

# 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

of an

# OFFSITE RECORDS STORAGE AND SECURE DESTRUCTION SOLUTION

**RFP No. UTS/A71**

**Submittal Deadline: June 26, 2019  
@ 3:00 PM, CST**

Issued: May 28, 2019

Issued By: Nancy Martinez  
Sr. Sourcing Specialist

## **SECTION 1** **INTRODUCTION**

### **1.1 Description of The University of Texas System**

The University of Texas System is comprised of System Administration and 14 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 is one of the larger education systems in the United States. With an operating budget of \$20.1 billion, UT System has a current student enrollment exceeding 230,000. UT System employs about 100,000 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 Southwestern Medical Center (UTSW)
- The University of Texas Medical Branch at Galveston (UTMB)
- 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 MD Anderson Cancer Center (UTMDACC)
- The University of Texas Health Science Center at Tyler (UTHSCT)
- The University of Texas at Arlington (UTA)
- The University of Texas at Austin (UT Austin)
- The University of Texas at Dallas (UTD)
- The University of Texas at El Paso (UTEP)
- The University of Texas of the Permian Basin (UTPB)
- The University of Texas at San Antonio (UTSA)
- The University of Texas at Tyler (UTT)
- The University of Texas Rio Grande Valley (UTRGV)

UT System has established The UT System Supply Chain Alliance (the "**Alliance**") to conduct and coordinate strategic purchasing initiatives across UT System. The Alliance essentially operates as UT System's own, in-house group purchasing organization. The Alliance is also affiliated with various non-UT System institutions of higher education. Through collaborative relationships, the Alliance seeks to combine supply chain and contracting activities and obtain best value goods and services while reducing total acquisition costs. The Alliance has created a team of supply chain professionals (the "**Strategic Services Group**") that has been tasked with executing Alliance purchasing initiatives. The Strategic Services Group assembles a team of subject matter experts ("**SMEs**") from participating institutions to assist in developing each sourcing event and evaluating suppliers during the procurement process. SMEs are involved from the sourcing event's inception and work with the Alliance and UT System to select the best value supplier(s). Any agreement resulting from this Request for Proposal (this "**RFP**") will be extended and marketed to all UT System institutions. Various non-UT System institutions that are affiliated with the Alliance may participate, too, in any agreement resulting from this RFP.

By participating in this RFP, proposer(s) (collectively, "**Proposer**") agrees to extend all goods, services and pricing to any Alliance member or affiliate (collectively, "**Institutional Participant**") 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 RFP from qualified suppliers for services related to offsite record storage and secure destruction services, as more specifically described in **Section 5.4** (Scope of Work) of this RFP (collectively, the “**Solution**”). The successful Proposer(s) to whom business may be awarded is referred to in this RFP as the “**Preferred Supplier**.”

UT System is seeking to identify a Preferred Supplier that will provide the most practical and cost-effective business model to serve the needs of the Institutional Participants. 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.

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 is to establish a comprehensive program to include, but not be limited to:

- provide a comprehensive and guaranteed service configuration and pricing structure;
- 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.

UT System intends to identify a Preferred Supplier that will provide strong service and implementation support, communicate and share best practices throughout the agreement resulting from this RFP, and be dedicated to ongoing service improvement.

Preferred Supplier will be enrolled in the Alliance’s Supplier Relationship Management Program (“**SRM**”) to monitor Preferred Supplier’s performance and pricing. UT System expects Preferred Supplier to work closely with the Alliance and each Institutional Participant and produce benefits for all parties involved in the relationship.

Proposer should realize that what is written in their final proposal submitted to UT System may become part of the successful Proposer’s final contract.

UT System may ask Proposer(s) to provide a formal presentation, prior to contract award, with additional information to SMEs or the Strategic Services Group. This presentation will allow the Alliance to clarify any technical, quality, or price-based questions that may arise from Proposer’s response.

Proposer should provide solutions involving historically underutilized business suppliers, where possible (ref. **Section 2.5** of this RFP).

## 1.3 Background and Scope of Opportunity

It is anticipated that the term of the agreement resulting from this RFP will be five (5) years, consisting of an initial term of three years, with UT System having the option to extend the

agreement unilaterally for another two-year period upon advance written notice to Preferred Supplier.

UT System estimates the total aggregated spend by UT System institutions for the Solution to be in excess of \$2 million annually. This estimated aggregate spend is based upon existing contracts and historical spend reports of institutions that may participate in any agreement resulting from this RFP, and is only an estimate of possible future volume. The intent of the Alliance to market the selected Preferred Supplier to all affiliated institutions, which include various non-UT System institutions of higher education, so annual spend volumes could be higher than the above estimate.

THE ABOVE FIGURES ARE ESTIMATES ONLY. PRODUCTS AND SERVICES PURCHASED ON THE BASIS OF ANY AGREEMENT RESULTING FROM THIS RFP MAY INVOLVE MORE OR LESS THAN THE ESTIMATES PROVIDED. UT SYSTEM DOES NOT REPRESENT, WARRANT OR GUARANTY THAT PARTICIPANTS WILL PURCHASE ANY PARTICULAR DOLLAR VALUE OR ANY PARTICULAR QUANTITY OF PRODUCTS OR SERVICES, AND UT SYSTEM SPECIFICALLY DISCLAIMS ANY SUCH REPRESENTATIONS, WARRANTIES AND GUARANTIES.

## **SECTION 2**

### **NOTICE TO PROPOSER**

#### **2.1 Submittal Deadline**

UT System will accept proposals submitted in response to this RFP until **3:00 PM**, Houston Time, on **June 26, 2019** (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**”):

Nancy Martinez  
Sr. Sourcing Specialist  
UT System Supply Chain Alliance  
njmartinez@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 **5:00 PM**, Houston Time, on **June 12, 2019**. 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) products and services to be provided and (2) total overall cost to participating institutions. Proposers should describe all educational, state and local government discounts, as well as any other applicable discounts that may be available.

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.

### 2.3.2 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 of acquiring Proposer's goods or services; and
- 2.3.2.7 Proposer's exceptions to the terms and conditions set forth in **Section 4** of this RFP.

### 2.4 Key Events Schedule

Issuance of RFP	May 28, 2019
Deadline for Indicating Interest in Attending Pre-Proposal Conference (ref. <b>Section 2.6</b> of this RFP)	June 3, 2019, 5:00 PM Houston Time
Pre-Proposal Conference (ref. <b>Section 2.6</b> of this RFP)	June 6, 2019 10:00 AM, Houston Time
Deadline for Questions/Concerns (ref. <b>Section 2.2</b> of this RFP)	June 12, 2019 5:00 PM, Houston Time
Submittal Deadline (ref. <b>Section 2.1</b> of this RFP)	June 26, 2019 3:00 PM, Houston Time
Selection of Finalists	July 2019
Finalists Interviews and Negotiations	July 2019
Anticipated Contract Award(s)	August 2019

**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 within seventy-two (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 Houston, Texas. Proposer is requested to reference **Section 4.1** 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 its performance hereunder, 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 hereunder will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting hereunder 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 Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter D, Division 1, Section 20.285, 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.

*Each Proposer must complete and return the HSP in accordance with the terms and conditions of this RFP, including the requirements set forth in Utilization of Historically Underutilized Businesses attached as **APPENDIX TWO** and incorporated herein for all purposes. 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 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 Jaggaer 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.

- 2.5.5 UT System may offer Proposer the opportunity to seek an informal review of its draft HSP by the UT System Office of HUB Development. If so, details regarding this opportunity will be provided in the Pre-Proposal Conference (ref. **Section 2.6** of this RFP) or by other means. This process of informal review is designed to help address questions Proposer may have about how to complete its HSP properly. Any concurrence in or comments on the draft HSP by the UT System Office of HUB Development will NOT constitute formal approval of the HSP, and will NOT eliminate the need for Proposer to submit its final HSP to UT System, concurrently with its proposal, in accordance with the detailed instructions in this **Section 2.5**.

## 2.6 Pre-Proposal Conference

UT System will hold a pre-proposal conference at **10:00 AM**, Houston Time, on **June 5, 2019**, with Proposers attending a 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 Services Group, and UT System HUB representatives relevant questions and clarify provisions of this RFP. Proposer should notify the UT System Contact **by no later than 5:00 PM Houston Time, on June 3, 2019**, whether it will attend the Pre-Proposal Conference, by emailing the UT System Contact. UT System will provide complete details and instructions (including personal computer requirements).

## **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 Jaggaer e-sourcing tool. To register for participation in this RFP, please email the UT System Contact for further instructions. 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 Jaggaer 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 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** 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; and (2) several Institutional Participation Agreements (each an “**IPA**”) signed by participating Alliance members and affiliates (collectively, the “**Agreement**”).

The terms and conditions contained in the attached Sample Preferred Supplier Agreement (ref. **APPENDIX THREE**) or, in the sole discretion of UT System, terms and conditions substantially similar to those contained in **APPENDIX THREE**, will constitute and govern any agreement that results from this RFP. If Proposer takes exception to any terms or conditions set forth in the Preferred Supplier Agreement, Proposer must submit a list of the exceptions as part of its proposal in accordance with **Section 5.3** 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, UT System may consider Proposer’s exceptions when UT System evaluates the Proposer’s proposal.

## **SECTION 5**

### **SPECIFICATIONS, ADDITIONAL QUESTIONS AND SCOPE OF WORK**

#### **5.1 General**

The requirements and specifications for the Services, as well as certain requests for information to be provided by Proposer as part of its proposal, are set forth below. The winning Proposer should understand that the Solution will be provided directly to Institutional Participants, and not to UT System or the Alliance.

#### **5.2 Minimum Requirements**

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

- 5.2.1 Preferred Supplier must pay to the Alliance an administrative fee of 3% of the Total Net Sales made under the Agreement (ref. **Section 6.2** of this RFP). This fee will be payable quarterly, based on the Total Net Sales made by Preferred Supplier under the Agreement during the related quarter. **"Total Net Sales"** means total revenue received by Preferred Supplier for the Solution and related services purchased by Institutional Participants, less credits, returns, taxes, unpaid invoices, and collections. The fee will be used to defray the costs incurred by the Alliance, as UT System's own, in-house group purchasing organization, in organizing, implementing, sustaining and optimizing group procurements for UT System institutions

#### **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 FOUR, 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 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.
- 5.3.3 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 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 participating institutions.

- 5.3.4 In its proposal, Proposer must respond to each item listed in **APPENDIX FIVE, Electronic and Information Resources (“EIR”) Environment Specifications**. **APPENDIX FIVE** will establish specifications, representations, warranties and agreements related to the EIR that Proposer is offering to provide. Responses to **APPENDIX FIVE** will be incorporated into the Agreement and will be binding on Proposer.
- 5.3.5 In its proposal, Proposer must respond to each item listed in **APPENDIX SIX, Security Characteristics and Functionality of Contractor’s Information Resources**. Responses to **APPENDIX SIX** will be incorporated into the Agreement and will be binding on Proposer.
- 5.3.6 By signing the Execution of Offer (ref. **Section 2 of APPENDIX ONE**), Proposer agrees to comply with Section 2252.908, Government Code (“**Disclosure of Interested Parties Statute**”), and 1 Texas Administration Code Sections 46.1 through 46.5 (“**Disclosure of Interested Parties Regulations**”), as implemented by the Texas Ethics Commission (“**TEC**”), including, among other things, providing the TEC and UT System with the information required on the form promulgated by the TEC and set forth in **APPENDIX SEVEN**. Proposers may learn more about these disclosure requirements, including the use of the TEC electronic filing system, by reviewing information on the TEC website at [https://www.ethics.state.tx.us/whatsnew/FAQ\\_Form1295.html](https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html). The Certificate of Interested Parties must be submitted by Preferred Supplier upon delivery to UT System of a signed Agreement.

## 5.4 Scope of Work

The details noted below will form the basis for the Scope of Work to be included in the Agreement concluded between UT System and Preferred Supplier.

- 5.4.1 Definitions. For purposes of this RFP the following definitions will apply:

**“UT System Contract Administrator”** = the individual designated by UT System to be responsible for day-to-day management of the Preferred Supplier-UT System relationship and to serve as the Preferred Supplier’s primary contact for and on behalf of Institutional Participants on all matters relating to this Agreement.

- 5.4.2 General Description

Proposer should understand that this RFP provides a general description of the products and services to be provided and is not intended to be all inclusive. Proposer must be familiar with the requirements and general conditions that are essential to provide the Solution consistent with industry best practices and in accordance with all licensing, regulations, and professional standards. The following outlines key elements of the Solution.

UT System acknowledges that each Proposer has an existing business model and may choose to supply services to Institutional Participants in a variety of ways that best suit the Proposer’s organization and market approach. Unless specifically noted by Proposer in its response to this RFP, all costs pertaining to the Solution to which this RFP relates will be considered to be included in the Proposer’s pricing. Separate costs to be borne by UT System will be only those expressly identified by Proposer in its response.

### 5.4.3 Campus Requirements.

- 5.4.3.1 Each Institutional Participant will have its own unique set of rules and regulations for conducting business on its campuses. Preferred Supplier will be responsible for compliance with each Institutional Participant's rules and regulations, including any and all requirements for background checks, badging/credentialing, and security.
- 5.4.3.2 Preferred Supplier will establish with each Institutional Participant campus-specific implementation methods and schedules.
- 5.4.3.3 Preferred Supplier will 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 System and Institutional Participant rules and policies, including, without limitation, those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions; consideration for students, patients and their families as well as employees; parking; and security.

5.4.4 Preferred Supplier-Alliance Account Support Team. Preferred Supplier will provide a Senior Management Account Representative with the authority and responsibility for the overall success of the Agreement within Preferred Supplier's organization. The Preferred Supplier also will designate an individual assigned to the Alliance account responsible for (i) receiving and providing ongoing communications by and between Preferred Supplier and UT System; (ii) monitoring the overall implementation of the Agreement at each Institutional Participant and providing updates to the UT System Contract Administrator; (iii) identifying and fostering process improvements; (iv) serving as the liaison to engage resources with Preferred Supplier's organization to troubleshoot and resolve problems; (v) organizing Periodic Business Reviews ("**PBRs**"); monitoring Key Performance Indicators ("**KPIs**") and (vi) providing early warning notices of service performance and other concerns to Preferred Supplier's management team and the UT System Contract Administrator.

### 5.4.5 Preferred Supplier-Institutional Participant Account Support Team.

Each Institutional Participant will have different support needs. The following outlines the minimum account management support to be provided to each Institutional Participant by Preferred Supplier.

Account Manager: Preferred Supplier will assign Account Manager(s) who will provide the following minimum services:

- Achieve understanding of Institutional Participant's business processes, rules, and requirements and operate within such processes, rules and requirements.
- Provide and manage personnel staffing to support initiatives.
- Identify opportunities in coordination with Institutional Participant and provide strategic direction.
- Provide support for issue resolution, product selling, conversion, and savings opportunities.

- Work with Institutional Participant on analysis and goal measurement for both Institutional Participant and Preferred Supplier.
- Help to identify and present opportunities and facilitate problem resolution with customers as required.
- Provide reports or analytic tools to assist Institutional Participants to recognize/prioritize savings opportunities, understand supply chain performance and better manage its operations.
- Assist with pricing validation and error correction.
- Provide training and support

#### 5.4.6 Offsite Records Storage

The following outlines the key Solution components to be furnished by Preferred Supplier. Preferred Supplier should define its in-house capability and capacity to perform each element of the Solution.

- (a) Analysis of Requirements. Provide an analysis of each Institutional Participant's storage requirements per applicable document archival policies and rules.
- (b) Provision of Adequate Storage Facilities. Make available records management facilities to provide physical storage capacity for at least the cubic feet of paper records estimated at the initiation of the Agreement.
- (c) Changes in Needs. Accommodate needs of Institutional Participants for additional storage space as they arise, or be able to downsize from the initial estimate.
- (d) Location of Storage Facilities. Maintain storage facilities located within 50 miles of the Institutional Participant being served.
- (e) Protection of Facilities. Provide a secure storage facility equipped with counter-intrusion systems, fire suppression and backup generators.
- (f) Pest Control. Proposer must provide proof of semi-annual treatment and/or inspection for rodents and insects.
- (g) Transportation of Records. Proposer must provide transportation of storage to and from each Institutional Participant and the storage facilities. All vehicles used must have the appropriate security features (anti-theft device) and be secured while at the delivery / pick-up site. All vehicles must be equipped with a fire extinguisher.
- (h) Climate Control. Provide storage facilities that are climate controlled, in addition to facilities without climate control
- (i) Specialized Service Requirements. Meet specialized service requirements, which may include:
  - Packing, re-packing files
  - Indexing and cataloguing documents
  - Providing destruction services at the storage facility or onsite at Institutional Participant, if required
  - Working with a third party designated by the Institutional Participant for destruction services involving records no longer required to be stored by Proposer
- (j) Storage Containers. Offer storage boxes and specialty containers built for long-term storage.
- (k) Chain of Custody. Provide a secure chain of custody of records from pick-up to storage to retrieval.

- (l) Controlled Access. Provide controlled access to stored records by users representing Institutional Participants.
- (m) Customized Reports. Create customized reports to Institutional Participants on an as-needed basis.
- (n) Rapid Access to Records. Implement a process that would enable Institutional Participants to access and retrieve documents rapidly and remotely around the clock. Same day service may be required, with 2 to 4 hour delivery time upon request.
- (o) Online Listing of Records. Provide an online listing of stored records available for access and retrieval.
- (p) Indexing of Records. Provide flexible indexing, including the option to identify records at the file, box or document level.
- (q) Privacy Policies and Procedures. Ensure your compliance with Institutional Participants' privacy policies and in-house procedures.
- (r) Transfer of Records. Assume full responsibility for the transfer of all of an Institutional Participant's records, including those located offsite at current vendor's facility, to the Proposer's facility, when applicable. This responsibility includes:
- New bar coding
  - Labeling
  - Data entry
  - Creating an inventory for records to be stored at the Proposer's facilities at the beginning of the Agreement, including those transferred from another site
  - Replacing boxes damaged and furnishing a report to each Institutional Participant, detailing which boxes were damaged and replaced
- (s) Destruction of Specified Records. Remove and destroy specified boxes presently stored with the current vendor, as agreed upon in advance with each Institutional Participant, in accordance with the institution's procedures. Boxes permanently removed from storage and destroyed must not appear on subsequent monthly invoices for storage. Requirements to be met:
- Certified destruction must be performed by either shredding or incineration.
  - Proposer must ensure that confidentiality of all destroyed records is maintained throughout the destruction process.
  - Proposer must provide a certificate of destruction to the relevant Institutional Participant for all records destroyed.
  - No records may be destroyed without prior written approval from the administrator or authorized user(s) of the Institutional Participant's account with Proposer.
- (t) Inventory Tracking. Proposer would be required to maintain an accurate, bar-coded, reliable computer-based inventory and tracking system capable of documenting pickup, delivery, and storage location of each Institutional Participant's documents and records. At a minimum, this system must be web-enabled, with appropriate security, to provide internet access to information by Institutional Participant's users. At a minimum, the system must identify the contents, the location, Institutional Participant's department, cost center, description, and status (checked in/checked out) for each storage container. Essential data fields include: box number, bar code, box size, location, cost center, department, major description, minor description, status, and box history (dates of check out and check-in). The inventory tracking process must include

appropriate logs and receipts for pickup and delivery of individual boxes / containers for verification and audit purposes. Logs and receipts must be made available upon Institutional Participant's request. The system must allow Institutional Participant users to remotely view inventory data and to initiate delivery requests via the Internet. Inventory status must be updated within 24 hours of activity.

- (u) Lost Boxes. Proposer would be required to address lost /misplaced boxes. Any box not located and delivered in an agreed-upon timeframe will be considered a lost box. The Proposer must include with its RFP response the policies and procedures to be followed should a box not be located and delivered on time. These must include, but not be limited to, notifications, location procedures, escalation procedures, timelines and status updates.

#### 5.4.6.1 Reporting

Proposer will provide monthly, written reports to each Institutional Participant of the current inventory, sorted by department/cost center, to include: box # / barcode, box description, date sent to storage, box size, and account activity to include new boxes added to inventory, number of delivery requests processed and pickups processed during the preceding month, including processing time for requests and deliveries. Institutional Participants must have access to these reports without additional fees. Activity reports should include a summary of ordering activity by location, quantity, and order type. Retrieval activity reports should include history for checked out, permanently removed, and destroyed inventory. Financial reports should provide billing activity for a specified invoice period.

#### 5.4.6.2 Current Record Inventory and Transfer Plan

Proposer will submit a Transfer Plan to each Institutional Participant, detailing the transfer process from existing facilities to Proposer's location. At the commencement of the Agreement, Proposer must assume full responsibility for coordinating the transfer under the Transfer Plan of all existing records stored at various locations to the Proposer's facility. This responsibility includes new bar coding, labeling, data entry, and inventorying for the boxes/items to be stored at the Proposer's facility or facilities at the beginning of the Agreement. All costs related to this requirement must be clearly identified in Proposer's response.

- Upon successful completion of the transfer, the Proposer would be required to supply to Institutional Participants a written report of the boxes moved to the new storage facility. The final Transfer Plan must be submitted for approval within 30 days after execution of the Agreement. The Transfer Plan would be subject to review and approval by the relevant Institutional Participant prior to implementation.

#### 5.4.6.3 Record Delivery

Proposer will be required to deliver, on an "as requested" basis, stored records to requesting departments designated by each Institutional Participant. Generally, deliveries will fall into one of the categories below:

- Routine: Delivery between 8 am to 5 pm Monday through Friday. Requests made before 11 am are to be delivered the same business day. Requests made after 11 am may be delivered the next business day but no later than 24 hours from the request.
- Rush/Emergency Before 3 pm: Delivery between 8 am to 5 pm Monday through Friday. Requests made by 3 pm are to be delivered within two hours of the time of the request.
- Rush/Emergency After 3pm: Requests made after 3 pm are either to be delivered same day delivery within 2 hours, or by 9 am the next business day, as determined by requestor.

#### 5.4.6.4 Secure Storage and Facility Standards

Proposer's storage facilities would be required to provide a level of protection consistent with industry and State of Texas standards, and must be solidly constructed with secure loading and unloading areas. Floors must support at least 300 pounds per square foot and must be at or above ground level to assure dry storage. Walls surrounding the record storage area must be four-hour fire resistant. Roof must be of non-combustible construction and leak-proof. The records storage facilities must meet all applicable and current requirements of the National Fire Protection Association.

Proposer would be required to provide both non-environmentally controlled and environmentally controlled storage areas. Environmentally controlled storage areas will at a minimum, have an average office environment in temperature and humidity. The climate control equipment must not be turned off or thermostat settings adjusted during nights, weekends and holidays. Proposer must have a back-up power system in all facilities. Storage facilities cannot house any hazardous material. Storage facilities cannot be located within a flood area or risk exposure from external hazards.

Proposer would be responsible for security of all storage facilities. Storage facilities must be equipped with an intrusion alarm system that is monitored 24 hours per day, including weekends and holidays.

Proposer must provide adequate storage capacity to meet both the current and future needs of UT System. Proposer would be responsible for protecting against damage or loss of the contents stored in any of its storage facilities. Proposer must provide a written disaster and recovery plan for any catastrophic occurrences including but not limited to earthquake, flood, fire, etc. Proposer would be responsible for recovery from any catastrophic occurrences, including but not limited to fire, damage or theft, as well as any associated costs. Proposer must carry the appropriate insurance and provide proof thereof.

The storage facility or facilities must be properly shelved, fully secured, and equipped with motion, smoke and heat detectors/alarms to prevent loss from theft and fire. Facilities must be constructed and equipped with fire safety systems as required by the International Fire Code and other applicable

#### 5.4.7 Secure Destruction Services

Note: the following represent the basic requirements for secure destruction services. More stringent requirements applicable to certain types of records (covered by HIPAA or FERPA, e.g.) may be specified in the Agreement and would govern in the event of any conflict with the requirements specified below.

Proposer's Solution will provide shredding and destruction of paper material and electronic material. Proposer will destroy all material within twenty-four (24) hours from the time of pickup from the Institutional Participant.

##### 5.4.7.1 Paper Material Secure Destruction

Proposer's secure destruction process will have the ability to provide onsite or offsite shredding of paper material. The process will include, but not limited to:

- Proposer will pick-up of containers based on a schedule agreed upon with the Institutional Participant
- Proposer will transport containers to the destruction site
- Proposer's shredding equipment must have the capacity to handle the volume of material generated or produced and must safely and completely destroy all materials whether stapled, clipped, bound, etc.
- Proposer's shredding equipment must convert the material into small unreadable pieces which are mixed, compressed and secured until destroyed.
- Shredded material will be recycled and not sold to other parties, and upon destruction, Proposer will provide the Institutional Participant or designee with a certificate of destruction. Include a sample of this certificate with your response to this RFP.
- Proposer will operate a monitored alarm system for areas where materials are held and a closed circuit camera system that monitors access points into destruction areas.

##### 5.4.7.2 Locked Security Containers

Proposer will provide required locked security containers and a scheduled or by request service for shredding and destruction of paper documents and/or electronic, and media materials requiring secure destructions. The Solution will include both on-site and off-site shredding service, as requested by the Institutional Participant. For off-site service, paper documents or electronic and media destruction will occur within twenty-four (24) hours of receipt of material.

The number of containers, size, locations to be placed and the frequency of services will be agreed upon with each Institutional Participant and may change upon request in accordance with their campus requirements.

The locked security containers will have the following features, but not limited to the following:

- All containers and consoles will be equipped with attached lid and locking devices.

- Containers and consoles will be of uniform color, and be clearly marked to indicate the container is only for deposit of “Confidential Documents for Destruction”
- Containers and consoles must have either a top slot or side slot near the top designed to prevent theft of materials by reaching in, and (preferably) wheels.
- Containers and consoles must have a tamper evident locking system and be made of a fire resistant material.
- Proposer will supply the Institutional Participant with a key for locking all containers and consoles. If a key is lost, Proposer will supply a new key at no additional charge.
- Proposer will install the containers and coordinate destruction schedule with the Institutional Participant.
- Proposer will submit to the Institutional Participant a complete description of the material type, size, color, signage and other features of containers and consoles selected by the Proposer and accepted by the Institutional Participant for services under the Agreement.
- Proposer will be responsible for maintaining all containers and consoles in good working order, cleaning containers as necessary and providing replacement and/or additional containers and consoles as may be requested by the Institutional Participant during the term of the Agreement.
- Institutional Participant will not be responsible for any liability incurred by the Proposer or the Proposer’s personnel arising out of the possession, use, maintenance, delivery, return, and/or collection from the containers and consoles provided by the Proposer.
- Proposer will remove the containers in a timely manner upon request by the Institutional Participant.
- Proposer will offer training to an Institutional Participant regarding the handling of materials to be placed in locked secure containers and pickup areas.

#### 5.4.7.3 Electronic Material Destruction

Proposer will provide secure destruction of electronic materials including, but not limited to, computers, computer components, flat panel monitors, printers, copiers, scanners, wiring and cabling, telephone accessories, projectors, audio/video equipment, cellphones.

Proposer will destroy each electronic equipment item so that it can no longer be utilized in its original form or for its intended purpose.

#### 5.4.7.4 Media Material Destruction

Proposer will provide secure destruction of electronic materials including, but not limited to, microfilm, microfiche, flash drives, data stored in recording devices that contain confidential information and must be protect when destroyed.

Proposer will destroy media to the degree that any information they may contain is no longer accessible or readable by any means. The destruction must be completed before the media is recycled.

#### 5.4.7.5 Security

Proposer will have a comprehensive security protocol that must be active from the time paper, electronic, and media materials are received until the time they have destroyed. Proposer's capabilities will include, but not be limited to the following:

- Proposer will have a video monitoring system capable of monitoring, capturing, and storing information on physical activities.
- Proposer's physical facilities must be equipped with standard physical security measures which include active barriers to entry such as fencing around the facility, secure dock doors, single entry points.
- At a minimum, Proposer must follow the guidelines and protocols established under their NAID Certification in regard to allowing visitors in the areas that contain the Institutional Participant's materials prior to being destroyed.
- Proposer must restrict their employees or a visitor to bring cell phones, smart phones, cameras, or any other recording or transmission devices into the destruction areas or areas that contain the Institutional Participant's material prior to being destroyed.
- Proposer must not use, allow access to, or offer for resale or use any materials or the information contained therein until it has been destroyed.

#### 5.4.7.6 Certificate of Destruction

Proposer will provide the Institutional Participant with certificates of destructions for all materials destroyed.

#### 5.4.8 Pricing

5.4.8.1 Preferred Supplier's overall price structure and discount levels will remain firm and unchanged for the term of the Agreement, unless otherwise agreed upon in writing by the UT System Contract Administrator and Preferred Supplier.

5.4.8.2 All prices quoted to UT System or Institutional Participants will be inclusive of all fees and charges due and payable to Preferred Supplier by Institutional Participant.

5.4.8.3 Preferred Supplier and the UT System Contract Administrator will review all price structures for the Services on a periodic basis as determined by the UT System Contract Administrator. Preferred Supplier's initial and subsequent pricing will be routinely benchmarked by the Strategic Services Group for market competitiveness. Preferred Supplier agrees to negotiate in good faith to adjust pricing if necessary to remain competitive. Should pricing listed in the Agreement change during such periodic reviews, such changes will be

documented in a written amendment to the Agreement agreed to by Preferred Supplier and the UT System Contract Administrator

#### 5.4.9 Inspection of Facilities

UT System reserves the right to inspect Preferred Supplier's facilities to verify that Preferred Supplier has the resources necessary and appropriate, as determined by commercially reasonable standards in the industry, to meet all of Preferred Supplier's duties and obligations as set forth in the Agreement.

#### 5.4.10 Invoicing and Payment.

5.4.10.1 Preferred Supplier will invoice Institutional Participants, not UT System or the Alliance. Due to the numerous E-procurement platforms used by Institutional Participants, detailed invoicing requirements will be established by agreement between Preferred Supplier and each Institutional Participant. Each invoice relating to the Agreement will reference the appropriate Institutional Participant purchase order number, and will include a detailed description of the services to which it relates, and appropriate HUB reporting documentation.

5.4.10.2 Each Institutional Participant is solely responsible for the payment of any purchase orders it issues, and neither UT System nor any other Institutional Participant will have any liability whatsoever relating to a purchase order issued by another Institutional Participant.

5.4.10.3 Institutional Participants will remit payments of invoices issued under the Agreement on a Net 30 Days basis, subject to requirements of the Texas Prompt Payment Act.

5.4.10.4 Preferred Supplier will resolve all order and invoice discrepancies within five (5) business days after written notification or, if because of their nature, the discrepancies cannot be resolved within that time frame, Preferred Supplier will take all of the steps the Institutional Participant's purchasing department deems necessary.

#### 5.4.11 Management Reports

Preferred Supplier will submit to the UT System Contract Administrator the reports listed below, within thirty (30) days after the close of each calendar quarter. The reports will be provided in electronic format or computer-generated spreadsheets, in accordance with a template to be provided by UT System. At a minimum, the reports will provide:

- Sales History Report: Preferred Supplier will submit to the UT System Contract Administrator a "**Sales History Report**" on the last day of the month following the end of each calendar quarter. The report will be provided in Microsoft Excel format, in accordance with the Sales History Report Format, Field Definitions, and a template to be provided by UT System. The report will provide sales and returns/credits to each Institutional Participant, using the required fields as defined in the Sales History Report Format and Field Definitions. Sales or returns/credits fulfilled by Preferred Supplier and approved HUB Subcontractors under the Agreement must be included in the report. If no sales or returns are made during the calendar quarter, Preferred Supplier

will submit confirmation of no sales or returns to the UT System Contract Administrator at the mailbox [utsscainfo@mdanderson.org](mailto:utsscainfo@mdanderson.org). The Sales History Report and reports of no sales or returns will be reviewed with the UT System Contract Administrator. Upon review, the UT System Contract Administrator may request Preferred Supplier to make formatting and content changes to the Sales History Report for past and/or future Sales History Reports. Timeliness of the Sales History Report on or before the Due Date will be evaluated as a Key Performance Indicator within the Supplier Relationship Management (SRM) Program described in in APPENDIX THREE–400.

Preferred Supplier will submit the Sales History Report for all Total Net Sales or returns/credits made by Preferred Supplier during the term of this Agreement to each Alliance member and affiliate, even if they have not signed an Institutional Participation Agreement. Sales or returns/credits made to Institutional Participants under other agreements, such as a local agreement between the Preferred Supplier and the Institutional Participant, are not required to be reported in the Sales History Report. All Total Net Sales or returns/credits made under the Agreement to an Institutional Participant not listed in the Institution Name Table described below must be reported to the UT System Contract Administrator for review.

The following tables indicate when Sales History Report will be due.

Sales History Report Quarterly Sales Period and Report Due Dates		
Calendar Quarter	Time Frame	Due Date
Q1	January-March	April 30
Q2	April-June	July 31
Q3	July-September	October 31
Q4	October-December	January 31

#### Institution Name Table

The names of current Alliance member and affiliated institutions are listed in the table below and are the only acceptable names that may be submitted to the Alliance in the Sales History Report. The UT System Contract Administrator will inform Preferred Supplier when an institution needs to be added to the Sales History Report. All other abbreviations and alternative names are unacceptable. The column titled “Examples of Other Institution Names” is only for reference purposes. Preferred Supplier should address to the UT System Contract Administrator any questions about institution names.

ID Number	Institution Name	Examples of Other Institution Names
714	UT Arlington	
721	UT Austin	UT Applied Research Labs (ARL) UT Austin Athletics
738	UT Dallas	
724	UT El Paso	
742	UT Permian Basin	
	UT Rio Grande Valley	UT Brownsville UT Pan American
743	UT San Antonio	

<b>750</b>	UT Tyler	
<b>729</b>	UT Southwestern Medical Center	
<b>723</b>	UT Medical Branch Galveston	
<b>744</b>	UT Health Science Center Houston	UT Physicians
<b>745</b>	UT Health Science Center San Antonio	
<b>506</b>	UT MD Anderson Cancer Center	University of Texas MD Anderson Cancer Center Science Park The Virginia Harris Cockrell Cancer Research Center MD Anderson Smithville
<b>750</b>	UT Health Science Center Tyler	UT Health Northeast
<b>720</b>	UT System	<i>Only used for sales or returns by the System Administration Office UTIMCO</i> UT System Personal Use UT Systems Info Resources
<b>A103</b>	Alamo Colleges District	
<b>737</b>	Angelo State University	
<b>823</b>	Baylor College of Medicine	BCM
<b>A100</b>	Baylor University	Baylor
<b>A102</b>	Children's Health Dallas	Children's Medical Center Dallas
<b>S2271</b>	Manor Independent School District	Manor ISD
<b>A101</b>	Rice University	
<b>755</b>	Stephen F. Austin State University	
<b>555</b>	Texas A&M University - AgriLife Extension Service	
<b>556</b>	Texas A&M University - AgriLife Research	
<b>770</b>	Texas A&M University - Central Texas	
<b>711</b>	Texas A&M University - College Station	
<b>751</b>	Texas A&M University - Commerce	
<b>760</b>	Texas A&M University - Corpus Christi	
<b>718</b>	Texas A&M University - Galveston	
<b>709</b>	Texas A&M University - Health Science Center	
<b>761</b>	Texas A&M University - International	
<b>732</b>	Texas A&M University - Kingsville	
<b>715</b>	Texas A&M University - Prairie View	Prairie View A&M University
<b>749</b>	Texas A&M University - San Antonio	
<b>713</b>	Texas A&M University - Tarleton	Tarleton State University
<b>764</b>	Texas A&M University - Texarkana	
<b>557</b>	Texas A&M University - Veterinary Med Diagnostic Lab	
<b>757</b>	Texas A&M University - West Texas	West Texas A&M University
<b>710</b>	Texas A&M University System	<i>Only used for sales or returns by the System Administration Office.</i>
<b>739</b>	Texas Tech Health Science Center	
<b>768</b>	Texas Tech System	<i>May be used if sales or returns cannot be distinguished per System institution.</i>
<b>733</b>	Texas Tech University	

719	Texas State Technical College	TSTC Harlingen
731	Texas Woman's University	
985	Tyler Junior College	
752	University of North Texas	
763	University of North Texas Health Science Center	
773	University of North Texas (Dallas)	
769	University of North Texas System	<i>May be used if sales or returns cannot be distinguished per System institution.</i>
A104	University of Tennessee System	<i>May be used if sales or returns cannot be distinguished per System institution</i>
A104-1	University of Tennessee Chattanooga	
A104-2	University of Tennessee Health Science Center	
A104-3	University of Tennessee Martin	

- HUB Report: Preferred Supplier will provide periodic reports as required by the HUB subcontracting plan, as applicable.

5.4.12 Preferred Supplier Relationship Management. Preferred Supplier and the UT System Contract Administrator will meet periodically to conduct a Periodic Business Review ("PBR") as further described in **APPENDIX THREE-4**.

#### 5.4.13 Proposer's Survey

Proposer must complete the Proposer's Survey.

The Proposer's Survey contains a list of additional questions the Proposer will answer when responding to this RFP. The questionnaire will provide each Proposer the opportunity to explain how its proposal meets UT System's needs. Responses to the Proposer's Survey will offer UT System insight into company financial information, account management plan, customer references, price protection guarantees, etc.

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 Jaggaer (formerly SciQuest) e-Sourcing tool and must follow the following naming convention: (<Proposer Name> - <Question Number> - Response - <File Name>).

Finally, Proposer is encouraged to specify any special certifications, awards, or other industry recognizable achievements that might set it apart from its competitors.

## **SECTION 6**

### **PRICE SCHEDULE AND AFFIRMATION**

#### **6.1 Price Schedule**

Proposer must submit a completed **Attachment A**, as part of its proposal, reciting detailed prices for the Solution described in **Section 5.4** (Scope of Work) of this RFP. The prices must include all associated charges.

#### **6.2 Pricing 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.:** Preferred Supplier of Offsite Records Storage and Secure Destruction Solution  
**RFP No.** UTS/A71

Ladies and Gentlemen:

Having carefully examined all the specifications and requirements of this RFP and any attachments thereto, the undersigned proposes to furnish the subject Solution upon the pricing terms quoted below.

The prices quoted in in response to this RFP (see **Section 6.1**) will be Proposer's guaranteed pricing.

Proposer agrees that if Proposer is awarded an agreement under this RFP, it will provide to UT System a quarterly administrative fee of 3% of the Total Net Sales made by Preferred Supplier under the Agreement. *[Note to Proposer: this will be addressed in the Agreement's Scope of Work.]* "**Total Net Sales**" is defined in **Section 5.2.1** of this RFP.

Subject to the requirements of the Texas Prompt Payment Act (Chapter 2251, *Texas Government Code*), UT System's standard payment terms are "Net 30 days." Proposer will provide the following prompt payment discount:

Prompt Payment Discount: \_\_\_\_\_%\_\_\_\_\_days/net 30 days.

Proposer certifies and agrees that all prices proposed in Proposer's proposal have been reviewed and approved 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 Jaggaer. 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 related goods and services, and UT System has made no representation, written or oral, that any particular goods or 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 Affirmation

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

UT System will not recognize or accept any charges or fees that are not specifically stated in the Pricing Affirmation.

### 1.9.4 Submission

Proposer should submit all proposal materials via the Jaggaer 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 subject goods and services.
  - 2.1.3 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform under the Agreement.
  - 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 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/A-\_\_\_\_\_

**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: the 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

## SAMPLE PREFERRED SUPPLIER AGREEMENT

for

### OFFSITE RECORDS STORAGE AND SECURE DESTRUCTION SOLUTION

between

THE UNIVERSITY OF TEXAS SYSTEM

and

\_\_\_\_\_  
**University of Texas Agreement Number:** \_\_\_\_\_

This Preferred Supplier Agreement, dated effective as of \_\_\_\_\_, 20\_\_ (“**Effective Date**”), is made by and between **The University of Texas System (“UT System”)**, a state agency and institution of higher education authorized under the laws of the State of Texas, and \_\_\_\_\_ (“**Preferred Supplier**”), a \_\_\_\_\_ corporation, Federal Tax Identification Number \_\_\_\_\_, with its principal offices located at \_\_\_\_\_.

This Agreement specifies the terms and conditions applicable to the supply by Preferred Supplier of offsite records storage and secure destruction solution to institutional participants, all as further described below.

Now, therefore, the parties, intending to be legally bound, agree as follows:

#### **SECTION 1 – Definitions**

“**Alliance**” means The University of Texas System Supply Chain Alliance, an in-house group purchasing organization established by UT System to conduct and coordinate strategic purchasing initiatives across UT System. UT System health and academic institutions are members of the Alliance. The Alliance is also affiliated with other institutions of higher education that have executed an Alliance affiliate agreement.

“**Institutional Participant**” means an Alliance member or affiliated institution of higher education, as designated by the Alliance, that has executed an Institutional Participation Agreement in connection with this Agreement.

**“Institutional Participation Agreement”** or **“IPA”** means the Institutional Participation Agreement attached to this Agreement as **Rider 3** and incorporated for all purposes, to be executed by each Institutional Participant.

**“Solution”** means \_\_\_\_\_.

**“UT Party”** means, as applicable, UT System and/or the Institutional Participants.

**“UT System Contract Administrator”** means the Director of the Alliance, who will be the initial contact for all contractual concerns related to this Agreement.

## **SECTION 2 – Term:**

The term of this Agreement will begin on the Effective Date and expire \_\_\_\_\_ [*initial fixed term of three years*], unless earlier terminated in accordance with the provisions of this Agreement. UT System will have the option to extend the term of this Agreement for an additional two-year period, upon written notice given to Preferred Supplier at least 90 days in advance of the renewal term.

The Parties acknowledge that, prior to any scheduled expiration of this Agreement, UT System may conduct a competitive procurement for the purchase of services comparable to the Services, for the period following expiration. If Preferred Supplier is not selected as the source for the succeeding period, Institutional Participants may need to transition over a period of time to purchasing the services primarily from the new source, rather than from Preferred Supplier. In such event, in order to allow for an orderly transition, Institutional Participants may wish to continue purchasing from Preferred Supplier for a limited period of time after the anticipated expiration of this Agreement. As a result, Preferred Supplier agrees that, notwithstanding any other provision of this Agreement:

- Preferred Supplier will make the Services available for purchase by Institutional Participants after \_\_\_\_\_, 20\_\_ (or the anticipated expiration date under any extended term of this Agreement), for a transitional period of six months (the **“Transition Period”**), on the same terms and conditions set forth in this Agreement.
- All incentive / rebate trigger amounts that may be established in this Agreement for any calendar year will be pro-rated automatically on a straight-line basis, to account for partial calendar years during which this Agreement exists, including the Transition Period.

## **SECTION 3 – Amendment:**

No change, modification, alteration, or waiver of this Agreement will be effective unless it is set forth in a written agreement that is signed by UT System and Preferred Supplier.

## **SECTION 4 – Performance by Preferred Supplier:**

Preferred Supplier will perform its obligations under this Agreement to the satisfaction of UT Party. Time is of the essence in connection with this Agreement. UT Party will not have any obligation to accept late performance or waive timely performance by Preferred Supplier. Preferred Supplier will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local laws, regulations or ordinances, for its performance hereunder.

**SECTION 5 – 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 this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**SECTION 6 – Eligibility Certifications:**

Pursuant to Sections 2155.004 and 2155.006, *Texas Government Code*, Preferred Supplier certifies that it has not received compensation for participation in the preparation of the Request for Proposal related to this Agreement and is not ineligible to receive the award of or payments under this Agreement; and acknowledges that this Agreement may be terminated and payment withheld if these certifications are inaccurate.

**SECTION 7 – Tax Certification:**

If Preferred Supplier is a taxable entity as defined by Chapter 171, Texas 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.

**SECTION 8 – 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 this 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.

**SECTION 9 – Loss of Funding:**

Performance by UT Party under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “**Legislature**”) and/or allocation of funds by the Board of Regents of The University of Texas System (the “**Board**”). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then UT Party will issue written notice to Preferred Supplier and UT Party may terminate this Agreement without further duty or obligation hereunder, other than payment for goods and services already delivered or provided to Institutional Participant. Preferred Supplier acknowledges that appropriation, allotment, and allocation of funds are beyond the control of UT Party.

**SECTION 10 – Force Majeure:**

None of the parties to this 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 agrees to use its best efforts to mitigate the impact of the occurrence so that UT Party may continue to provide healthcare services during the occurrence.

**SECTION 11 – 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 this 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  
210 W. 7th Street  
Attn: Executive Vice Chancellor for Business Affairs  
Austin, Texas 78701-2982  
Fax: 512-499-4289  
Email: Lloyd@utsystem.edu

*with copy to:* The University of Texas System Supply Chain Alliance  
Mid Campus Building  
7007 Bertner Ave., Suite 11.2339  
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  
210 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  
Mid Campus Building  
7007 Bertner Ave., Suite 11.2339  
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.

## **SECTION 12 – Preferred Supplier's Obligations.**

**12.1** Preferred Supplier represents that it has the knowledge, ability, skills, and resources to perform its obligations hereunder.

**12.2** Preferred Supplier will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance hereunder. Preferred Supplier will cause all persons connected with the Preferred Supplier directly in charge of performance hereunder to be duly registered and/or licensed under all applicable federal, state and municipal, laws, regulations, codes, ordinances and orders, including the rules, regulations and procedures promulgated by the Board or Institutional Participants, and those of any other body or authority having jurisdiction (collectively, "**Applicable Law**").

**12.3** Preferred Supplier represents, warrants and agrees that (a) it will use commercially reasonable efforts to perform hereunder, in a good and workmanlike manner and in accordance with commercially reasonable standards of Preferred Supplier's profession or business, and (b) all good and services provided hereunder 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.

**12.4** Preferred Supplier warrants and agrees that its performance under this Agreement will be accurate and free from any material defects. Preferred Supplier's performance hereunder 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 hereunder. Preferred Supplier will, at its own cost, correct all material defects in its performance under this Agreement, as soon as practical after Preferred Supplier becomes aware of the defects. If Preferred Supplier fails to correct such material defects within a reasonable time, then UT Party 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.

**12.5** 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.

**12.6** 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 this Agreement, and the individual executing this 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 this Agreement and perform all its obligations hereunder, and the individual executing this Agreement on behalf of Preferred Supplier has been duly authorized to act for and bind Preferred Supplier.

**12.7** Preferred Supplier will provide the warranties more particularly described in Section \_\_\_ of **Rider 1**, Scope of Work.

**12.8** Preferred Supplier represents and warrants that neither the execution and delivery of this Agreement by Preferred Supplier nor Preferred Supplier's performance hereunder 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.

### **SECTION 13 – State Auditor's Office:**

Preferred Supplier understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "**Auditor**"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), Education Code. Preferred Supplier agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Preferred Supplier will include this provision in all contracts with permitted subcontractors.

### **SECTION 14 – Governing Law:**

Travis County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties 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 internal laws of the State of Texas.

### **SECTION 15 – Breach of Contract Claims:**

**15.1** To the extent that Chapter 2260, Texas Government Code, as it may be amended from time to time ("**Chapter 2260**"), is applicable to this Agreement and is not preempted by other Applicable Law, the dispute resolution process provided for in Chapter 2260 will be used, as further described herein, by UT Party and Preferred Supplier to attempt to resolve any claim for breach of contract made by Preferred Supplier:

**15.1.1** Preferred Supplier's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Preferred Supplier will submit written notice, as required by subchapter B of Chapter 2260, to UT Party in accordance with the notice provisions in this 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 contract provision that 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's chief business officer, or another officer of UT Party as may be designated from time to time by UT Party by written notice thereof to Preferred Supplier in accordance with the notice provisions in this Agreement, will examine Preferred Supplier's claim and any counterclaim and negotiate with Preferred Supplier in an effort to resolve the claims.

**15.1.2** If the parties are unable to resolve their disputes under **Section 15.1.1**, 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 this Agreement by UT Party.

**15.1.3** Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this Agreement by UT Party nor any other conduct, action or inaction of any representative of UT Party relating to this 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.

**15.2** 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.

**15.3** UT Party and Preferred Supplier agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

#### **SECTION 16 – Compliance with Law:**

Preferred Supplier will perform hereunder in compliance with all Applicable Law. 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.

#### **SECTION 17 – UT System's Right to Audit:**

At any time during the term of this Agreement and for a period of four (4) years thereafter UT System or a duly authorized audit representative of UT System, or the State of Texas, at its expense and at reasonable times, reserves the right to audit Preferred Supplier's records and books directly related to charges paid for all products and services provided under this Agreement. The right will not extend to any fixed fee component of the charges or to any services performed more than one year prior to the date of request for review. In the event such an audit by UT System reveals any errors or overpayments by an Institutional Participant, Preferred Supplier will refund the full amount of such overpayments within thirty (30) days of such audit findings. Institutional Participant, at its option, reserves the right to deduct such amounts owing to Institutional Participant from any payments due to Preferred Supplier.

#### **SECTION 18 – Access to Documents:**

To the extent applicable to this 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 agrees to allow, during and for a period of not less than four (4) years after this Agreement term, access to this 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.

**SECTION 19 – Insurance:**

**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, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-:VII or better, and in amounts not less than the following minimum limits of coverage:

**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

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which services are to be performed for Institutional Participant.

**19.1.2** Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 300,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000

The required Commercial General Liability policy will be issued on a form that insures Preferred Supplier's and subcontractor's liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

**19.1.3** Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for Bodily Injury and Property Damage. Contractors transporting hazardous materials must provide the MCS-90 endorsement and CA9948 Broadened Pollution Liability endorsement on the Business Auto Liability policy. Policy limits must be in line with Federal requirements.

**19.1.4** Umbrella/Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence and aggregate with a deductible of no more than \$10,000, and will be excess over and at least as broad as the underlying coverage as required under **Sections 19.1.1** Employer's Liability; **19.1.2** Commercial General Liability; and **19.1.3** Business Auto Liability. Inception and expiration dates will be the same as the underlying policies. Drop-down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.

**19.1.5** Directors' and Officers' Liability Insurance with limits of not less than \$1,000,000 per claim. The coverage will be continuous for the duration of this Agreement and for not less than twenty-four (24) months following the expiration or termination of this Agreement.

**19.2** Preferred Supplier will deliver to Institutional Participant:

- 19.2.1** Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all required insurance policies after the execution and delivery of this Agreement and prior to the performance by Preferred Supplier under this Agreement. Additional evidence of insurance will be provided verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.
- 19.2.2** ***All insurance policies*** (with the exception of workers' compensation, employer's liability and professional liability) will be endorsed and name The Board of Regents of The University of Texas System and Institutional Participant as Additional Insureds for liability caused in whole or in part by Preferred Supplier's acts or omissions with respect to its on-going and completed operations up to the actual liability limits of the required insurance policies maintained by Preferred Supplier. The Commercial General Liability Additional Insured endorsement including on-going and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.
- 19.2.3** Preferred Supplier hereby waives all rights of subrogation against The Board of Regents of The University of Texas System and Institutional Participant. ***All insurance policies*** will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The University of Texas System, and Institutional Participant. Preferred Supplier will notify Institutional Participant within ten business days after being notified by Preferred Supplier's insurance carrier of, and at least 15 days prior to, any cancellation, material change, or non-renewal relating to any insurance policy required in this **Section 19**.
- 19.2.4** Preferred Supplier will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by Institutional Participant prior to the performance by Preferred Supplier under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.
- 19.2.5** Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the Institutional Participant contact identified in the Institutional Participation Agreement.

**19.3** Preferred Supplier's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by Institutional Participant or The University of Texas System. Preferred Supplier's or subcontractor's insurance will be kept in force until all obligations under this Agreement have been fully performed and accepted by Institutional Participant in writing, except as provided in this **Section 19.3**.

- 19.3.1** Directors and Officers Liability insurance coverage written on a claims-made basis requires Preferred Supplier to purchase an Extended Reporting Period Endorsement, effective for 24 months after the expiration or cancellation of this policy.

#### **19.4 Cyber Liability Insurance**

Preferred Supplier will maintain Cyber Liability insurance with limits of not less than \$TBD million for each wrongful act, that provides coverage for:

- Liability for security or privacy breaches, including loss or unauthorized access to University Records, whether by Preferred Supplier or any of subcontractor or cloud service provider used by Preferred Supplier;
- Costs associated with a privacy breach, including notification of affected individuals, customer support, crises management / public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
- Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
- Costs of restoring, updating or replacing data;
- Liability losses connected to network security, privacy, and media liability;
- “Insured versus insured” exclusion prohibited.

Certificates of Insurance and Additional Insured Endorsements reflecting applicable limits, sub-limits, self-insured retentions and deductibles will be provided to UT System upon request. Preferred Supplier will be responsible for any and all deductibles, self-insured retentions or waiting period requirements. If the Cyber Liability policy is written on a claims-made basis, the retroactive date should be prior to the commencement of this Agreement. If the Cyber Liability policy is written on a claims-made basis and non-renewed at any time during and up until expiration or termination of this Agreement, Preferred Supplier will purchase an Extended Reporting Period for at least a two year period. UT Parties and The Board of Regents of UT System will be named as an additional insureds and UT Parties will be provided with a waiver of subrogation, both by endorsement to the required Cyber Liability policy.

## **SECTION 20 – Indemnification:**

**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 PARTY, 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 THIS 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.

**20.2** IN ADDITION, PREFERRED SUPPLIER WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UT PARTY, 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.

### **SECTION 21 – Ethics Matters; No Financial Interest:**

Preferred Supplier and its employees, agents, representatives and subcontractors have read and understand:

- (1) UT System’s Conflicts of Interest Policy available at <https://www.utsystem.edu/board-of-regents/policy-library/policies/uts180-conflicts-interest-conflicts-commitment-and-outside>;
- (2) UT System’s Standards of Conduct Guide available at <https://www.utsystem.edu/documents/docs/policies-rules/ut-system-administration-standards-conduct-guide>; and
- (3) applicable state ethics laws and rules available at <https://www.utsystem.edu/offices/general-counsel/ethics#use>.

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 this Agreement.

### **SECTION 22 – Assignment of Overcharge Claims:**

Preferred Supplier hereby assigns to UT Party any and all claims for overcharges associated with this Agreement arising under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq., or arising under the antitrust laws of the State of Texas, Business and Commerce Code, Sec. 15.01, et seq.

### **SECTION 23 – Assignment and Subcontracting:**

Except as specifically provided in any Historically Underutilized Business Subcontracting Plan (“**HSP**”) attached as **Rider 5** and incorporated for all purposes, neither Preferred Supplier’s interest in this Agreement, its duties and obligations under this Agreement nor fees due to Preferred Supplier under this Agreement may be subcontracted, assigned, delegated or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (1) not be binding on UT Party; and (2) be a breach of this Agreement for which Preferred Supplier will be subject to any remedial actions provided by Texas law, including Chapter 2161, Texas Government Code, and 34 Texas Administrative Code (“**TAC**”) Section 20.14. UT Party may report nonperformance under this Agreement to the Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, “**TPSS**”) in accordance with 34 TAC Chapter 20, Subchapter F, Vendor Performance and Debarment Program. The benefits and burdens of this Agreement are, however, assignable by UT Party.

### **SECTION 24 – Historically Underutilized Business Subcontracting Plan:**

**24.1** If an HSP is attached to this Agreement, Preferred Supplier agrees to use good faith efforts to subcontract the scope of work in accordance with the HSP. 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 the TPSS. Submission of compliance reports will be required as a condition for payment under this 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 Chapter 20, Subchapter F, Vendor Performance and Debarment Program. UT Party may also revoke this Agreement for breach and make a claim against the Preferred Supplier.

**24.2** If at any time during the term of this Agreement, Preferred Supplier desires to change the HSP, before the proposed changes become effective (1) Preferred Supplier must comply with 34 TAC Section 20.14; (2) the changes must be reviewed and approved by UT Party; and (3) if UT Party approves changes to the HSP, this Agreement must be amended in accordance with Section 2.5.3 to replace the HSP with the revised subcontracting plan.

**24.3** If UT Party expands the scope of this Agreement through a change order or any other amendment, UT Party will determine if the additional scope of work contains probable subcontracting opportunities not identified in the initial solicitation for the scope of work. 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 (1) this Agreement may be amended to include the additional scope of work; or (2) Preferred Supplier may perform the additional scope of work. 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 this Agreement under Section 4.19 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 this Agreement to the TPSS in accordance with 34 TAC Chapter 20, Subchapter F, Vendor Performance and Debarment Program.

## **SECTION 25 – Payment and Invoicing:**

Institutional Participant agrees to pay fees due under this 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 31<sup>st</sup> day after the later of: 1) the date the performance is completed, or 2) the date Institutional Participant receives an invoice for the related goods or 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 related goods or services; and (c) other reasonable action.

Section 51.012, *Texas Education Code*, authorizes UT Party to make any payment through electronic funds transfer methods. Preferred Supplier agrees to receive payments from UT Party through electronic funds transfer methods, including the automated clearing house system (also known as ACH). Prior to the first payment under this Agreement, UT Party will confirm Preferred Supplier’s banking information. Any changes to Preferred Supplier’s banking information will be communicated by Preferred Supplier to UT Party in writing at least thirty (30) days in advance of the effective date of the change.

**SECTION 26 – Limitations:**

The parties to this Agreement 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 of this Agreement, including, but not limited to, those terms and conditions relating to 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.

**SECTION 27 – 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, is attached to this Agreement as **Rider 6** and incorporated for all purposes.

**SECTION 28 – OSHA Compliance:**

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

**SECTION 29 - 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. Preferred Supplier agrees that a breach of this certification is a violation of the Equal Opportunity clause in this Agreement. The term "**segregated facilities**" means any waiting rooms, work area, rest rooms and wash rooms, entertainment areas, 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 such 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.

### **SECTION 30 – Premises Rules:**

If this Agreement requires Preferred Supplier's presence on UT Party's premises or in UT Party's 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, without limitation, those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions; consideration for students, patients and their families as well as employees; parking; and security.

### **SECTION 31 – 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 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 prior to award, 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 this 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 this Agreement for default by Preferred Supplier.

### **SECTION 32 – Office of Inspector General Certification:**

Preferred Supplier acknowledges that UT Party is prohibited by federal regulations from allowing any employee, subcontractor, or agent of Preferred Supplier to work on site at 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.dhhs.gov/progorg/oig/cumsan/index.htm>.

### **SECTION 33 – Termination:**

**33.1** In the event of a material failure by either party to perform in accordance with the terms of this Agreement ("default"), the other, non-defaulting party may terminate this Agreement upon thirty (30)

days' written notice of termination setting forth the nature of the material failure. The termination will not be effective if the material failure is fully cured prior to the end of the 30-day period. No such termination will relieve the defaulting party from liability for the underlying default or breach of this Agreement or any other act or omission.

**33.2** UT System may terminate this Agreement, without cause, upon written notice to Preferred Supplier; provided, however, this Agreement will not terminate until the later of (1) 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 this Agreement will not relieve any party from liability for its default under or breach of this Agreement or any other act or omission of that party. In the event that this Agreement is terminated, then within thirty (30) days after termination, Preferred Supplier will reimburse UT Party for all fees paid by UT Party to Preferred Supplier that were (a) not earned by Preferred Supplier prior to termination, or (b) for goods or services that UT Party did not receive from Preferred Supplier prior to termination.

**33.3** 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 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 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. In the event that 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.

#### **SECTION 34 – Authority:**

The individuals executing this Agreement on behalf of each party have been duly authorized to act for and bind the party they represent.

#### **SECTION 35 – Survival of Provisions:**

Expiration or termination of this Agreement will not relieve either party of any obligations under this Agreement that by their nature survive such expiration or termination.

#### **SECTION 36 – Confidentiality; Press Releases; Public Information:**

**36.1 Confidentiality and Safeguarding of UT Party Records.** Under this Agreement, Preferred Supplier may (1) create, (2) receive from or on behalf of UT Party, or (3) have access to, UT Party's records or record systems (collectively, "**UT Party Records**"). Among other things, UT Party 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. Preferred Supplier represents, warrants, and agrees that it will: (1) hold UT Party Records in strict confidence and will not use or disclose UT Party Records except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by UT Party in writing; (2) safeguard UT Party Records according to reasonable administrative, physical and technical standards commonly in effect within Preferred Supplier's industry and that are no less rigorous than the standards by which Preferred Supplier protects its own confidential information; (3) continually monitor its operations in accordance with reasonable standards commonly in effect within Preferred Supplier's industry and take any action necessary to

ensure that UT Party Records are safeguarded and that the confidentiality of UT Party Records is maintained in accordance with all applicable federal, state and local, laws, regulations, and ordinances, and the terms of this Agreement; and (4) comply with UT Party's rules, policies, and procedures regarding access to and use of UT Party's computer systems. At the request of UT Party, Preferred Supplier will provide UT Party with a written summary of the procedures Preferred Supplier uses to safeguard and maintain the confidentiality of UT Party Records.

**36.2 Notice of Impermissible Use.** If an impermissible use or disclosure of any UT Party 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.

**36.3 Return of UT Party Records.** Preferred Supplier agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all UT Party 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 UT Party Records, Preferred Supplier will provide UT Party with written notice of Preferred Supplier's intent to destroy UT Party Records. Within five (5) days after destruction, Preferred Supplier will confirm to UT Party in writing the destruction of UT Party Records.

**36.4 Disclosure.** If Preferred Supplier discloses any UT Party 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 36**.

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

**36.6 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* ("TPIA"), Chapter 552, *Texas Government Code*. In accordance with Section 552.002 of TPIA and Section 2252.907, *Texas Government Code*, and at no additional charge to UT Party, Preferred Supplier will make any information created or exchanged with UT Party pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by UT Party that is accessible by the public.

**36.7 Termination.** In addition to any other termination rights set forth in this 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 this Agreement without notice or opportunity to cure.

**36.8 Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

### **SECTION 37 – FERPA Compliance:**

**37.1** The Parties agree that UT Party Records, as referenced in **Section 36**, that Preferred Supplier may (1) create, (2) receive from or on behalf of UT Party, or (3) have access to, may include records that (a) are subject to the Federal Education Rights and Privacy Act ("FERPA") or (b) contain personally identifiable information from "Education Records" as defined by and subject to FERPA (collectively, "FERPA Records"). FERPA Records include all such data in any form whatsoever, including electronic,

written and machine readable form. If any specific use of Preferred Supplier's CAC Solution under this Agreement will involve Preferred Supplier's access to FERPA Records or personally identifiable information of any kind, Preferred Supplier and UT Party will document such access in writing.

**37.2** With respect to all UT Party Records that also constitute FERPA Records, Preferred Supplier is designated as a UT Party Official with a legitimate educational interest in and with respect to such FERPA Records, only to the extent to which Preferred Supplier is required to create, receive or maintain FERPA Records to carry out this Agreement.

**37.3** In addition to all of the other obligations imposed upon Preferred Supplier with regard to UT Party Records pursuant to this Agreement, Preferred Supplier understands and agrees to abide by the following terms and conditions as to all FERPA Records, without reservation. To the extent that this **Section 37** conflicts with any other terms of this Agreement, this **Section 37** will prevail.

**37.3.1 Prohibition on Unauthorized Use or Disclosure of FERPA Records:** Preferred Supplier will hold FERPA Records in strict confidence. Preferred Supplier will not use or disclose FERPA Records received from or on behalf of UT System, except as permitted or required by this Agreement.

**37.3.2 Maintenance of the Security of FERPA Records:** Preferred Supplier will use administrative, technical and physical security measures, including secure encryption in the case of electronically maintained or transmitted FERPA Records, approved by UT Party that are at least as stringent as the requirements of UT System's Information and Resource Use & Security Policy, UTS165 (ref. <https://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy>), to preserve the confidentiality and security of all FERPA Records received from, or on behalf of UT Party, its students or any third party pursuant to this Agreement.

**37.3.3 Reporting of Unauthorized Disclosures or Misuse of FERPA Records and Information:** Preferred Supplier, within one (1) day after discovery, will report to UT System any use or disclosure of FERPA Records not authorized by this Agreement. Preferred Supplier's report will identify: (i) the nature of the unauthorized use or disclosure, (ii) the FERPA Records used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Preferred Supplier has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Preferred Supplier has taken or will take to prevent future similar unauthorized use or disclosure. Preferred Supplier will provide such other information, including written reports, as reasonably requested by UT System. For purposes of this **Section 37.3.3**, an unauthorized disclosure or use includes any access or use of an "Education Record" (as defined by FERPA) by an Preferred Supplier employee or agent that the employee or agent does not require to perform services or access by any employee or agent that does not involve the provision of services.

**37.3.4 Right to Audit:** If UT Party has a reasonable basis to believe that Preferred Supplier is not in compliance with the terms of this **Section 37**, UT System may audit Preferred Supplier's compliance with FERPA as such compliance relates to FERPA Records maintained by Preferred Supplier.

**37.3.5 Five-Year Exclusion for Improper Disclosure of Education Records.** Under the federal regulations implementing FERPA, improper disclosure or redisclosure of personally identifiable information from "Education Records" (as defined by FERPA) by Preferred Supplier or its employees or agents may result in Preferred Supplier's complete exclusion from eligibility to contract with UT Party for at least five (5) years.

**37.3.6 Secure Destruction of FERPA Records.** Preferred Supplier agrees that no later than 30 days after expiration or termination of this Agreement for any reason, or within thirty (30) days after UT System's

written request, Preferred Supplier will halt all access, use, creation, or processing of FERPA Records and will Securely Destroy all FERPA Records, including any copies created by Preferred Supplier or any subcontractor; and Preferred Supplier will certify in writing to UT System that all FERPA records have been Securely Destroyed. “**Securely Destroy**” means shredding, erasing or otherwise modifying a record so as to make it unreadable or indecipherable.

**37.3.7 Disclosure.** Preferred Supplier will restrict disclosure of FERPA Records solely to those employees, subcontractors or agents of Preferred Supplier that have a need to access the FERPA Records in order for Preferred Supplier to perform its obligations under this Agreement. If Preferred Supplier discloses any FERPA Records to a contractor or agent, Preferred Supplier will require the subcontractor or agent to comply with restrictions and obligations that align with the restrictions and obligations imposed on Preferred Supplier by this Agreement, including requiring each subcontractor or agent to agree to the same restrictions and obligations in writing.

**37.3.8 Termination.** Preferred Supplier’s duties under this **Section 37** will survive expiration or termination of this Agreement as to any FERPA Records that have not been Securely Destroyed by Preferred Supplier as required by **Section 37.3.6**.

**37.3.9 Breach.** In the event of a breach, threatened breach or intended breach of this **Section 37** by Preferred Supplier, UT Party (in addition to any other rights and remedies available to UT Party at law or in equity) will be entitled to preliminary and final injunctions, enjoining and restraining such breach, threatened breach or intended breach.

## **SECTION 38 – Tax Exemption**

UT System institutions, being agencies of the State of Texas, are exempt from Texas Sales & Use Tax on goods and services in accordance with Section 151.309, *Tax Code*, and Title 34 TAC Section 3.322. Pursuant to 34 TAC Section 3.322(c)(4), UT System institutions are not required to provide a tax exemption certificate to establish their tax exempt status.

## **SECTION 39 – 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 this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, UT Party may terminate this 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.

**SECTION 40 – No Required Quantities or Minimum Amounts:**

Preferred Supplier understands that this Agreement does not obligate UT Party to purchase any specific amount of goods or services from Preferred Supplier under this Agreement or otherwise. For example, this Agreement does not establish any minimum quantity or minimum dollar amount of goods or services that UT Party must purchase from Preferred Supplier during the term of this Agreement.

**SECTION 41 – 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 under this Agreement (collectively, the “**EIRs**”) comply with the applicable requirements set forth in Title 1, Chapter 213, *Texas Administrative Code*, and Title 1, Chapter 206, Rule §206.70, *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 Party, 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 Preferred Supplier fails or is unable to do so, UT Party may terminate this Agreement, and Preferred Supplier will refund to UT Party all amounts UT Party has paid under this Agreement within thirty (30) days after the termination date.

**SECTION 42 – Certification regarding Boycotting Israel:**

Pursuant to Chapter 2270, Texas Government Code, Preferred Supplier certifies that it (1) does not currently boycott Israel; and (b) will not boycott Israel during the term of this Agreement. Preferred Supplier acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**SECTION 43 – Certification regarding Business with Certain Countries and Organizations:**

Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Preferred Supplier certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Preferred Supplier acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**SECTION 44 – Background Checks:**

Preferred Supplier will not knowingly assign any individual to provide services on a UT Party’s campus if the individual has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. If requested by any UT Party to comply with its policy, Preferred Supplier will perform appropriate criminal background checks on each individual who will provide such services on the UT Party’s campus.

**SECTION 45 – Entire Agreement; Modifications:**

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

**SECTION 46 – Captions:**

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

**SECTION 47 – Waivers:**

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

**SECTION 48 – Binding Effect:**

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

**SECTION 49 – Limitations 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 this 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 this Agreement.

**SECTION 50 – Relationship of the Parties:**

For all purposes of this Agreement and notwithstanding any provision of this 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.

**SECTION 51– Severability:**

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

**SECTION 52 – External Terms:**

This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral ("**External Terms**"), concerning Preferred Supplier's performance under this Agreement. Such External Terms are null and void and will have no effect under this 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, browserwrap, 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.

**SECTION 53 – Conflicts:**

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

**SECTION 54 –Business Associate Agreements:**

Preferred Supplier acknowledges that Institutional Participants may be subject to the Health Insurance Portability and Accountability Act of 1996, Public 104-191 (“**HIPAA**”) as amended by the Health Information Technology for Economic and Clinical Health, Title XII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) (“**HITECH Act**”). UT System and the respective Institutional Participants are separate entities for purposes of HIPAA. Preferred Supplier, by executing this Agreement, is deemed to have entered into a HIPAA Business Associate Agreement (“**BAA**”) with each Institutional Participant, as applicable, on the terms set forth in **Rider 7** (UT System-Wide Standard BAA Terms and Conditions).

**SECTION 55 – General Data Protection Regulation (GDPR):**

Some of the UT Party Records that Preferred Supplier receives, creates or maintains for or on behalf of Institutional Participant constitute or may constitute Personal Information or Data (as defined by the GDPR) subject to the GDPR. All such Personal Information or Data will be governed by the GDPR Data Protection Addendum attached as **Rider 8**. Except as otherwise provided by **Rider 8**, Preferred Supplier will provide Institutional Participant with a copy of Preferred Supplier’s GDPR privacy notice which complies with GDPR requirements, including but not limited to detailing the gathering and use of data, an individual’s rights under GDPR, and breach notification information. Preferred Supplier will provide Institutional Participant with any information reasonably necessary to allow Institutional Participant to fulfill its responsibilities as a data controller, as that term is defined by the GDPR, when responding to an inquiry from a data subject, as that term is defined by the GDPR, to the extent such inquiry is governed by GDPR. Such information will be provided to Institutional Participant no later than 5 days from the day Preferred Supplier is notified of a request for information from a data subject. Except to the extent this Section conflicts with **Rider 8**, Preferred Supplier will comply with this Section in connection with all Data subject to GDPR.

**SECTION 56 – Attachments:**

The Riders listed below are attached to and fully incorporated into this Agreement as substantive parts of this Agreement:

**Rider 1** – Scope of Work

**Rider 2** – Price Schedule

**Rider 3** – Institutional Participation Agreement Form (see APPENDIX THREE-3)

**Rider 4** – Supplier Relationship Management (see APPENDIX THREE-4)

**Rider 5** – HUB Subcontracting Plan

**Rider 6** – Affirmative Action Compliance Program

**Rider 7** – UT System-Wide Standard BAA Terms and Conditions (see APPENDIX THREE-7)

**Rider 8** – GDPR Data Protection Addendum (see APPENDIX THREE-8)

Having agreed to the foregoing terms, and with the intention of being legally bound, the parties have executed this Agreement on the dates shown below.

**THE UNIVERSITY OF TEXAS SYSTEM**

**[PREFERRED SUPPLIER]**

Signed: \_\_\_\_\_  
Scott C. Kelley, Executive Vice  
Chancellor for Business Affairs

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX THREE - 3

### INSTITUTIONAL PARTICIPATION AGREEMENT

By entering into this Institutional Participation Agreement (“**Institutional Participation Agreement**”), the undersigned institution (“**Institutional Participant**”) agrees to the terms and conditions set forth in the Preferred Supplier Agreement between The University of Texas System and \_\_\_\_\_, Agreement Number UTSSCA\_\_\_\_\_, dated effective \_\_\_\_\_, 20\_\_ (the “**Preferred Supplier Agreement**” or “**PSA**”). All of the terms and conditions of the PSA 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 PSA.

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

Benefits from Preferred Supplier Agreement:

To obtain an offsite records storage and secure destruction solution at discounted pricing.

Institutional Participant’s Responsibilities

To the extent authorized by applicable law and relevant rules and regulations of UT System and Institutional Participant, Institutional Participant will use commercially reasonable efforts to perform the following responsibilities:

- Identify Preferred Supplier as a primary supplier of the subject services.
- Organize and share benefits of the PSA at one or more “kick-off” events.
- Permit Preferred Supplier, at its sole cost, to create and distribute sales materials involving services available for purchase under the PSA and that may include updates on: pricing, new services information, technical developments, and special promotions. All such communications will be subject to prior approval by Institutional Participant.
- Periodically provide information to Preferred Supplier on current and projected opportunities for supply of Preferred Supplier’s services under the PSA.
- On an ongoing basis, make Institutional Participant’s end-users aware of the business relationship with Preferred Supplier and value-generation opportunities.
- Conduct periodic business reviews to review reports and commitments.
- Facilitate resolution of customer/supplier conflicts.

Institutional Participant’s notice address and contact information is:

***[Name of Institutional Participant]***

Street Address: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Attention: \_\_\_\_\_

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: \_\_\_\_\_

Preferred Supplier designates the following contact who will be responsible for facilitating this Institutional Participation Agreement:

**PREFERRED SUPPLIER Primary Contact:**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**Insurance Paperwork.** The insurance provisions of this Agreement require certain certificates and endorsements to be mailed, faxed, or emailed to Institutional Participant. Contact information for the Institutional Participant’s representative authorized to receive such certificates and endorsements is as follows:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
                  \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

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

***[Name of Institutional Participant]***

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 the UT System Supply Chain Alliance Strategic Services Group at [utsscainfo@mdanderson.org](mailto:utsscainfo@mdanderson.org).**

## **APPENDIX THREE - 4**

### **SUPPLIER RELATIONSHIP MANAGEMENT PROGRAM**

#### **Supplier Relationship Management (“SRM”) Program Requirements**

The Alliance SSG will conduct Periodic Business Reviews (“PBRs”) of Preferred Supplier’s performance under this Agreement beginning approximately six (6) months after the Effective Date of this Agreement and then every \_\_\_\_\_ thereafter, based on the Alliance SSG’s assessment of contract performance risk as \_\_\_\_\_.

#### **Periodic Business Reviews**

At each PBR, the Alliance SSG will evaluate Preferred Supplier’s performance based on the Key Performance Indicators (“KPIs”) listed below.

- a. Account Management**
- b. Price Compliance**
- c. Ordering and Delivery Performance**
- d. Service & Support**
- e. Customer Satisfaction**

#### **KPI Reporting**

Preferred Supplier will report to the Alliance SSG at each PBR on the following KPIs.

##### **ACCOUNT MANAGEMENT REPORTS & METRICS**

- Year-to-date and period-over-period spend.
- Price rationalization activities and impact on savings and value-add.
- Availability of web-based records management/ordering system up-time, excludes scheduled downtime
- Spend Report submitted on time to the Alliance Contract Administrator.
- HUB report summary and breakdown for previous months. Monthly report due by 10th of each month. Number of reports due after 10th not to exceed 0%.

##### **PRICE COMPLIANCE REPORTS & METRICS**

- Number/Percentage of invoice price discrepancies: Not to exceed 2%

##### **ORDERING AND DELIVERY PERFORMANCE REPORTS & METRICS**

- Total number of boxes delivered compared to total number of boxes ordered, in each case aggregated across all Institutional Participants
- Total number of shredding and destruction pick-ups compared to the scheduled pick-ups, aggregated across all Institutional Participants.

##### **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 4 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

#### CUSTOMER SATISFACTION REPORTS & METRICS

- Semi-Annual survey of end users
- Overall customer service rating of “satisfactory” greater than 90%

Preferred Supplier and the UT System Contract Administrator may modify the above KPIs from time to time in writing.

If the Alliance SSG deems Preferred Supplier’s performance against the above KPIs to be unsatisfactory, the Alliance SSG and Preferred Supplier may discuss an appropriate corrective action plan, before UT System exercises its legal remedies under this Agreement.

Institutional Participants will report Preferred Supplier performance concerns to the Alliance SSG in a timely manner, for discussion at PBRs.

## APPENDIX THREE - 7

### **UT SYSTEM-WIDE BUSINESS ASSOCIATE AGREEMENT STANDARD TERMS AND CONDITIONS**

Preferred Supplier, by executing the Preferred Supplier Agreement to which this Rider is attached, is deemed to have entered into a HIPAA Business Associate Agreement ("**BAA**") with each Institutional Participant on the terms set forth below. Each Institutional Participant is a "**Covered Entity**," and Preferred Supplier is a "**Business Associate**," as more fully defined below (collectively, the "**Parties**").

#### RECITALS

WHEREAS, Covered Entity has entered or is entering into an Agreement with Business Associate (the "**Underlying Agreement**") by which it has engaged Business Associate to perform services;

WHEREAS, Covered Entity possesses Protected Health Information that is protected under HIPAA and the HIPAA Regulations, HITECH Act and state law, including the Medical Records Privacy Act (MRPA), and is permitted to manage such information only in accordance with HIPAA and the HIPAA Regulations, HITECH Act, and MRPA;

WHEREAS, Business Associate may receive such information from Covered Entity, or create, receive, maintain or transmit such information on behalf of Covered Entity, in order to perform certain of the services under the Underlying Agreement;

WHEREAS, the Parties desire to comply with health information privacy and security protections subsequent to the enactment of the HITECH Act, Subtitle D of the American Recovery and Reinvestment Act of 2009 which has established requirements for compliance with HIPAA. In particular, the requirements provide that: (1) Covered Entity give affected individuals notice of security breaches affecting their PHI, and Business Associate give notice to Covered Entity pursuant to the provisions below; (2) Business Associate comply with the HIPAA security regulations; and (3) additional and/or revised provisions be included in Business Associate Agreement;

WHEREAS, Under HIPAA and HITECH, Covered Entity is required to enter into protective agreements, generally known as "business associate agreements," with certain downstream entities that will be entrusted with HIPAA-protected health information;

WHEREAS, Health information is further protected by state law, including the MRPA; and

WHEREAS, Covered Entity wishes to ensure that Business Associate will appropriately safeguard Protected Health Information.

NOW THEREFORE, Covered Entity and Business Associate agree as follows:

1. **Definitions.** The Parties agree that the following terms, when used in this BAA, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA and the HIPAA Regulations and the MRPA. All capitalized terms used in this BAA but not defined below shall have the meaning assigned to them under the HIPAA Regulations.

- a. "Breach" shall have the meaning given such term under 45 C.F.R. § 164.402 as such regulation is revised from time to time.
- b. "Breach of System Security" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of Sensitive Personal Information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data.
- c. "Business Associate" means, with respect to a Covered Entity, a person who:
- 1) on behalf of such Covered Entity or of an Organized Health Care Arrangement (as defined under the HIPAA Regulations) in which the Covered Entity participates, but other than in the capacity of a member of the workplace of such Covered Entity or arrangement, creates, receives, maintains, or transmits PHI for a function or activity regulated by HIPAA, HIPAA Regulations, or MRPA including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities listed at 42 C.F.R. 3.20, billing, benefit management, practice management, and re-pricing; or
  - 2) provides, other than in the capacity of a member of the workforce of such Covered Entity, legal, actuarial, accounting, consulting, Data Aggregation, management, administrative, accreditation, or financial services to or for such Covered Entity, or to or for an Organized Health Care Arrangement in which the Covered Entity participates, where the provision of the service involves the disclosure of PHI from such Covered Entity or arrangement, or from another Business Associate of such Covered Entity or arrangement, to the person.
- d. "Data Aggregation" means, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of Covered Entity, the combining of such PHI by Business Associate with the PHI received by Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- e. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- f. "HIPAA Regulations" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164 subparts A and E ("The Privacy Rule") and the Security Standards as they may be amended from time to time, 45 C.F.R. Parts 160, 162 and 164, Subpart C ("The Security Rule").
- g. "HITECH Act" means the provisions of Division A, Title XIII of the American Recovery and Reinvestment Act of 2009, known as The Health Information Technology for Economic and Clinical Health, Act 42 U.S.C. §3000 et. seq., and implementing regulations and guidance, including the regulations implemented in 78 Fed. Reg. 5566 (January 25, 2013).
- h. "Individually Identifiable Health Information" means information that is a subset of health information, including demographic information collected from an individual, and:

- 1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
  - 2) relates to past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
    - a) that identifies the individual; or
    - b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- i. "MRPA" means Texas Medical Records Privacy Act, as codified in Section 181 et seq. of the Texas Health and Safety Code and as implemented through regulations including the Standards Relating to the Electronic Exchange of Health Information, codified at Title 1, Section 390.1 et seq. of the Texas Administrative Code.
- j. "Protected Health Information" or "PHI" means Individually Identifiable Health Information that is transmitted by electronic media; maintained in any medium described in the definition of the term electronic media in the HIPAA Regulations; or transmitted or maintained in any other form or medium. The term excludes Individually Identifiable Health Information in educational records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g; records described at 20 U.S.C. § 1232g(a)(4)(B)(iv); and employment records held by a Covered Entity in its role as employer and regarding a person who has been deceased more than 50 years.
- k. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a routine basis, such as scans, "pings", or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate.
- l. "Sensitive Personal Information" means: (1) an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: (a) social security number; (b) driver's license number or government-issued identification number; (c) account number or credit or debit card number in combination with any required security code, access, code, or password that would permit access to an individual's financial account; or (2) PHI information that identifies an individual and relates to: (a) the physical or mental health or condition of the individual; (b) the provision of health care to the individual; or (c) payment for the provision of health care to the individual.
- m. "Unsecured PHI" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified in the guidance issued under Section 13402(h)(2) of the HITECH Act on the HHS web site.

## 2. Permitted Uses and Disclosures.

- a. Compliance with Law. Covered Entity and Business Associate agree to comply with HIPAA, HIPAA Regulations, the HITECH Act, and the MRPA.

- b. Performance of Services. Except as otherwise permitted by this BAA, Business Associate may create, receive, maintain or transmit PHI on behalf of Covered Entity only in connection with the performance of the services contracted for in the Underlying Agreement or as Required by Law (as that term is defined by 45 C.F.R. § 164.103).
- c. Proper Management and Administration. Business Associate may use PHI it receives in its capacity as Covered Entity's Business Associate for the proper management and administration of Business Associate in connection with the performance of services in the Underlying Agreement, as permitted by this BAA or as Required by Law (as that term is defined by 45 C.F.R. § 164.103), and to carry out the legal responsibilities of Business Associate. Business Associate may also disclose Covered Entity's PHI for such proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate. Any such disclosure of PHI shall only be made in accordance with the terms of this BAA, including Section 5(c) if to an agent or subcontractor of Business Associate, and only if Business Associate obtains reasonable written assurances from the person to whom the PHI is disclosed that: (1) the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and (2) Business Associate will be notified by such person of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.
- d. Data Aggregation. Business Associate may use and disclose PHI received by Business Associate in its capacity as Covered Entity's business associate in order to provide Data Aggregation services relating to Covered Entity's health care operations only with Covered Entity's permission.
- e. Business Associate may use and disclose de-identified health information if written approval from the Covered Entity is obtained, and the PHI is de-identified in compliance with the HIPAA Rules.

### 3. Nondisclosure.

- a. As Provided in this BAA. Business Associate shall not use or further disclose Covered Entity's PHI other than as permitted or required by this BAA or as Required by Law (as that term is defined by 45 C.F.R. § 164.103).
- b. Disclosures Required By Law. Business Associate shall not, without prior written consent of Covered Entity, disclose any PHI on the possibility that such disclosure is required by law without notifying, to the extent legally permitted, Covered Entity so that the Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such a disclosure, Business Associate, shall, to the extent permissible by law, refrain from disclosing the PHI until Covered Entity has exhausted all alternatives for relief. Business Associate shall require reasonable assurances from persons receiving PHI in accordance with Section 2(c) that such persons will provide Covered Entity with similar notice and opportunity to object before disclosing PHI when a disclosure is required by law.
- c. Additional Restrictions. If Covered Entity notifies Business Associate that Covered Entity has agreed to be bound by additional restrictions on the uses or disclosures of Covered Entity's PHI pursuant to HIPAA or the HIPAA Regulations, Business Associate shall be bound by such additional restrictions and shall not disclose Covered Entity's PHI in violation of such

additional restrictions to the extent possible consistent with Business Associate's obligations set forth in the Underlying Agreement.

d. **Restrictions Pursuant to Subject's Request.** If Business Associate has knowledge that an individual who is the subject of PHI in the custody and control of Business Associate has requested restrictions on the disclosure of PHI, Business Associate must comply with the requested restriction if (a) the Covered Entity agrees to abide by the restriction; or (b) the disclosure is to a health plan for purposes of carrying out payment or health care operations and the PHI pertains solely to a health care item or service for which Covered Entity has been paid out of pocket in full. If the use or disclosure of PHI in this BAA is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, or if an exception under the Privacy Rule expressly applies.

e. **Remuneration.** Business Associate shall not directly or indirectly receive remuneration in exchange for disclosing PHI received from or on behalf of Covered Entity except as permitted by HITECH Act § 13405, the MRPA, and any implementing regulations that may be promulgated or revised from time to time.

f. **Disclosure.** Business Associate shall not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. part 164, or MRPA, if done by the Covered Entity itself except as authorized under Section 2 of this BAA.

**4. Minimum Necessary.** Business Associate shall limit its uses and disclosures of, and requests for, PHI, to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.

**5. Additional Business Associate Obligations.**

a. **Safeguards.** Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. 164 with respect to electronic PHI to prevent use or disclosure of the PHI other than as provided for by this BAA. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any paper or electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity.

b. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of the obligations.

c. **Business Associate's Agents and Subcontractors.**

1) Business Associate shall ensure that any agents and subcontractors to whom it provides PHI agree to only create, receive, maintain or transmit PHI on behalf of the Business Associate under the same restrictions that apply to Business Associate. Such agreement between Business Associate and subcontractor or agent must be in writing and must comply with the terms of this BAA and the requirements outlined at 45 C.F.R. §164.504(e)(2); 45 C.F.R. §164.502(e)(1)(ii); 45 C.F.R. §164.314; and 45 C.F.R.

§164.308(b)(2). Additionally, Business Associate shall ensure agent or subcontractor agree to and implement reasonable and appropriate safeguards to protect PHI.

2) If Business Associate knows of a pattern of activity or practice of its subcontractor or agent that constitutes a material breach or violation of the agent or subcontractor's obligation under the contract or other arrangement, the Business Associate must take steps to cure the breach and end the violation and if such steps are not successful, must terminate the contract or arrangement if feasible. If it is not feasible to terminate the contract, Business Associate must promptly notify the Covered Entity.

d. Reporting. Business Associate shall, as soon as practicable but not more than five (5) business days after becoming aware of any successful security incident or use or disclosure of Covered Entity's PHI or Sensitive Personal Information in violation of this BAA, report any such use or disclosure to Covered Entity. With the exception of law enforcement delays that satisfy the requirements under 45 C.F.R. § 164.412 or as otherwise required by applicable state law, Business Associate shall notify Covered Entity in writing without unreasonable delay and in no case later than ten (10) calendar days upon discovery of a Breach of Unsecured PHI or Breach of Security System. Such notice must include, to the extent possible, the name of each individual whose Unsecured PHI or Sensitive Personal Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach. Business Associate shall also provide, to the extent possible, Covered Entity with any other available information that Covered Entity is required to include in its notification to individuals under 45 C.F.R. § 164.404(c) and Section 521.053, Texas Business & Commerce Code at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. For purposes of this BAA, a Breach of Unsecured PHI or Breach of Security System shall be treated as discovered by Business Associate as of the first day on which such breach is known to Business Associate (including any person, other than the individual committing the breach, who is an employee, officer, or other agent of Business Associate, as determined in accordance with the federal common law of agency) or should reasonably have been known to Business Associate following the exercise of reasonable diligence.

e. Mitigation. Business Associate shall have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect from any Use or Disclosure (as defined by 45 C.F.R. §160.103).

f. Sanctions. Business Associate shall apply appropriate sanctions in accordance with Business Associate's policies against any employee, subcontractor or agent who uses or discloses Covered Entity's PHI in violation of this BAA or applicable law.

g. Covered Entity's Rights of Access and Inspection. From time to time upon reasonable notice, or upon a reasonable determination by Covered Entity that Business Associate has breached this BAA, Covered Entity may inspect the facilities, systems, books and records of Business Associate related to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity or the safeguarding of such PHI to monitor compliance with this BAA. Business Associate shall document and keep current such security measures and safeguards and make them available to Covered Entity for inspection upon reasonable request including summaries of any internal or external assessments Business Associate performed related to such security controls and safeguards. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with

this BAA, nor does Covered Entity's (1) failure to detect or (2) detection but failure to require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement or termination rights under this BAA. This Section shall survive termination of this BAA.

h. United States Department of Health and Human Services. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health and Human Services for purposes of determining Covered Entity's compliance with HIPAA and the HIPAA regulations, provided that Business Associate shall promptly notify Covered Entity upon receipt by Business Associate of any such request for access by the Secretary of the United States Department of Health and Human Services, and shall provide Covered Entity with a copy thereof as well as a copy of all materials disclosed pursuant thereto, unless otherwise prohibited by law.

i. Training. Business Associate shall provide such training in the privacy and security of PHI to its Workforce (as that term is defined by 45 C.F.R. § 160.103) as is required for Business Associate's compliance with HIPAA, HIPAA Regulations, HITECH, and the MRPA.

## **6. Obligation to Provide Access, Amendment and Accounting of PHI.**

a. Access to PHI. Business Associate shall make available to Covered Entity, in the time and manner designated by the Covered Entity, such information as necessary to allow Covered Entity to meet its obligations under the HIPAA Regulations, PHI contained in a Designated Record Set held by Business Associate as Covered Entity may require to fulfill Covered Entity's obligations to provide access to, and copies of, PHI in accordance with HIPAA and the HIPAA Regulations and MRPA. In the event that any individual requests access to PHI directly from Business Associate, Business Associate shall notify Covered Entity within five (5) business days that such request has been made.

b. Amendment of PHI. Business Associate shall make available to Covered Entity PHI contained in a Designated Record Set held by Business Associate as Covered Entity may require to fulfill Covered Entity's obligations to amend PHI in accordance with HIPAA and the HIPAA Regulations. In addition, Business Associate shall, as directed by Covered Entity, incorporate any amendments to Covered Entity's PHI into copies of such information maintained by Business Associate. In the event that any individual requests amendment of PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five (5) business days.

c. Accounting of Disclosures of PHI.

1) Record of Disclosures. Business Associate shall maintain a record of all disclosures of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, except for those disclosures identified in Section 6(c)(2) below, including the date of the disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure which includes an explanation of the reason for such disclosure. Business Associate shall make this record available to Covered Entity upon Covered Entity's request. If Business Associate maintains records in electronic form, Business Associate shall account for all disclosures made during the period of three (3) years preceding the request. In the event that any individual requests an accounting of disclosures of PHI

directly from Business Associate, Business Associate shall notify Covered Entity within five (5) business days that such request has been made and provide Covered Entity with a record of disclosures within ten (10) days of an individual's request. If the request from an individual comes directly to Covered Entity and Covered Entity notifies Business Associate that it requires information from Business Associate in order to respond to the individual, Business Associate shall make available to Covered Entity such information as Covered Entity may require within ten (10) days from the time of request by Covered Entity.

2) Certain Disclosures Need Not Be Recorded. The following disclosures need not be recorded:

- a) disclosures to carry out Covered Entity's treatment, payment and health care operations as defined under the HIPAA Regulations;
- b) disclosures to individuals of PHI about them as provided by the HIPAA Regulations;
- c) disclosures for Covered Entity's facility's directory, to persons involved in the individual's care, or for other notification purposes as provided by the HIPAA Regulations;
- d) disclosures for national security or intelligence purposes as provided by the HIPAA Regulations;
- e) disclosures to correctional institutions or law enforcement officials as provided by the HIPAA Regulations;
- f) disclosures that occurred prior to the later of (i) the Effective Date or (ii) the date that Covered Entity is required to comply with HIPAA and the HIPAA Regulations;
- g) disclosures pursuant to an individual's authorization in accordance with HIPAA and the HIPAA Regulations; and
- h) any other disclosures excepted from the right to an accounting by the HIPAA Regulations.

## 7. Material Breach, Enforcement and Termination.

a. Term. This BAA shall become effective on the Effective Date of the Underlying Agreement and shall continue unless or until this BAA terminates, the Underlying Agreement terminates, or the Business Associate has completed performance of the services in the Underlying Agreement, whichever is earlier.

b. Termination. Either Party may terminate this BAA:

- 1) immediately if the other Party is finally convicted in a criminal proceeding for a violation of HIPAA or the HIPAA Regulations;

- 2) immediately if a final finding or stipulation that the other Party has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which the other Party has been joined; or completed performance of the services in the Underlying Agreement, whichever is earlier.
  - 3) pursuant to Sections 7(c) or 8(b) of this BAA.
- c. Remedies. Upon a Party's knowledge of a material breach by the other Party, the non-breaching Party shall either:
- 1) provide an opportunity for the breaching Party to cure the breach and end the violation or terminate this BAA and the Underlying Agreement if the breaching Party does not cure the breach or end the violation within ten (10) business days or a reasonable time period as agreed upon by the non-breaching party; or
  - 2) immediately terminate this BAA and the Underlying Agreement if cure is not possible.
- d. Injunctions. Covered Entity and Business Associate agree that any violation of the provisions of this BAA may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law or in equity, Covered Entity shall be entitled to seek an injunction or other decree of specific performance with respect to any violation of this BAA or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.
- e. Indemnification. This indemnification provision is enforceable against the Parties only to the extent authorized under the constitution and laws of the State of Texas. The Parties will indemnify, defend and hold harmless each other and each other's respective employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as "indemnified party," against all actual and direct losses suffered by the indemnified party and all liability to third parties arising from or in connection with any breach of this BAA or of any warranty hereunder or from any negligence or wrongful acts or omissions, including failure to perform its obligations under MRPA, HIPAA, the HIPAA Regulations, and the HITECH Act by the indemnifying party or its employees, directors, officers, subcontractors, agents or other members of its workforce.
- f. Breach of PHI and Breach of System Security. Business Associate will pay or reimburse Covered Entity for all costs and penalties incurred by Covered Entity in connection with any incident giving rise to a Breach of PHI and/or a Breach of System Security, including without limitation all costs related to any investigation, any notices to be given, reasonable legal fees, or other actions taken to comply with HIPAA, the HITECH Act, or any other applicable law or regulation, where (i) the PHI was in the custody or control of Business Associate when the Breach of PHI and/or Breach of System Security occurred, or (ii) the Breach of PHI and/or Breach of System Security was caused by the negligence or wrongful acts or omissions of Business Associate and its employees, directors, officers, subcontractors, agents or other members of its workforce.

## **8. General Provisions.**

- a. State Law. Nothing in this BAA shall be construed to require Business Associate to use or disclose PHI without written authorization from an individual who is a subject of the PHI, or

written authorization from any other person, where such authorization would be required under state law for such use or disclosure.

b. **Amendment.** Covered Entity and Business Associate agree to enter into good faith negotiations to amend this BAA to come into compliance with changes in state and federal laws and regulations relating to the privacy, security and confidentiality of PHI. Covered Entity may terminate this BAA upon thirty (30) days written notice in the event that Business Associate does not promptly enter into an amendment that Covered Entity, in its sole discretion, deems sufficient to ensure that Covered Entity will be able to comply with such laws and regulations.

c. **No Third Party Beneficiaries.** Nothing express or implied in this BAA is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

d. **Ambiguities.** The Parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with applicable law protecting the privacy, security, and confidentiality of PHI, including, without limitation, MRPA, HIPAA, the HIPAA Regulations, and the HITECH Act.

e. **Primacy.** To the extent that any provision of this BAA conflicts with the provision of any other agreement or understanding between the Parties, this BAA shall control.

f. **Destruction/Return of PHI.** Business Associate agrees that, pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I), upon termination of this BAA or the Underlying Agreement, for whatever reason,

1) It will return or destroy all PHI, if feasible, received from or created or received by it on behalf of Covered Entity that Business Associate maintains in any form, and retain no copies of such information which for purposes of this BAA shall mean all backup tapes. Prior to doing so, Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. An authorized representative of Business Associate shall certify in writing to Covered Entity, within thirty (30) days from the date of termination or other expiration of the Underlying Agreement, that all PHI has been returned or disposed of as provided above and that Business Associate or its subcontractors or agents no longer retain any such PHI in any form.

2) If it is not feasible for Business Associate to return or destroy said PHI, Business Associate will notify the Covered Entity in writing. The notification shall include a statement that the Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and the specific reasons for such determination. Business Associate shall comply with the Security Rule and extend any and all protections, limitations and restrictions contained in this BAA to Business Associate's use and/or disclosure of any PHI retained after the termination of this BAA, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

3) If it is infeasible for Business Associate to obtain, from a subcontractor or agent any PHI in the possession of the subcontractor or agent, Business Associate must provide a written explanation to Covered Entity and require the subcontractors and agents to agree to comply with the Security Rule and extend any and all protections, limitations and restrictions contained in this BAA to the subcontractors' and/or agents'

use and/or disclosure of any PHI retained after the termination of this BAA, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

g. Offshore Work. In performing the functions, activities or services for, or on behalf of Covered Entity, Business Associate shall not, and shall not permit any of its agents or subcontractors who receive Covered Entity's PHI to, transmit or make available any PHI to any entity or individual outside the United States without prior written consent of Covered Entity.

h. Integration. This BAA embodies and constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments and understandings pertaining to the subject matter hereof.

i. Governing Law. This BAA is governed by, and shall be construed in accordance with, applicable federal law and the laws of the State of Texas without regard to choice of law principles.

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

If to Covered Entity:  
The applicable U.T. Institution(s)'s Privacy Officer.

With copy to:  
The University of Texas System Privacy Officer  
Office of Systemwide Compliance

If to Business Associate: \_\_\_\_\_

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner herein above provided.

k. Privilege. Notwithstanding any other provision in this BAA, this BAA shall not be deemed to be an agreement by Business Associate to disclose information that is privileged, protected, or confidential under applicable law to the extent that such privilege, protection or confidentiality (a) has not been waived or (b) is not superseded by applicable law.

## APPENDIX THREE - 8

### GDPR DATA PROTECTION ADDENDUM

The purpose of this Addendum is to provide the terms related to privacy, confidentiality, and security which Preferred Supplier is required to adhere to under applicable data protection laws and regulations, in order to process, handle, and store Personal Information on behalf of Institutional Participant as set forth in this Agreement to which this **Rider 8** is attached (the "**Underlying Agreement**").

#### 1. Definitions

- (a) "GDPR" means the European Union (EU) General Data Protection Regulation, EU 2016/679 of the European Parliament and of the Council.
- (b) "Personal Information" means any and all data obtained directly from an individual or included in UT Party Records (regardless of format) that (i) identifies or can be used to identify, contact or locate a natural person, or (ii) pertains in any way to an identified natural person. Personal Information includes obvious identifiers (such as names, addresses, email addresses, phone numbers and identification numbers) as well as biometric data, "personal data" (as defined in the GDPR) and any and all information about an individual's computer or mobile device or technology usage, including (for example) IP address, MAC address, unique device identifiers, unique identifiers set in cookies, and any information passively captured about a person's online activities, browsing, application or hotspot usage or device location.
- (c) "Privacy Laws" means all applicable U.S. and international laws that regulate the Processing of Personal Information. In particular, "Privacy Laws" includes the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Family Educational Rights and Privacy Act (FERPA), the Identify Theft Enforcement and Protection Act (ITEPA), the GDPR and other applicable laws that specify privacy, security or security breach notification obligations that affect the Personal Information or the provision of the services by Preferred Supplier.
- (d) "Process" or "Processing" means any operation or set of operations which is performed upon Personal Information, whether or not by automatic means, such as collection, compilation, use, disclosure, duplication, organization, storage, alteration, transfer, transmission, combination, redaction, erasure, or destruction.
- (e) "Security Breach" means a "personal data breach" (as defined in the GDPR), a "breach of the security of a system" or similar term (as defined in any other applicable Privacy Law) or any other event that compromises the security, confidentiality or integrity of Personal Information.
- (f) "Sensitive Personal Information" is a subset of Personal Information, which due to its nature has been classified by law or by Institutional Participant policy as deserving additional privacy and security protections. Sensitive Personal Information consists of: (i) all government-issued identification numbers, (ii) all financial account numbers (including payment card information and health insurance numbers), (iii) individual medical records, genetic and biometric information, (iv) all data obtained from a U.S. consumer reporting agency (such as employee background investigation reports, credit reports, and credit scores), (v) user account credentials, such as usernames, passwords, security questions/answers and other password recovery data, (v) data elements that constitute "Special Categories of Data", as defined by Article 9 under the GDPR, namely "Personal Information" revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic

data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

- (g) "Services" means any and all services that Institutional Participant requests the Preferred Supplier to perform under the Underlying Agreement.
- (h) "Subprocessor" means any third party (including Preferred Supplier's affiliates, agents, and subcontractors) that provides any services to Preferred Supplier and that may have access (including inadvertent access) to any Personal Information.
- (i) "Transfer" means to disclose or otherwise make the Personal Information available to a third party (including to any affiliate or Subprocessor of Preferred Supplier), either by physical movement of Personal Data to such third party or by enabling access to Personal Data by other means.

## 2. Preferred Supplier Obligations

- (a) Preferred Supplier will only Process or Transfer Personal Information as authorized by Institutional Participant and as necessary to perform the Services detailed in the Underlying Agreement.
- (b) Preferred Supplier will promptly inform Institutional Participant in writing:
  - (i) if it is not in compliance with or cannot comply with any material term of this Addendum or of the Underlying Agreement, including any such term regarding the Services. In addition to any other rights of the Institutional Participant under this Addendum, the Underlying Agreement, or applicable law or regulation, in the event of such notice Institutional Participant at its sole discretion may (1) permit Preferred Supplier to use reasonable efforts to remedy any such non-compliance or (2) terminate Preferred Supplier's further Processing of Personal Information under this Addendum and the Underlying Agreement;
  - (ii) of any request for access to any Personal Information received from an individual who is (or claims to be) the subject of the data;
  - (iii) of any request for access to any Personal Information received by Preferred Supplier from any government agency, entity, or official (including any data protection agency or law enforcement agency);
  - (iv) of any other requests with respect to Personal Information received from Institutional Participant or other third parties, other than those set forth in the Underlying Agreement. Preferred Supplier understands that it is not authorized to and will not respond to the requests identified in items (ii), (iii), and (iv) above, unless Preferred Supplier is (1) explicitly authorized by Institutional Participant or (2) the response is legally required under a subpoena or similar legal document issued by a government agency, entity, or official that compels disclosure by Preferred Supplier.
- (c) If Services involve Preferred Supplier's collection of Personal Information directly from individuals, Preferred Supplier will provide the individuals with a clear and conspicuous written privacy notice, which notice will be reviewed by Institutional Participant before Preferred Supplier begins providing any Services set forth in the Underlying Agreement. The notice must comply with any legal requirements for the privacy notice in the jurisdictions where it is given, be translated into the languages used in connection with Preferred Supplier's interaction with the individuals, and indicate that Preferred Supplier is processing Personal Information as a processor on behalf of Institutional Participant.
- (d) If the Personal Information includes "protected health information" (or "PHI") as defined in the Health Insurance Portability and Accountability Act and 45 Code of Federal Regulations (CFR) Part 160 and

subparts A and E of Part 164 (collectively, HIPAA”)), then before Preferred Supplier may receive, maintain or create any Personal Information, Preferred Supplier will execute an appropriate Business Associate Agreement (“BAA”) as required by HIPAA with Institutional Participant. To the extent that the BAA conflicts with any term contained in this Addendum or the Underlying Agreement, the terms of the BAA will control.

- (e) Subject to Section 2(b) of this Addendum, Preferred Supplier will cooperate with Institutional Participant and with its affiliates and representatives in responding to inquiries, incidents, claims and complaints regarding Processing of Personal Information or as otherwise needed for Institutional Participant to (1) demonstrate compliance with applicable Privacy Laws and (2) respect individuals’ rights under those Privacy Laws.
- (f) Preferred Supplier must use reasonable efforts to stay informed of applicable legal and regulatory requirements for Processing of Personal Information. Preferred Supplier will ensure that its Processing complies with all applicable Privacy Laws, as well as Preferred Supplier’s and Institutional Participant’s privacy notices.

### 3. Confidentiality and Data Access

- (a) Personal Information is considered Confidential Information of Institutional Participant. Preferred Supplier will not use or disclose Personal Information received from or on behalf of Institutional Participant, its students, faculty, or staff, or any third party pursuant to the Underlying Agreement, (including any Personal Information provided by an Institutional Participant student directly to Preferred Supplier), except as permitted or required by the Underlying Agreement or this Addendum. If Preferred Supplier discloses any Personal Information to a Subprocessor Preferred Supplier will require the Subprocessor to comply with the same restrictions and obligations that are imposed on Preferred Supplier by the Underlying Agreement and this Addendum, including requiring each Subprocessor to agree to the same restrictions and obligations in writing.
- (b) Preferred Supplier will use the administrative, technical and physical security measures, including secure encryption in the case of electronically maintained or transmitted Personal Information, approved by Institutional Participant and that are at least as stringent as the requirements of UT System Information and Resource Use & Security Policy, UTS 165 at <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy>, to preserve the confidentiality and security of all Personal Information received from or on behalf of Institutional Participant, its students, faculty, or staff, or any third party pursuant to the Underlying Agreement.
- (c) Preferred Supplier has implemented and will maintain documented appropriate business continuity and disaster recovery plans to enable it to continue or resume providing Services in accordance with the Underlying Agreement in the event of any disaster or other adverse event affecting the Institutional Participant and/or Preferred Supplier.
- (d) Prior to allowing any employee, subcontractor, representative, agent, subprocessor, or other individual to process Personal Information, Preferred Supplier will (i) conduct an appropriate background check of the individual as permitted by law and in compliance with the Underlying Agreement, (ii) require the individual to execute an enforceable confidentiality agreement, and (iii) provide the individual with appropriate privacy and security training. Preferred Supplier will also continually monitor its employees, subcontractors, representatives, agents, subprocessors, or other individuals it provides or engages for compliance with the privacy and security program requirements.
- (e) Preferred Supplier, within five (5) business days after becoming aware of any successful security breach or use or disclosure of Personal Information in violation of this Agreement, will report to Institutional

Participant as much information as Preferred Supplier has available, including but not limited to: (i) the nature of the unauthorized use or disclosure, (ii) the Personal Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Preferred Supplier has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Preferred Supplier has taken or will take to prevent future similar unauthorized use or disclosure. Preferred Supplier will provide such other information, including written reports, as reasonably requested by Institutional Participant.

- (f) Upon request, Preferred Supplier will provide Institutional Participant with information about the Preferred Supplier's information security program. Preferred Supplier will also submit its data processing facilities for audit, during Preferred Supplier's reasonable business hours, which will be carried out in a mutually-agreeable manner no more than ten (10) days after such request. In the event that such audit reveals material gaps or weaknesses in Preferred Supplier's security program, Institutional Participant will be entitled to terminate Preferred Supplier's Processing of Personal Information, including, termination of this Addendum and the Underlying Agreement permanently, or until such issues are resolved.

**4. Return of Records**

Preferred Supplier agrees that no later than 30 days after expiration or termination of the Underlying Agreement or this Addendum for any reason, or within thirty (30) days after Institutional Participant's written request, Preferred Supplier will halt all access, use, or processing of Personal Information and will return or destroy UT Party Records and/or Personal Information as agreed to by the Parties in the Underlying Agreement.

**5. General Provisions**

This Agreement is governed by, and shall be construed in accordance with, applicable federal law and the laws of the State of Texas without regard to choice of law principles. To the extent that the Underlying Agreement conflicts with any term or provision contained in this Agreement, the terms of the Underlying Agreement will control.

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

If to Institutional Participant:  
The applicable U.T. Institution(s)'s Privacy/Data Protection Officer.

With copy to:  
The University of Texas System Privacy and Data Protection Officer  
Office of Systemwide Compliance  
210 West 7<sup>th</sup> Street  
Austin, Texas 78701

If to Preferred Supplier:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner herein above provided.

## APPENDIX FOUR

### 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 under this Agreement (collectively, the “**EIRs**”) comply with the applicable requirements set forth in Title 1, Chapter 213, *Texas Administrative Code*, and Title 1, Chapter 206, Rule §206.70, *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 Party, 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 Preferred Supplier fails or is unable to do so, UT Party may terminate this Agreement, and Preferred Supplier will refund to UT Party all amounts UT Party has paid under this Agreement within thirty (30) days after the termination date.

**APPENDIX FIVE**

**ELECTRONIC AND INFORMATION RESOURCES**  
**ENVIRONMENT SPECIFICATIONS**

*[insert the latest version of this form]*

**APPENDIX SIX**

**SECURITY CHARACTERISTICS AND FUNCTIONALITY OF  
PROPOSER'S INFORMATION RESOURCES**

*[insert the latest version of this form]*

## APPENDIX SEVEN

### **CERTIFICATE OF INTERESTED PARTIES (Texas Ethics Commission Form 1295)**

This is a sample of the Texas Ethics Commission's FORM 1295 – DISCLOSURE OF INTERESTED PARTIES. Contractor must use the Texas Ethics Commission electronic filing web page (at [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)) to complete the most current Disclosure of Interested Parties form and submit the form as instructed to the Texas Ethics Commission and UT System. **The Certificate of Interested Parties will be submitted to UT System by Preferred Supplier only when the Agreement resulting from this RFP is signed.**

CERTIFICATE OF INTERESTED PARTIES		FORM 1295	
Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.		OFFICE USE ONLY	
<b>1</b> Name of business entity filing form, and the city, state and country of the business entity's place of business.			
<b>2</b> Name of governmental entity or state agency that is a party to the contract for which the form is being filed.			
<b>3</b> Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.			
4		Nature of Interest (check applicable)	
Name of Interested Party	City, State, Country (place of business)	Controlling	Intermediary
<b>5</b> Check only if there is NO Interested Party. <input type="checkbox"/>			
<b>6 AFFIDAVIT</b> I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.			
_____ Signature of authorized agent of contracting business entity			
AFFIX NOTARY STAMP / SEAL ABOVE			
Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20 _____, to certify which, witness my hand and seal of office.			
_____ Signature of officer administering oath      Printed name of officer administering oath      Title of officer administering oath			
<b>ADD ADDITIONAL PAGES AS NECESSARY</b>			