluntary Product Accessibility Template (“**VPAT**”) found at <http://www.itic.org/index.php?submenu=resources&src=gendocs&ref=vpat&category=resources> and submit the VPAT with Proposer’s proposal.

APPENDIX FIVE

RIDERS TO BE ATTACHED TO AGREEMENT AWARDED TO PREFERRED SUPPLIER

The following Riders would be attached to the PSA:

- Rider 100** Scope of Work (to be developed from **Section 5** of this RFP)
- Rider 200** Pricing Schedule (ref. **Section 6.1** and **Attachment A** of this RFP)
- Rider 300** Institutional Participation Agreement (**Appendix FIVE-300**)
- Rider 400** Sample Supplier Relationship Management (**Appendix FIVE-400**)
- Rider 500** HUB Subcontracting Plan (ref. **Section 2.5** of this RFP)
- Rider 600** Warranties (to contain the standard, express warranties applicable to the Services)
- Rider 700** Affirmative Action Compliance Program (ref. **Section 4.45** of this RFP)
- Rider 800** Sample HIPAA Business Associate Agreement (to be developed; ref. **Section 4.29** of this RFP)

APPENDIX FIVE-300

INSTITUTIONAL PARTICIPATION AGREEMENT

By entering into this Institutional Participation Agreement (“**Institutional Participation Agreement**”), the undersigned UT System Institution (“**Institutional Participant**”) agrees to the terms and conditions set forth in the Preferred Supplier Agreement for _____ between The University of Texas System and _____, Agreement Number UTSSCA _____ dated effective _____, 2011 (the “**Preferred Supplier Agreement**”). All of the terms and conditions of the Preferred Supplier Agreement are incorporated into this Institutional Participation Agreement for all purposes. Unless otherwise specified in this Institutional Participation Agreement, all defined terms used in this Institutional Participation Agreement have the same meaning as assigned to those terms in the Preferred Supplier Agreement.

By entering into this Institutional Participation Agreement, the Institutional Participant is authorized to take full advantage of all of the benefits and provisions set forth in the Preferred Supplier Agreement including, but not limited to, the benefits listed below, which are specified in detail in the Preferred Supplier Agreement:

Preferred Supplier Agreement Benefits:

- tbd
-

Institutional Participant’s Responsibilities

To the extent authorized by all Applicable Laws, Institutional Participant agrees to use commercially reasonable efforts to perform the following responsibilities:

- Identify Preferred Supplier as the preferred supplier for the Services
- Notify the offices at Institutional Participant of the benefits to Institutional Participant and the UT System of those offices’ procurement of the Services from Preferred Supplier under the Preferred Supplier Agreement.
- Load entries for the Preferred Supplier’s Services available for purchase by Institutional Participant under the Preferred Supplier Agreement into any e-procurement, ERP, or local ordering systems used by Institutional Participant to facilitate ordering of the Services.
- Permit Preferred Supplier, at its sole cost, to create and distribute promotional materials to Institutional Participant offices identifying the Preferred Supplier Agreement and the Services available under that Agreement, provided that such promotional materials must be in compliance with all Applicable Laws, Rules, and Regulations and be reviewed and approved in advance by Institutional Participant.
- Identify this Institutional Participant Agreement and its value to end users.
- Organize and promote the Preferred Supplier Agreement with on-campus product shows and promotional events.
- Conduct business reviews to evaluate reports, metrics, and commitments.
- Facilitate resolution of Institutional Participant and Preferred Supplier conflicts.

The Institutional Participant's notice address and contact information is:

The University of Texas at _____
Street Address: _____
Fax: _____
Email: _____
Attention: _____

The Institutional Participant designates the following contacts who will be responsible for facilitating this Institutional Participation Agreement:

INSTITUTIONAL PARTICIPANT: Primary Contact:

Name: _____
Title: _____
Telephone: _____
Fax: _____
Email: _____

INSTITUTIONAL PARTICIPANT: HUB Contact:

Name: _____
Title: _____
Telephone: _____
Fax: _____
Email: _____

The Institutional Participant designates the following contact who will be responsible for facilitating this Institutional Participation Agreement:

PREFERRED SUPPLIER Primary Contact:

Name: _____
Title: _____
Telephone: _____
Fax: _____
Email: _____

Institutional Participant agrees to the terms of this Institutional Participation Agreement:

The University of Texas _____
By: _____
Printed Name and Title: _____
Signature: _____
Street: _____
City: _____ State: _____ Zip: _____
Date: _____

Upon activation of this Institutional Participation Agreement, Institutional Participant's Primary Contact will receive notification of activation via email. Please return signed completed form to _____, at _____@mdanderson.org

APPENDIX FIVE-400

SUPPLIER RELATIONSHIP MANAGEMENT

Supplier Relationship Management (“SRM”) Program Requirements

Quarterly Business Reviews (“QBRs”) of Preferred Supplier’s performance under this Agreement will be conducted by the UT System Administrator on behalf of UT System beginning six (6) months after the Effective Date of this Agreement and then every three (3) months thereafter. Institutional Participants may elect to establish a local level supplier relationship management program by a separate mutual agreement with Preferred Supplier.

Quarterly Business Reviews

Prior to each QBR, Preferred Supplier’s performance will be evaluated by UT System and, at UT System’s request, one or more Institutional Participants, based on the five (5) Key Performance Indicators (“KPIs”) listed below. Preferred Supplier will be rated by UT System and the Institutional Participants on its performance under each of these KPIs. UT System and the Institutional Participants will also determine an overall rating for Preferred Supplier’s performance during that quarter. The results of such ratings will be subsequently set forth in percentage scores for Preferred Supplier’s performance that will be reported out in a scorecard that UT System and the Institutional Participants provide to Preferred Supplier during the QBR.

- a. **Account Management**
- b. **Price Compliance**
- c. **Service & Support**
- d. **Customer Satisfaction**
- e. **tbd**

After the initial implementation period of six (6) months starting on the Effective Date, Preferred Supplier must obtain a minimum score from UT System and the Institutional Participants of 90% or better on each KPI and on the overall rating for each quarter during the remaining term of this Agreement. The scorecard will be reviewed by Preferred Supplier, UT System and the Institutional Participants during each QBR.

Corrective Action Plan

UT System will notify Preferred Supplier during a QBR if Preferred Supplier receives a score of less than 90% during the previous quarter for (1) any KPI or (2) its overall score. Within fifteen (15) calendar days after receipt of such notice, Preferred Supplier will provide UT System with a written corrective action plan (“CAP”) acceptable to UT System to address such unacceptable scores. At a minimum, the CAP will address Preferred Supplier’s performance issues resulting in unacceptable score(s) and contain a root cause analysis of the problems causing such performance issue, proposed solutions to those problems, proposed process modifications to prevent reoccurrence of such problems, a time frame for Preferred Supplier’s implementation of the proposed solutions and process modifications, and the person(s) who will be responsible for Preferred Supplier’s implementation of the CAP. The CAP will be presented to the UT System Administrator for concurrence prior to implementation. Concurrence with the CAP by the UT System Administrator will not be unreasonably withheld or delayed. Concurrence with the CAP will not constitute a waiver by UT System of its right to exercise all remedies available under this Agreement or Applicable Law.

Corrective Action and Remedies

If Preferred Supplier’s implementation of the CAP does not result in a minimum score on each KPI of 90% or better and an overall score of 90% or better, during each subsequent calendar quarter, UT System may:

- revisit and/or re-solicit the marketplace for the Services, or
- exercise other remedies available under this Agreement or Applicable Law

Performance Review Reporting and Metrics

Preferred Supplier will prepare and deliver the following reports to UT System and the Institutional Participants for review at each QBR. Customer Satisfaction Reports and Metrics below will be prepared and provided by UT System at each QBR.

Reports and Metrics

ACCOUNT MANAGEMENT REPORTS & METRICS
Year-to-date and period-over-period spend.
Spend versus previous quarter and year.
Price rationalization activities and impact on savings and value-add.
Number/Percentage of items incorrectly shipped. Not to exceed 1%.
PRICE COMPLIANCE REPORTS & METRICS
Number/Percentage of invoice price discrepancies: Not to exceed 2%
Non-Standard items with invoice price discrepancies: Not to exceed 5%
ORDERING AND DELIVERY PERFORMANCE REPORTS & METRICS
Number of return orders
Average ship days
Fill rate percentage - 98% for catalog Products
Report on back-ordered line detail
SERVICE AND SUPPORT REPORTS & METRICS
Number of days account managers accessible for Institutional Participants.
Response time to respond to technical support calls placed by Institutional Participants: Not to exceed 24 hours
Any new IT or technology enhancements will be offered to Institutional Participants as a priority customers: 100% of information will be disseminated to priority customers
Order discrepancy resolution rate and response time. Not to exceed 48 hours
CUSTOMER SATISFACTION REPORTS & METRICS
Semi-Annual survey of end users
Overall customer service rating of “satisfactory” greater than 90%

All reports may be modified by Institutional Participants within Preferred Supplier’s reasonable capabilities to meet local requirements and service levels. Metrics may be revised upon mutual agreement between Preferred Supplier and UT System.

APPENDIX FIVE-800

SAMPLE HIPAA BUSINESS ASSOCIATE AGREEMENT

[Each Institutional Participant will have its own form of Business Associate Agreement. The PSA may include a sample Business Associate Agreement, with the understanding that Proposer would execute an appropriate agreement as proposed by each of the respective Institutional Participants.]

ATTACHMENT A
PRICE SCHEDULE