

SECTION 1

INTRODUCTION

1.1 Description of The University of Texas System

The University of Texas System is comprised of System Administration and 15 institutions of higher education with campuses across the State of Texas whose missions are devoted to world class healthcare, teaching, research, and public service (collectively, “**UT System**”). UT System currently has six health institutions and nine academic facilities, making it one of the larger education systems in the United States. With an operating budget of \$14.6 billion, UT System has a current student enrollment exceeding 216,000. UT System employs more than 87,000 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 Brownsville (UTB)
- The University of Texas at Dallas (UTD)
- The University of Texas at El Paso (UTEP)
- The University of Texas – Pan American (UTPA)
- The University of Texas of the Permian Basin (UTPB)
- The University of Texas at San Antonio (UTSA)
- The University of Texas at Tyler (UTT)

UT System has established the University of Texas System Supply Chain Alliance (the “**Alliance**”) to conduct and coordinate strategic purchasing initiatives across UT System. The Alliance is also affiliated with various Texas 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 Sourcing Team**”) that has been tasked with executing Alliance purchasing initiatives. The Strategic Sourcing Team assembles a team of subject matter experts (“**SMEs**”) from participating institutions to assist in the development of each sourcing event and the evaluation of suppliers during the procurement process. SMEs are involved from the sourcing event’s inception and work with the Alliance and UT System to select the best value supplier(s). Any agreement resulting from this Request for Proposal, UTS/A45 (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 the supply of primary and secondary antibodies and related services more specifically described in **Section 5.4 ("Scope of Work")** of this RFP (collectively, the "**Antibodies**"). The successful Proposer(s) to whom business may be awarded is referred to in this RFP as the "**Preferred Supplier.**"

Specifically this RFP process should:

- Provide a comprehensive and guaranteed pricing structure for Antibodies;
- 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 seeks to identify the proposer(s) that will provide the most practical and cost effective business model to serve the needs of Institutional Participants as their preferred supplier for Antibodies. As such, the focus is on identifying all cost associated with the sale of Antibodies and working towards solutions that will minimize total cost of ownership. UT System hope to conclude an agreement that will provide Institutional Participants with access to Preferred Supplier's Antibodies at discounted prices and that will permit all parties to reduce procurement and transaction costs and improve business processes.

This RFP seeks to create synergies between UT System and the awarded Proposer(s). As such, the awarded Proposer(s) 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 SME's or the Strategic Sourcing Team. This presentation will allow the Alliance to clarify any technical, quality, or price based questions that may arise as part of the Proposer's response.

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

1.3 Scope of Opportunity

Based on historical spend data provided by UTMB, UTMDACC, UTSW and UTHSCH (the institutions that may participate in any agreement resulting from this RFP), the purchase of Antibodies by these named institutions in the aggregate is estimated at \$8 million annually. Other institutions ultimately may join in this sourcing event, which presumably would increase the estimated volume of Antibodies to which this RFP relates. This is only an estimate of possible future volume. No contract resulting from this RFP will guarantee a specific volume of services to a Preferred Supplier.

THE ABOVE FIGURES ARE ESTIMATES ONLY. VOLUMES 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, 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**, Central Standard Time, on **August 18, 2014** (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**”):

Jeff Bonnardel, Sourcing Specialist
UT System Supply Chain Alliance
Phone: (713) 745-0899
Email: jabonnardel@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**, Central Standard Time, on **July 31, 2014**. 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	July 16, 2014
Pre-Proposal Conference (ref. Section 2.6 of this RFP)	July 29, 2014 10:00 AM, Central Standard Time
Deadline for Questions/Concerns (ref. Section 2.2 of this RFP)	5:00 PM, Central Standard Time on July 31, 2014
Submittal Deadline (ref. Section 2.1 of this RFP)	3:00 PM, Central Standard Time on August 18, 2014
Selection of Finalists	Late September 2014
Finalists Interviews and Negotiations	October 2014
Anticipated Contract Award(s)	November 2014

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

1. If selected as a finalist, Proposer may be required to attend an interview session that includes a face-to-face meeting with an advance notice of no more than one week. The anticipated location of this activity is Houston, Texas.
2. If selected for contract award, Proposer should have its chief legal and business officers available for commencement of contract negotiations with 72 hours of notice of award. Such negotiations may take place face-to-face in order to expedite the contracting phase. The anticipated location of this activity is 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 Title 34, *Texas Administrative Code*, Section 20.13 (a), and has determined that subcontracting opportunities are probable under this RFP.

2.5.3 A HUB Subcontracting Plan (“**HSP**”) is required as part of Proposer’s proposal. The HSP will be developed and administered in accordance with UT System’s Policy on Utilization of Historically Underutilized Businesses attached as **APPENDIX TWO** and incorporated herein for all purposes.

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

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

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

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

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

2.6 Pre-Proposal Conference

UT System will hold a pre-proposal conference at **10:00 AM**, Central Standard Time, on July 29, **2014**. Proposers may attend the conference in one of the following two formats:

in person attendance located in the One Mid Campus Building at 7007 Bertner Ave. Suite 11.2339, TX 77030 (located in the Texas Medical Center); or

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

The Pre-Proposal Conference will allow all Proposers an opportunity to ask the Alliance, the Strategic Sourcing Team, and UT System HUB representatives relevant questions and clarify provisions of this RFP. Proposer should notify the UT System Contact **by no later than July 22, 2014**, whether it will attend the Pre-Proposal Conference, by emailing the UT System Contact at jabonnardel@mdanderson.org. Proposer must clearly state in which format it will attend. If the Proposer elects to attend the Pre-Proposal Conference in the webinar format, UT System will provide complete details and instructions (including personal computer requirements). If Proposer elects to attend the Pre-Proposal Conference in person, there will be a strict limit of two (2) individuals per Proposer.

SECTION 3

SUBMISSION OF PROPOSAL

3.1 Electronic Submission Notice

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

3.2 Proposal Validity Period

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

3.3 Terms and Conditions

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

3.3.1.1 Specifications, Additional Questions and Scope of Work (ref. **Section 5** of this RFP);

3.3.1.2 General Terms and Conditions (ref. **Section 4** of this RFP);

3.3.1.3. Proposal Requirements (ref. **APPENDIX ONE**); and

3.3.1.4 Notice to Proposer (ref. **Section 2** of this RFP).

3.4 Submittal Checklist

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

3.4.1 Signed and Completed Execution of Offer (ref. **Section 2** of **APPENDIX ONE**).

3.4.2 Responses to questions and requests for information in the Specifications, Additional Questions and Scope of Work Section (ref. **Section 5** of this RFP).

3.4.3 Signed and Completed Pricing 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** and **Attachment A** of this RFP).

SECTION 4
GENERAL TERMS AND CONDITIONS

4.1 General Information regarding Structure of Transaction and Terms and Conditions

The structure of the transaction UT System intends to enter into as a result of this RFP will be substantially similar to the following: (1) one Preferred Supplier Agreement (“**PSA**”) between UT System and Preferred Supplier; 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 Antibodies, as well as certain requests for information to be provided by Proposer as part of its proposal, are set forth below.

5.2 Minimum Requirements

5.2.1 Proposer must pay to the Alliance a quarterly administrative fee of 2% of the Total Net Sales made under the Agreement (ref. **Section 6.2** of this RFP).

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.

5.4 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 General Description. The following outlines the essential requirements for the Scope of Work. Proposer acknowledges and understands that this RFP provides a general description of the work to be performed and is not intended to be all inclusive. Proposer must be familiar with the requirements and general conditions that are essential to provide Antibodies, consistent with industry best practices and in accordance with all licensing, regulations, and professional standards.

The Agreement resulting from this RFP will provide Institutional Participants with access to the Antibodies at discounted prices and is intended to permit all parties to reduce procurement and transaction costs and improve business processes.

Preferred Supplier is expected to do at least the following:

- A. Provide a comprehensive and guaranteed pricing structure for Antibodies;
- B. Achieve cost savings for Institutional Participants, reflective of their aggregate purchasing volumes;
- C. Create a process for utilization of Preferred Supplier to meet the needs of the Institutional Participants for both routine and unique purchases;
- D. Improve overall customer satisfaction; and
- E. Enhance relationships between Preferred Supplier and Institutional Participants.

5.4.2 Preferred Supplier Account Support Team

Preferred Supplier will provide an account / sales support team with the authority and responsibility for the overall success of the Agreement within the Preferred Supplier's organization. Each Institutional Participant has varying and different support needs. The following outlines the minimum account management, sales and technical support to be provided to each Institutional Participant by Preferred Supplier. This individual and/or team will:

- A. Educate and train Institutional Participants on:
 - order and invoicing processes
 - website utilization
 - delivery operations
 - return and warranty procedures
 - use of Preferred Supplier's technology applications
 - customer service processes
- B. Collaborate with the UT System Contract Administrator to develop custom news articles and newsletters for use by the Strategic Sourcing Team;
- C. Meet technology requirements for integrating and interfacing with Institutional Participant's enterprise resource planning systems;
- D. Monitor the overall implementation of the Agreement at each Institutional Participant and provide periodic updates to the UT System Contract Administrator;
- E. Identify and foster process improvements to support contract growth initiatives and coordinate activities of Preferred Supplier and the Strategic Sourcing Team;
- F. Serve as the liaison to engage resources within Preferred Supplier's organization to troubleshoot and resolve problems;
- G. Notify the UT System Contract Administrator of any changes to the account;
- H. Conduct Quarterly Business Reviews ("QBRs") with the UT System Contract Administrator;

- I. Monitor agreed-upon Key Performance Indicators (“KPIs”) and provide early warning of any non-performance to Preferred Supplier’s management team and the UT System Contract Administrator;
- J. Be accessible 24 hours a day, seven days a week for emergencies;
- K. Answer any inquiry within four hours.

Within sixty (60) days after execution of the Agreement, Preferred Supplier will develop with each Institutional Participant a mutually agreed upon customized Work Plan to include, but not limited to: local performance measures; program goals; implementation plan; sales marketing plan; e-commerce integration plan; ordering method(s), invoicing method(s); and premises rules.

UT System will designate the individual who will serve as the UT System Contractor Administrator.

5.4.3 Pricing.

- A. 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; *provided, however*, Preferred Supplier may provide additional volume discounts and promotional discounts above those stated in the Agreement, and Preferred Supplier is encouraged to do so. Preferred Supplier will document all additional volume discounts and promotional discounts in written email correspondence to the UT System Contract Administrator.
- B. If Preferred Supplier offers to any federal, state or local governmental entity a price for Antibodies that is lower than the price established under the Agreement (excluding any additional volume discounts and promotional discounts provided on a periodic basis), the lower price will become the new price for all Institutional Participants within five (5) business days after the lower price was offered. Preferred Supplier will document in written email correspondence to the UT System Contract Administrator all such occurrences of such lower prices being offered , and all such lower pricing will be incorporated into and made a part of the Agreement for all purposes once so documented.
- C. 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. All prices will be quoted on an FOB destination basis, shipping prepaid.
- D. Preferred Supplier and the UT System Contract Administrator will review all price structures for Antibodies on a quarterly basis during each QBR. Preferred Supplier’s initial and subsequent pricing will be benchmarked by the Strategic Sourcing Team for market competitiveness. Preferred Supplier agrees to negotiate in good faith to adjust pricing if necessary to remain competitive. Should pricing or configuration for products listed in the Agreement change during such quarterly reviews, such changes will be documented in a written amendment to this Agreement agreed to by Preferred Supplier and the UT System Contract Administrator.

5.4.4 Ordering.

- A. Preferred Supplier will provide one or more local or toll-free telephone numbers and a web-based ordering system, for Institutional Participants to use in submitting orders via telephone, fax or the internet. Preferred Supplier's facsimile and web-based ordering system will be available seven days a week, 24 hours per day.
- B. Preferred Supplier will provide next business day delivery for all orders placed between 8:00 am and 5:00 pm (local time).
- C. Each Institutional Participant will be responsible for its own process for ordering authorization and ordering method (e.g., manual purchase orders, telephone, facsimile, EDI, or via an internet-based ordering system).
- D. Preferred Supplier will accept Purchasing Card (P-card) orders at no additional fees or handling charges and will provide level III or higher data reporting.
- E. Preferred Supplier will maintain throughout the Agreement a web punch-out site designed specifically for UT System and Institutional Participants to allow end-users to access Preferred Supplier's ordering system. Preferred Supplier will customize its website to meet the local requirements of Institutional Participants, *provided, however*, this will be limited to customizations that can be accomplished using available features, without any programming being required, such as including Institutional Participant's logo on the website, if requested. The website will provide an intuitive process to identify, configure, and easily compose an order for submission. The website will be secure and will allow access only by individuals designated by Institutional Participants. Preferred Supplier will obtain UT System's express, written permission before using any logo or other intellectual property of UT System or any Institutional Participant on the website or any other materials. The web site will, at a minimum:
 - allow Institutional Participants to search Preferred Supplier's catalog based on key word, brand name, description, etc.;
 - provide Technical Data Sheet in pdf format (printable) with all the available information about applications of the antibody;
 - provide list price, discount information and contract pricing;
 - allow Institutional Participants to place an order on-line, inquire on orders, and check on product price and availability;
 - provide a secure means for storing procurement card information; and
 - provide tracking/status information after an order is submitted.

5.4.5 Delivery and Shipping.

- A. All Products will be delivered FOB Destination, shipping prepaid, unless otherwise agreed in writing.

- B. Preferred Supplier will deliver all Antibodies identified in a valid Purchase Order (PO) or P-Card Transaction (PCT) to the Institutional Participant that issued the PO or PCT within (1) two (2) business days after Preferred Supplier receives that Purchase Order or PCT, unless the product is unavailable, or (2) in accordance with a specific delivery schedule that is agreed to by Preferred Supplier and that Institutional Participant has documented in the PO or PCT.
- C. Preferred Supplier will be responsible for the delivery of products and equipment in first-class condition at the point of delivery, and in accordance with good commercial practice. All products will be extended “free shipping” with no handling or inside delivery charges. Any additional transportation fees will be waived such as: hazardous materials fees, fuel surcharges, dry ice charges, blue ice, etc. Preferred Supplier will be solely responsible for any loss or damage to Antibodies that occurs during shipment or prior to delivery of Antibodies to the ship address referenced in the Institutional Participant’s PO or PCT.
- D. Institutional Participant may, at its sole option and discretion, designate its own carrier for transportation of products purchase from Preferred Supplier. In such event, Institutional Participant will be responsible for and pay directly to its designated third party carrier all transportation charges incurred.
- E. Preferred Supplier will have the capability of tracking all in bound shipments and upon request will provide a shipment status report to the Institutional Participant.

5.4.6 Hazardous Materials and OSHA Communication Standards

- A. Preferred Supplier will provide Material Safety Data Sheets (MSDS) to the appropriate user(s).
- B. Preferred Supplier will retain title and/or ownership and responsibility for hazardous materials delivered in error. Within three (3) working days of notification, Preferred Supplier will retrieve hazardous materials delivered in error and will ensure proper coordination with Institutional Participant’s Environmental Health & Safety Office and will comply with Institutional Participant’s premises rules and requirements.
- C. Preferred Supplier will be responsible for providing its employees with chemical safety training mandated by OSHA’s Hazard Communication Standard.
- D. Preferred Supplier will provide Institutional Participant with safety/recall updates applicable to any equipment / products furnished under the Agreement.

5.4.7 Invoicing and Payment.

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

- B. Each Institutional Participant is solely responsible for the payment of any purchase orders or P-Card Transaction (PCT) it issues, and no other Institutional Participant will have any liability whatsoever relating to a purchase order or PCT issued by another Institutional Participant.

5.4.8 Warranty and Returns.

- A. Preferred Supplier will provide a 90-day, hassle-free return policy, without handling charges, return shipping charges, or restocking fees. To ensure prompt handling, Institutional Participants must obtain a return goods authorization number from Preferred Supplier and reference this number on return shipping documents. Returns made without the authorization number will be returned to Institutional Participants freight collect. Preferred Supplier reserves the right to reverse any credit issued to Institutional Participants for any product not returned after authorization and request by Preferred Supplier. Products to be returned will be picked up by Preferred Supplier within five (5) business days after notification, and Preferred Supplier will provide to Institutional Participant a written receipt confirming return of product at time of pick up.
- B. Preferred Supplier will provide a money-back guarantee on all Antibodies that fail to perform in accordance with specifications published by Preferred Supplier. In addition, Preferred Supplier will provide an additional credit of \$20 on future Antibody purchases by each researcher upon any material failure of Preferred Supplier's product. This \$20 credit will be provided only towards future Antibody purchases and is a onetime credit to each researcher for any Antibody that fails to perform.
- C. Preferred Supplier will accept Institutional Participant's return of a product if it does not meet Institutional Participant's or researcher handling requirements. For example, if product is delivered on dry ice that has expired, Institutional Participant may return the product at no cost.
- D. If Preferred Supplier fails to deliver, or erroneously delivers any products under the Agreement, Preferred Supplier will take immediate corrective action to make the correct delivery at no cost to Institutional Participant. Should any action cause visible damage to the products during transport, once notified by either the carrier or Institutional Participant, Preferred Supplier will immediately contact the Institutional Participant and make arrangements to inspect the damaged product and/or authorize a return of the product and ship a replacement.
- E. Preferred Supplier will track all returned shipments and upon request will provide a shipment status report to Institutional Participant.

5.4.9. Dated Products.

Products with a limited shelf life will be supplied with no less than the minimum remaining shelf life permitted under Preferred Supplier's standard inventory policies and procedures, but in no event with a remaining shelf life of less than six (6) months from the date of shipment.

5.4.10 Custom Products.

Upon agreement between Preferred Supplier and any Institutional Participant, Preferred Supplier may provide custom Antibody production services under the Agreement. Preferred Supplier will work in good faith with Institutional Participant and any researcher to complete custom work at a price competitive and fair for the work being performed by Preferred Supplier.

5.4.11 Management Reports.

Preferred Supplier will submit to the UT System Contract Administrator the written 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 minimum, the reports will provide sales to each Institutional Participant, with sales broken out product number, description, total units/quantity sold, product list price, discount percentage and net sales price, and total sales dollars. Preferred Supplier will report on a quarterly basis (unless otherwise expressly indicated below):

- Sales History Report: spend for each Institutional Participant by product for all sales for the current quarter and for total calendar year to date sales.
- Special Discount Pricing Report: sales made to each Institutional Participant for products sold at prices below those established per the Agreement
- HUB Reports: periodic reports as required by the HUB subcontracting plan, as applicable.
- Order History Report: showing, for each Institutional Participant: an up-to-date listing of products that have been ordered during the term of the Agreement; the date and status of each order (including the date of delivery); the quantity and pricing; and the contact information for the individual at the Institutional Participant who placed the order. This report to be furnished upon request
- Service level Report: TBD

5.4.12 Product Shows and Demonstrations.

At the discretion and request of the Alliance or any Institutional Participant, Preferred Supplier will hold at least one (1) annual product show to promote the purchase of products covered by the Agreement. The show will be no less than three (3) hours in length. Booth coverage will extend through the lunch hour. All costs associated with the show, including but not limited to room rental, tables/chairs/booths, audio visual, parking passes, food and beverages and signage, will be borne by Preferred Supplier. All reservations and coordination efforts with the rental facility will be the responsibility of Preferred Supplier. Additional breakout rooms/spaces for special presentations and/or training are welcome.

At the discretion and request of the Alliance or any Institutional Participant, Preferred Supplier will provide educational and technical demonstrations for the display of new technologies and products available under the Agreement, and these demonstrations will

be made widely accessible to Institutional Participant's research and academic faculty and staff.

5.4.13 Initial Contract Term and Extension

It is anticipated that the term of the Agreement would be seven (7) years, consisting of an initial term of five years, with a two-year renewal option by UT System.

5.5 **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. If Proposer needs to submit additional supporting information, refer to the supporting information in responses to the Proposer's Survey and attach supporting materials in a logical and clear manner. Any supporting information must be included in electronic form via the Ariba® e-Sourcing tool and must follow the following naming convention: (<Proposer Name> - <Question Number> - Response - <File Name>).

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

PROPOSER'S SURVEY
RFP UTS/A45- Antibodies

1.0 Company Profile

- 1.1 Provide your company's main address, telephone and fax number.
- 1.2 Provide your company's Federal Employer Identification Number (FEIN).
- 1.3 Provide your company's DUNS number.
- 1.4 Provide your company's main contact for this RFP including telephone number and email address.
- 1.5 Provide your company's legal structure (e.g., corporation, partnership, etc.).
- 1.6 For all individuals, groups, corporations, etc. that holds 25% or greater equity in the company list their name and their percentage (%) held.
- 1.7 Provide any details of all past or pending litigation or claims filed against your company that would affect your company's performance under an Agreement with UT System.
- 1.8 Has your company, or any of its parents or subsidiaries, ever had a Bankruptcy Petition filed in its name, voluntarily or involuntarily? If yes, specify the date, circumstances, and resolution.
- 1.9 Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity. If yes, specify date(s), details, circumstances, and prospects for resolution.
- 1.10 Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.
- 1.11 If requested, please indicate your company's agreement to provide the company's audited financial statement for the last two (2) years.
- 1.12 Please list all new all new accounts (customer name and location) established within last 6 months projected to exceed \$1 million in annual sales.

2.0 References

- 2.1 Provide a listing of at least three (3) current customers (healthcare or academic institutions, preferred) for whom you provide products and services of the type and kind required under this RFP. Your customer reference should include the company name; contact person including telephone number; e-mail address, scope of services, annual sales volume (\$), and a period of time for which work was performed.
- 2.2 If you did not provide your DUNS number as requested in response to question 1.3 above, please provide two financial references (1 trade reference and 1 financial institution/bank reference). List should include company name, mailing address, telephone number, FAX number, contact person and length of financial relationship.

3.0 Product Overview

- 3.1 How many pre-made primary antibodies does your company currently have available in your catalog?
- 0 – 1,000
 - 1,000 – 5,000
 - 5,000 – 10,000
 - 10,000 – 20,000
 - >20,000
- 3.2 How many pre-made secondary antibodies does your company currently have available in your catalog?
- 0 – 1,000
 - 1,000 – 5,000
 - 5,000 – 10,000
 - 10,000 – 20,000
 - >20,000
- 3.3 Of the Primary Antibodies produced, how many apply to Western Blot?
- 0 – 1,000
 - 1,000 – 5,000
 - 5,000 – 10,000
 - 10,000 – 20,000
 - >20,000
- 3.4 Of the Primary Antibodies produced, how many apply to Immunofluorescence?
- 0 – 1,000
 - 1,000 – 5,000
 - 5,000 – 10,000
 - 10,000 – 20,000
 - >20,000
- 3.5 Of the Primary Antibodies produced, how many apply to ELISA?
- 0 – 1,000
 - 1,000 – 5,000
 - 5,000 – 10,000
 - 10,000 – 20,000
 - >20,000
- 3.6 Of the Primary Antibodies produced, how many apply to Immunoprecipitation?
- 0 – 1,000
 - 1,000 – 5,000
 - 5,000 – 10,000
 - 10,000 – 20,000
 - >20,000
- 3.7 Of the Primary Antibodies produced, how many apply to Flow Cytometry?
- 0 – 1,000
 - 1,000 – 5,000
 - 5,000 – 10,000
 - 10,000 – 20,000
 - >20,000
- 3.8 Of the Primary Antibodies produced, how many apply to other application not listed in the previous 5 questions?
- 0 – 1,000
 - 1,000 – 5,000
 - 5,000 – 10,000

- 10,000 – 20,000
- >20,000

3.9 Does your company offer custom antibody production for primary antibodies?

- Yes
- No

3.10 If an Alliance Institution member produces an in-house antibody with your company's custom antibody, please provide your policy for handling patent rights.

3.11 How many new Primary Antibodies did you add to your catalog in the past 12 months? Please specify by antibody type (Monoclonal or Polyclonal Antibody).

3.12 Of the Secondary Antibodies produced, how many apply to Western Blot?

- 0 – 1,000
- 1,000 – 5,000
- 5,000 – 10,000
- 10,000 – 20,000
- >20,000

3.13 Of the Secondary Antibodies produced, how many apply to Immunofluorescence?

- 0 – 1,000
- 1,000 – 5,000
- 5,000 – 10,000
- 10,000 – 20,000
- >20,000

3.14 Of the Secondary Antibodies produced, how many apply to ELISA?

- 0 – 1,000
- 1,000 – 5,000
- 5,000 – 10,000
- 10,000 – 20,000
- >20,000

3.15 Of the Secondary Antibodies produced, how many apply to Immunoprecipitation?

- 0 – 1,000
- 1,000 – 5,000
- 5,000 – 10,000
- 10,000 – 20,000
- >20,000

3.16 Of the Secondary Antibodies produced, how many apply to Flow Cytometry?

- 0 – 1,000
- 1,000 – 5,000
- 5,000 – 10,000
- 10,000 – 20,000
- >20,000

- 3.17 Of the Secondary Antibodies produced, how many apply to other application not listed in the previous 5 questions?
- 0 – 1,000
 - 1,000 – 5,000
 - 5,000 – 10,000
 - 10,000 – 20,000
 - >20,000
- 3.18 How many new Secondary Antibodies did you add to your catalog in the past 12 months? Please specify by antibody type (Monoclonal or Polyclonal Antibody).
- 3.19 Does your company offer custom antibody production for secondary antibodies?
- Yes
 - No
- 3.20 Does your company offer companion products that complement the antibody products available?
- Yes. If yes, please provide an overview of these products.
 - No
- 3.21 Does your company offer control extracts to complement the antibody products?
- Yes
 - No
- 3.22 Do your products come with an expiration date?
- Yes
 - No
- 3.23 Will your company offer the Alliance any type of quality guarantees for Antibodies purchased?
- Yes. If yes, please describe all quality guarantees your company is willing to extend on Antibodies purchased?
 - No

4.0 Account Management

- 4.1 Will your company assign a designated account manager(s) to assume overall responsibility for the work to be performed for UT System?
- Yes. If yes, provide a project-staffing plan including resumes for all proposed “key” staff members who will be assigned to this account and defining their role in supporting the UT System account.
 - No
- 4.2 Indicate the amount of time (%) that the account manager(s) will allocate to managing and supporting the UT System account.
- 100%
 - 75% - 99%
 - 50% - 74%
 - <50%
- 4.4 Provide an organization chart that identifies the proposed Sales support for each Institutional Participant; include their length of service with the company and any special training they have received.

- 4.5 Provide your criteria for hiring including screening, criminal background checks, or any other means of verification of employee information, or explain other means for ensuring the integrity and suitability of the Proposer's employees.
- 4.6 Identify the staff/personnel resources outside of your company that you typically engage to assist in performing the work contemplated under this RFP and the role they play in performing the services.
- 4.7 Do you have a standard code of ethics for sales staff? If yes, please provide a copy?
- 4.8 Describe how you measure and evaluate performance of your sales personnel.
- 4.9 How is your sales staff rewarded for outstanding customer service and support?
- 4.10 Does your company operate a 'toll free' customer service support line? (If No, go to 4.12)
- Yes
- No
- 4.11 Can you describe the average call waiting time for telephone customer support?
- 4.12 What are the hours of operation for your company's customer support line?
- 4.13 Describe your training and development program for both full time and part-time personnel as it relates to customer service, policies and procedures, quality control, and general business operations.
- 4.15 If awarded a contract indicate the marketing efforts your company will undertake to promote the relationship with the Alliance and the benefits of the contract to the Institutional Participants?
- Electronic marketing material
- Distribution of marketing material on campus
- Kick-off Events
- Vendor Shows
- On-line tutorials
- Customer training
- Seasonal Promotions and Specials
- 4.16 Are there any other marketing efforts not listed above that your company is willing to offer?

5.0 Technology and Tools

- 5.1 Describe the state of e-commerce within your company and detail how Institutional Participants can benefit from your approach.
- 5.2 What systems (e.g., Oracle/PeopleSoft, SciQuest, etc.) have you successfully integrated your e-commerce solution?
- 5.3 Please indicate the web punch-out site functions that you will provide to UT System Institutional Participants: (check all that apply)
- Allow Institutional Participants to search Supplier's catalog based on key word, brand name, description, etc.;
- Provide List Price, Discount information and Contract Pricing;
- Allow Institutional Participants to place an order on-line, inquire on their order, and check product price and availability;
- Provide a secure means for storing procurement card information;
- Provide tracking/status information after an order is submitted;

- 5.5 Does your company have the ability to create a custom website portal containing a tailored catalog for the Alliance?
- 5.6 Does each user have a unique ID and Password to access your company's electronic ordering system?
- 5.7 Does your company provide an online order confirmation?
- 5.8 Can users place orders for multiple pre-approved ship-to addresses?
- 5.9 Can pre-defined order value limits be enforced by user ID?
- 5.10 Does your system provide customer with real time inventory status (available/backorder/out of stock)? If yes, please describe at what time(s) during the process inventory can be checked (i.e., product inquiry, placement of product in shopping cart; placement of order, etc.)
- 5.11 Can your company provide technical support 24 hours/ 7 days a week?
- 5.12 If no, please list the days of the week and hours that your company can provide technical support.
- 5.13 Does your website provide Technical Data Sheets in PDF format (printable) with all the available information about application of the antibody? ____Yes ____No
- 5.14 Please describe your company's technical support process and capabilities to handle technical questions about Antibodies?
- 5.15 Please detail the training, education requirements, and professional experience required for call center employees.
- 5.16 What percentage of the individuals in your technical call center have research experience?

6.0 Ordering

- 6.1 Which order methods does your company support?
- Phone
 - Fax
 - Internet
 - E-mail
- 6.2 Does your company allow online ordering for all your products? If not, indicate which products or services are excluded.
- 6.3 Do you require a minimum order value? If yes, please describe.
- 6.4 Are there any minimum order quantities per product? If yes, please describe any limitations, restrictions, or requirements
- 6.5 Can your company set pre-defined spending limits per user?
- 6.6 Does your company have the ability to accept credit card purchases via your website?
- 6.7 Please indicate which invoice methods you support. Check all that apply.
- paper invoice
 - in XML format via internet
 - sent via EDI

- 6.8 Does your company allow blanket orders to be placed to allow researchers to order their antibodies throughout the year via one purchase order?
- 6.9 Please indicate which EDI transaction sets you support.
- 6.10 Does your company have a process to monitor delivery times against service levels?
- 6.11 Will your company allow an Alliance institution to ship Antibodies via a pre-paid delivery solution?

7.0 Customer Support, Operations, Policies and Procedures

- 7.1 Provide details regarding your various Customer Support Programs.
- 7.2 Provide an overview of the various services and technical training programs your company can provide the Institutional Participants.
- 7.3 Describe your “after hours” operations, support and product availability/delivery.
- 7.4 Provide details as to how sales support and order placement continuity will be maintained when supplier’s key personnel are on vacations or holidays, or when illness or emergency strikes.
- 7.5 Will you provide a dedicated customer service representative and toll-free customer support line available 7 days/24 hours per day? If yes, will this be a U.S. based service center?
- 7.6 Describe your inventory capabilities and distribution model to support the multiple UT Alliance member locations across the State of Texas. Provide locations of warehouse/distribution facilities that will support the Institutional Participants.
- 7.7 Describe your company’s capacity to provide Institutional Participant with desk-top delivery to designated customer locations on their campuses. Identify any limitations, restrictions, or special requirements.
- 7.8 Describe the process your company uses to deliver products to customers in a timely manner. What is your order cut-off time for next day delivery?
- 7.9 How does your company validate orders for accuracy?
- 7.10 How does your company validate the invoice prices match the Agreement prices?
- 7.11 What system does your company have in place to manage back orders and substitutions? How is the Customer notified/updated?
- 7.12 What is your company's mechanism for communicating product shortages? Please explain.
- 7.13 Provide details of your return policy; what items are not acceptable for return?
- 7.14 Provide details of your process(es) for issuance of “credit memos”. Can paper credit memos be issued if using electronic invoices?
- 7.15 Explain how your company proposes to resolve any complaints, issues or challenges. Please detail your company's problem resolution process for customer complaints and concerns.

- 7.16 Describe any special programs that your company offers that will improve customer's ability to access Products, such as ship-from-stock availability, on-time delivery or other innovative strategies.
- 7.17 Does your company have a corporate approved "Disaster Continuity Plan"? If yes, please provide details outlining the type/severity of the disaster; recovery time; and operating functions/services.
- 7.18 Please describe programs you have in place to assist clients recovering from disasters.

8.0 Implementation Plan

- 8.1 Provide a detailed Start-up Implementation Schedule identifying key tasks and milestone commencing date of contract award through implementation, including readiness to process first order. Your response should clearly define both your and UT System's responsibilities and resources required during the implementation phase.
- 8.2 Outline your company's plan for marketing the Preferred Supplier Agreement to participating Institutional Participants.
- 8.3 Explain how your company will educate its management team and sales team about the Preferred Supplier Agreement.
- 8.4 Explain how your company will market and transition the Preferred Supplier Agreement into the primary offering to UT System Institutional Participants.
- 8.5 Describe any contract start- up or implementation risk you foresee and your plan to manage these risks

9.0 Reporting

- 9.1 Does your company have custom reporting capabilities? If yes, please describe capabilities.
- 9.2 Indicate which standard reports are available to Institutional Participants and to the Alliance Contract Administrator.. Include the frequency they can be made available and how these reports can be accessed
- 9.3 A requirement for this contract is to provide detailed reports on a quarterly basis. Please indicate your ability to provide the following reports. Check all that apply
 - Sales by Institutional Participant for products sold at prices below the prices set under the Preferred Supplier Agreement;
 - Sales by Institutional Participant for sales not under the Preferred Supplier Agreement
 - Order Fulfillment (percentage of orders filled completely within 2 days after order receipt)
 - Sales by custom order
 - Inbound freight cost
 - Percentage of returns by Institutional Participant;
 - Customer Satisfaction
- 9.2 A requirement for this contract is to provide detailed quarterly reporting on contract spend for purchases of Antibodies. Can your company support this requirement. If yes, please check all applicable parameters below whereby spend reports can be generated.
 - Institutional Participant

- Purchase Order Number
- End User/Cost Center
- Department
- Delivery Location
- Item/Catalog Number
- Description
- Purchase Price
- List Price
- Discount Percentage (%)
- Unit of Measure
- Quantity Purchased

9.3 Can user level access to reports be restricted to designated individuals?

9.4 Describe your capacity to report purchases of green products purchased by each Institutional Participant.

10.0 Quality Control

10.1 What safety measures does your company have in place for prevention, storage, and shipment of materials?

10.2 Does your company validate or QC each lot of Antibodies produced before shipping the product?

10.3 Please describe what measures your company takes to communicate to each Institution regarding any compromised materials and/or recalls.

10.4 Is your company ISO 9000 certified?

10.5 If yes, please list all ISO 9000 certifications your company currently holds and when they were first acquired.

10.6 What Good Manufacturing Practices (GMP) are performed at your company's Antibodies production facilities? Please provide an overview of these practices below.

10.7 What Good Laboratory Practices (GLP) are performed at your company's Antibodies production facilities?

10.8 Does your company provide actual data for the validation of your company's Antibodies?

10.9 Please detail your company's problem resolution process for customer complaints and concerns.

10.10 Please identify any challenges and/or difficulties you anticipate in providing services to UT System and how you plan to manage them; what assistance will you require from UT System.

11.0 Competitive Advantage

11.1 Please indicate any additional "value added" services or programs not otherwise asked or disclosed herein that should be considered during the evaluation process

11.2 Please provide any suggested improvements and alternative for doing business with your company that will make this arrangement more cost effective for your company and Institutional Participants.

- 11.3 Briefly describe your company's current advantage in the marketplace. Please provide only information not previously asked or disclosed herein.
- 11.4 Describe how your company would proactively approach generating additional cost savings for the Alliance's spend going forward. Please provide only information not previously asked or disclosed herein.
- 11.5 What percentage of the annual revenue is dedicated to research and development?
- < 1%
 - 1% - 4%
 - 5% - 10%
 - > 10%
- 11.6 Please identify any new product lines and or services you have brought to market in the past year and what is planned for 2015-2016 that will benefit our Institution's faculty and researchers?

12.0 Pricing

- 12.1 Please indicate that your company agrees to pay UT System a two percent (2%) Administration Fee for total sales volume of Institutional Participant Purchases
- 12.2 What is the initial period of time that your company will provide fixed pricing for Antibodies?
- 6 months
 - 12 months
 - 18 months
 - 24 months
 - No fixed pricing
- 12.3 For the fixed pricing time period indicated in Question 12.2, above, is your company willing to maintain fixed pricing for an equal increment of time after a price adjustment has occurred? For example, if the Fixed Pricing time period is twelve (12) months and a price adjustment were to occur after month 12 then, would Pricing be fixed and eligibility for an increase not occur until after month 24 and each twelve month increment thereafter?
- 12.4 Upon expiration of the initial fixed price period for Antibodies, will your company agree to a capped price escalations?
- 0% - 3%
 - 4% - 7%
 - 7% - 10%
 - > 10%
 - No Capped Pricing Offered
- 12.5 A requirement for this contract is that all products, including new products be extended "free shipping" with no handling or inside delivery charges. Please indicate all exceptions to the "free shipping" and your proposal to reduce cost on shipping and delivery.
- 12.6 Please indicate any additional delivery cost or service fees for "desk-top" delivery.
- 12.7 If a product is not available or discontinued, how will your company offer an equivalent product at the same contracted price or negotiated discount percentage?
- 12.8 Please state how your company will ensure and maintain price competitiveness for products under contract during the full term of the agreement. Indicate how you benchmark your pricing and

under what conditions to you pass along price decreases to the customer. If applicable, please provide examples.

12.9 As your company adds new products to its catalog, how will pricing discounts apply to these products?

12.10 Does your company offer any special pricing or discounts for new lab startups? If yes, please describe your special offering.

13.0 Incentives and Rebates

13.1 Please indicate your company's incremental sales volume growth rebate or incentive, and the method for calculation of the rebate/incentive

13.2 Please indicate any incentives offered for e-Commerce utilization by Institutional Participant (e.g., ordering; invoicing; payment; etc.)

13.3 Please indicate your company's offer for an early start-up or transition incentive if awarded a contract?

13.4 Please describe your company's proposed sales promotions plan

13.5 Please list and describe any other incentive your company offers to Institutional Participants.

13.6 Please indicate your company's early payment discount.

14.0 Historically Underutilized Businesses

In addition to your completion of the HSP (**Appendix Two**), please respond to the following:

14.1 Provide a clear statement of your company's commitment and plan to engage, utilize and partner with HUBs in the work under a contract between your company and UT System.

14.2 Describe your current subcontracts/partnering arrangements with HUB firms and the capacity which they are utilized in the delivery of your services

15.0 Green Purchasing and Sustainability

15.1 Green Initiative – Provide a brief description of your company's environmental initiatives, including in a list format any green products and the green certifications for each of those products that would be offered under this Agreement.

15.2 Recycling – Provide a brief description of your company's initiatives regarding contents of products provided under this Agreement. Include your business statement covering your position relative to sustainable business practices as it relates to reducing global warming.

15.3 Please see and complete **Exhibit 1 to Section 5.5**

Exhibit 1 to Section 5.5

1.0 Environmental Sustainability Questionnaire –Please complete the following

1.1 Please provide an overview of your environmental sustainability program. Your response to include any information, policy, etc., on environmentally friendly and sustainable furniture, manufacturing, recycling – reclaimed manufacturing, delivery vehicles, reforestation for wood conservation, etc.

1.2 What Policies are in place to monitor and manage your supply chain regarding environmental issues? Please check the items that apply.

- We apply environmental criteria when making purchasing decisions.
- We purchase “green” (recyclable, reusable, non-toxic, bio-degradable, and made from 100% post-consumer recycled materials) supplies, products and materials.
- We specify sustainable products and or locally manufactured products
- We specify products using Electronic Products Environmental Assessment Tool (EPEAT) standards
- We partner with sustainable suppliers or utilize suppliers who share in the sustainability commitment
- Our Director of Sustainability is researching industry best procurement practices

1.3 What type of sustainable packaging/shipping materials do you use? Please check the items that apply.

- Our packaging/shipping materials are recyclable
- Our packaging/shipping materials are reusable
- Our packaging/shipping materials are bio-degradable
- Our packaging/shipping materials are made from 100% post-consumer recycled materials

1.4 Does your company have a Green Transportation Plan for your operation? Please check the items that apply.

- We encourage carpooling, public transportation, and using other alternative modes of transportation
- We subsidize public transportation for employees
- We are developing a Green Transportation Plan
- We have an established Green Transportation Plan (Describe below)

- We offer flexible hours, telecommuting or a compressed work week
- We utilize teleconference, video conference, WebEx or GoTo Meetings
- We purchase carbon offsets
- We own electric, hybrid, or E-85 fueled vehicles
- We rent hybrid vehicles

1.5 What does your company do to minimize the environmental costs associated with shipping? Please check the items that apply.

- We are evaluating what the company can do to minimize the environmental costs associated with shipping
- We combine deliveries with customer visits
- We consolidate deliveries
- We use bike couriers for local delivery

- We utilize electronic communications and electronic transfer of documents. E-mail, fax and Portable Document Format (PDF)
- Our packaging and shipping materials are reused until they eventually get recycled
- We have established a sustainability plan that minimizes the need for shipping (Describe below)
- We specify products that can be purchased within a 500 mile radius of the delivery location

1.6 Does your company have an environmental policy statement? Please check the items that apply.

- We are developing an environmental policy statement
- Our environmental policy statement consists of a commitment to promote environmental stewardship
- Our environmental policy statement describes our company's Sustainability Initiative
- We have formed an oversight committee to ensure the success of our environmental policy
- Our environmental policy statement describes how our company explores opportunities to work with communities, governments and non-governmental and professional organizations to help articulate, teach and advance the principles of sustainability
- We are developing an environmental policy statement
- Our environmental policy statement consists of a commitment to promote environmental stewardship
- Our environmental policy statement describes our company's Sustainability Initiative
- We have formed an oversight committee to ensure the success of our environmental policy
- Our environmental policy statement describes how our company explores opportunities to work with communities, governments and non-governmental and professional organizations to help articulate, teach and advance the principles of sustainability

1.7 Has your company ever been cited for non-compliance of an environmental or safety issue? Please check the item that applies.

- No, my company HAS NOT been cited for non-compliance of an environmental or safety issue
- Yes, my company HAS been cited for non-compliance of an environmental or safety issue. If yes, please provide details

1.8 What programs do you have in place, or planned for promoting resource efficiency? (i.e. an environmental or waste audit)? Please check the items that apply.

- We recycle consumables, reduce waste and practice energy reduction when possible
- We are developing a recycling program
- We utilize a formal energy management system
- We are a member of various environmental organizations
- We have formed a Sustainability Committee to identify sustainable solutions for our company

- We have a company-wide Recycling Program
- Our Director of Sustainability initiates and supports sustainability efforts
- We have performed an environmental or waste audit
- We are recognized by peers and environmental organizations for providing leadership in sustainability
- We are a carbon-neutral company

1.9 Does your company have web-based materials available documenting your “Green” initiatives? Please check the items that apply.

- We are developing web-based documentation of “Green” initiatives
- Our website includes “Green” reference information
- Our website contains an environmental policy statement
- Our website includes materials that document company’s “Green” initiatives
- Our website contains our company’s Sustainability Report

- Yes, the manufacturer of the product that I am bidding/proposing HAS an environmental policy statement

1.10 If you are providing a product, does the manufacturer of the product that you are bidding/proposing have an environmental policy statement? Please check the item that applies.

- No, the manufacturer of the product that I am bidding/proposing DOES NOT have an environmental policy statement
- Yes, the manufacturer of the product that I am bidding/proposing HAS an environmental policy statement

1.11 If you are providing a product, has the manufacturer of the product that you are bidding/proposing ever been cited for non-compliance of an environmental or safety issue? Please check the item that applies.

- No, the manufacturer of the product that I am bidding/proposing HAS NOT been cited for non-compliance of an environmental or safety issue
- Yes, the manufacturer of the product that I am bidding/proposing HAS been cited for non-compliance of an environmental or safety issue

1.12 Has an environmental life-cycle analysis of the product that you are bidding/proposing been conducted by a certified testing organization, such as Green Seal? Please check the item that applies.

- No, an environmental life-cycle analysis of the product that I am bidding/proposing HAS NOT been conducted by a certified testing organization, such as Green Seal
- Yes, an environmental life-cycle analysis of the product that I am bidding/proposing HAS been conducted by a certified testing organization, such as Green Seal.

SECTION 6
PRICING SCHEDULE AND AFFIRMATION

6.1 Pricing Schedule

Proposer must submit as **Attachment A**, as part of its proposal, detailed prices for the Antibodies described in **Section 5.4** (Scope of Work) of this RFP. The prices must include all charges associated with providing the full scope of work.

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 Primary and Secondary Antibodies
RFP No.: UTS/A45

Ladies and Gentlemen:

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

The prices quoted in **Attachment A** to this RFP 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 2% 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”** means the total dollar amount of all sales of Antibodies that are made by Preferred Supplier to Institutional Participants, less credits, returns, taxes, and unpaid invoices. The administrative fee will be used by UT System to provide support for implementation, administration, monitoring, and management of the Agreement.

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 Ariba. Each Addendum must be acknowledged by Proposer prior to the Submittal Deadline and should accompany Proposer's proposal.

1.3 Public Information

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

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

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

request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under Sections 552.101, 552.110, 552.113, and 552.131, *Government Code*.

1.4 Type of Agreement

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

1.5 Proposal Evaluation Process

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

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

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

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

UT System reserves the right to (a) enter into an agreement for all or any portion of the requirements and specifications set forth in this RFP with one or more Proposers, (b) reject any and all proposals and re-solicit proposals, or (c) reject any and all proposals and temporarily or

permanently abandon this selection process, if deemed to be in the best interests of UT System. Proposer is hereby notified that UT System will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by UT System.

1.6 Proposer's Acceptance of Evaluation Methodology

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

1.7 Solicitation for Proposal and Proposal Preparation Costs

Proposer understands and agrees that (1) this RFP is a solicitation for proposals and UT System has made no representation written or oral that one or more agreements with UT System will be awarded under this RFP; (2) UT System issues this RFP predicated on UT System's anticipated requirements for the 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 Ariba® e-sourcing tool. Proposer should ensure that all documents are submitted electronically in accordance with the instructions in **Section 3.1** of this RFP.

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

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

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

Except as otherwise provided in this RFP, no proposal may be changed, amended, or modified after it has been submitted to UT System. However, a proposal may be withdrawn and resubmitted at any time prior to the Submittal Deadline. No proposal may be withdrawn after the Submittal Deadline without UT System's consent, which will be based

on Proposer's submittal of a written explanation and documentation evidencing a reason acceptable to UT System, in UT System's sole discretion.

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

SECTION 2

EXECUTION OF OFFER

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

- 2.1** By signature hereon, Proposer represents and warrants the following:
- 2.1.1 Proposer acknowledges and agrees that (1) this RFP is a solicitation for a proposal and is not a contract or an offer to contract; (2) the submission of a proposal by Proposer in response to this RFP will not create a contract between UT System and Proposer; (3) UT System has made no representation or warranty, written or oral, that one or more contracts with UT System will be awarded under this RFP; and (4) Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
 - 2.1.2 Proposer is a reputable company that is lawfully and regularly engaged in providing the 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-37

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.

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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)

SECTION 2
EXECUTION OF OFFER

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- 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.
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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.

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"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.
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- 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.
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means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.

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

RFP No.: UTS/A-37

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)

THE UNIVERSITY OF TEXAS SYSTEM ADMINISTRATION
September 2012

APPENDIX THREE

POLICY ON UTILIZATION HISTORICALLY UNDERUTILIZED BUSINESSES

Vendor/Commodities



**The University of Texas System
Office of HUB Development
Policy on Utilization of Historically Underutilized Businesses (HUBs)**

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**The University of Texas System
Office of HUB Development**

**POLICY ON UTILIZATION OF
HISTORICALLY UNDERUTILIZED BUSINESSES (HUBs)**

Introduction

In accordance with the Texas Government Code, Sections 2161.181-182 and Title 34, Section 20.13 of the Texas Administrative Code (TAC), The Board of Regents of the University of Texas System, acting through the Office of HUB Development shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction services, including professional and consulting services; and commodities contracts. The HUB Rules promulgated by the Texas Comptroller of Public Accounts (the “Texas Comptroller”), set forth in 34 TAC Sections 20.10-20.28, encourage the use of HUBs by implementing these policies through race-, ethnic- and gender-neutral means.

The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the following goals as specified in the State of Texas Disparity Study:

- **11.2% for heavy construction other than building contracts;**
- **21.1% for all building construction, including general contractors and operative builders contracts;**
- **32.7% for all special trade construction contracts;**
- **23.6% for professional services contracts**
- **24.6% for all other services contracts, and**
- **21% for commodities contracts.**

The University of Texas System shall make a good faith effort to meet or exceed these goals to assist HUBs in receiving a portion of the total contract value of all contracts that U. T. System expects to award in a fiscal year. The University of Texas System may achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161, Subchapter F.

NOTE:

In accordance with 34 TAC §20.13 (d) (1)(D)(iii), the goals above are the State of Texas HUB goals. For purposes of this procurement, the University of Texas System goals listed in the Special Instructions on page 10 will apply.

SUMMARY OF REQUIREMENTS
Historically Underutilized Business (HUBs) Subcontracting Plan

It is the policy of The University of Texas System and each of its component institutions, to promote and encourage contracting and subcontracting opportunities for Historically Underutilized Businesses (HUBs) in all contracts. Accordingly, The University of Texas System has adopted “**EXHIBIT H, Policy on Utilization of Historically Underutilized Businesses**”. The Policy applies to all contracts with an expected value of \$100,000 or more. The Board of Regents of The University of Texas System is the contracting authority.

1. In all contracts for professional services, contracting services, and/or commodities with an expected value of \$100,000 or more, The University of Texas System (“U. T. System” or the “University”) will indicate in the purchase solicitation (e.g. RFQ, RFP, or CSP) whether or not U. T. System has determined that subcontracting opportunities are probable in connection with the contract. A HUB Subcontracting Plan is a required element of the architect, contractor or vendor Response to the purchase solicitation. The HUB Subcontracting Plan shall be developed and administered in accordance with the Policy. **Failure to submit a required HUB Subcontracting Plan will result in rejection of the Response.**
2. If subcontracting opportunities are probable, U. T. System will declare such probability in its invitations for bids, requests for proposals, or other purchase solicitation documents, and shall require submission of the appropriate HUB Subcontracting Plan with the Response.
 - a. When subcontracting opportunities are probable, and the Respondent proposes to subcontract any part of the work, the Respondent shall submit a **HUB Subcontracting Plan as prescribed by the Texas Comptroller** identifying subcontractors **[34 TAC §20.14 (d) (1)(A)(B)(C)(D)(i)(ii)(iii)(2)(3)(A)(B)(C)(D)(E)(F)(4)(A)(B)]**.
 - b. When subcontracting opportunities are probable, but the Respondent can perform such opportunities with its employees and resources, the Respondent’s HUB Subcontracting Plan shall include **the Self Performance HUB Subcontracting Plan, Section 3 – Self Performance Justification as the HUB Subcontracting Plan (HSP)**. **[34 TAC §20.14 (d)(5)(A)(B)(C)(D)]**.
3. If subcontracting opportunities are not probable, U. T. System will declare such probability in its invitations for bids, requests for proposals, or other purchase solicitation documents and shall require submission of the appropriate HUB Subcontracting Plan with the Response.
 - a. When subcontracting opportunities are not probable, and the Respondent proposes to perform all of the work with its employees and resources, the Respondent shall submit a HUB Subcontracting Plan that includes **the Self Performance HUB Subcontracting Plan, Section 3 – Self Performance Justification as the HUB Subcontracting Plan (HSP)**.
 - b. When subcontracting opportunities are not probable, but the Respondent proposes to subcontract any part of the work, the Respondent shall submit a **HUB Subcontracting Plan as prescribed by the Texas Comptroller** identifying subcontractors.
4. Respondents shall follow, but are not limited to, procedures listed in the Policy when developing a HUB Subcontracting Plan.
5. In making a determination whether a good faith effort has been made in the development of the required HUB Subcontracting Plan, U. T. System shall follow the procedures listed in the Policy. If accepted by the University, the HUB Subcontracting Plan shall become a provision of the Respondent’s contract with the University of Texas System. **Revisions necessary to clarify and enhance information submitted in the original HUB subcontracting plan may be made in an effort to determine good faith effort. Any revisions after the submission of the HUB Subcontracting Plan shall be approved by the HUB Coordinator.**
6. The University of Texas System shall reject any Response that does not include a fully completed HUB Subcontracting Plan, as required. **An incomplete HUB Subcontracting Plan is considered a material failure to comply with the solicitation for proposals.**

7. Changes to the HUB Subcontracting Plan. Once a Respondent's HUB Subcontracting Plan is accepted by U. T. System and becomes a provision of the contract between Respondent and U. T. System, the Respondent can only change that HUB Subcontracting Plan if (a) the Respondent complies with 34 TAC Section 20.14; (b) the Respondent provides its proposed changes to U. T. System for review; (c) U. T. System (including U. T. System's HUB Coordinator) approves Respondent's proposed changes to its HUB Subcontracting Plan; and (d) U. T. System and the Respondent amend their contract (via a writing signed by authorized officials of both parties) in order to replace the contract's existing HUB Subcontracting Plan with a revised HUB Subcontracting Plan containing the changes approved by U. T. System.
8. Expansion of Work. If, after entering into a contract with a Respondent as a result of a purchase solicitation subject to the Policy, U. T. System wishes to expand the scope of work that the Respondent will perform under that contract through a change order or any other contract amendment (the "Additional Work"), U. T. System will determine if the Additional Work contains probable subcontracting opportunities not identified in the initial purchase solicitation for that contract. If U. T. System determines that probable subcontracting opportunities exist for the Additional Work, then the Respondent must submit to U. T. System an amended HUB Subcontracting Plan covering those opportunities that complies with the provisions of 34 TAC Section 20.14. Such an amended HUB Subcontracting Plan must be approved by U. T. System (including U. T. System's HUB Coordinator) before (a) the contract may be amended by U. T. System and the Respondent to include the Additional Work and the amended HUB Subcontracting Plan and (b) the Respondent performs the Additional Work. If a Respondent subcontracts any of the additional subcontracting opportunities identified by U. T. System for any Additional Work (i) without complying with 34 TAC Section 20.14 or (ii) before U. T. System and that Respondent amend their contract to include a revised HUB Subcontracting Plan that authorizes such subcontracting, then the Respondent will be deemed to be in breach of its contract with U. T. System. As a result of such breach, U. T. System will be entitled to terminate its contract with the Respondent, and the Respondent will be subject to any remedial actions provided by Texas law, including those set forth in Chapter 2161, Texas Government Code, and 34 TAC Section 20.14. University may report a Respondent's nonperformance under a contract between that Respondent and U. T. System to the Texas Comptroller in accordance with 34 TAC Sections 20.101 through 20.108.
9. A Response may state that the Respondent intends to perform all the subcontracting opportunities with its own employees and resources in accordance with the Policy. However, if such a Respondent enters into a contract with U. T. System as a result of such a Response but later desires to subcontract any part of the work set forth in that contract, before the Respondent subcontracts such work it must first change its HUB Subcontracting Plan in accordance with the provisions of Section 7 above .
10. The University shall require a vendor to whom a contract has been awarded to report the identity and the amount paid to its subcontractors on a monthly basis using a **HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report (PAR)** as a condition for payment.
11. If the University determines that the successful Respondent failed to implement an approved HUB Subcontracting Plan in good faith, the University, in addition to any other remedies, may report nonperformance to the Texas Comptroller in accordance with 34 TAC, Section 20.14, (g)(1) related remedies of nonperformance to professional services firms, contractor, and vender implementation of the HUB Subcontracting Plan.
12. In the event of any conflict between this "Summary of Requirements" and the remainder of the HUB Policy, the remainder of the HUB Policy will control.
13. These requirements, including the attachments referred to above, may be downloaded over the Internet from <http://www.utsystem.edu/hub/hubforms.html>. For additional information contact Office of HUB Development, The University of Texas System Administration, 512/499-4530.

**Vendor/Commodities HSP
Summary of Attachments required from Respondents**

	Letter of Transmittal Page 7	Letter of HUB Commitment page 8	HUB Subcontracting Plan (HSP) Pages 10-17	Progress Assessment Report (PAR) Page 18
1. UT SYSTEM DETERMINES THAT SUBCONTRACTING OPPORTUNITIES ARE PROBABLE.				
1. A. Respondent Proposes Subcontractors: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are probable</u> .	X		X	
1. B. Respondent Proposes Self-Performance: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are probable</u> , but the Respondent can perform such opportunities with its employees and resources.	X		X	
2. UT SYSTEM DETERMINES THAT SUBCONTRACTING OPPORTUNITIES ARE NOT PROBABLE.				
2. A. Respondent Proposes Self-Performance: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are not probable</u> , but the Respondent can perform such opportunities with its employees and resources.	X		X	
2. B. Respondent Proposes Subcontractors: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are not probable</u> but the Respondent proposes to subcontract any part of the work.	X		X	
3. Indefinite Duration/Indefinite Quantity Contracts: Submit with initial qualifications. Attachments required from the Respondent prior to contract execution for each contract associated with a solicitation for miscellaneous services.		X	X	
4. Changes in the HUB Subcontracting Plan After Award: Attachments required from the Respondent to whom a contract has been awarded if it desires to make changes to the approved HUB Subcontracting Plan.			X	
5. Reporting: The Progress Assessment Report (PAR) is required with all payment requests. The submittal of this attachment is a condition of payment.				X

(RESPONDENT'S BUSINESS LETTERHEAD)

Date

Mr. Hopeton Hay
Director, HUB & Federal Small Business Program
The University of Texas System
702 Colorado, Suite 6.600
Austin, Texas 78701

Re: Historically Underutilized Business Plan for _____ (related services)
RFP No. _____

Dear Mr. Hay,

In accordance with the requirements outlined in the specification section "HUB Participation Program," I am pleased to forward this HUB Subcontracting Plan as an integral part of our response in connection with your invitation for Request for Proposals referencing the above project.

I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs). I also understand the State of Texas Annual Procurement Goal according to 34 Texas Administrative Code Section 20.13 and the goal as stated in Agency Special Instructions section of the HUB Subcontracting Plan, page 9.

Select one of the following:

_____ 23.4% for all building construction, including general contractors and operative builders contracts

_____ 32.7% for all special trade construction contracts

_____ 23.6% for professional services contracts

_____ 24.6% for all other services contracts

_____ 34% for commodities contracts

Subcontractors	# of Subcontractors	Total Subcontract \$ Value	Total Estimated %	% Minority Owned	% Woman Owned
HUB					
Non-HUB					
TOTAL					

I understand the above HUB percentages must represent Texas Comptroller HUB certification standards. For each of the listed HUB firms, I have attached a Texas Comptroller certification document, or, if the HUB is certified by another Texas Comptroller approved certifying agency, a copy of their approved certification document.

Should we discover additional subcontractors claiming Historically Underutilized Business status during the course of this contract we will notify you of the same. In addition, if for some reason a HUB is unable to fulfill its contract with us, we will notify you immediately in order to take the appropriate steps to amend this contractual obligation.

Sincerely,

(Project Executive)
cc: Contract Administrator

(BUSINESS LETTERHEAD)

Date

Mr. Hopeton Hay
Director HUB & Federal Small Business Program
The University of Texas System
702 Colorado, Ste. 6.600
Austin, TX 78701

Re: Historically Underutilized Business Plan for (Project Title)
Project Number ____-____

Dear Mr. Hay:

In accordance with the requirements outlined in the specification section "HUB Participation Program," I am pleased to forward this HUB Subcontracting Plan as an integral part of our proposal in connection with your invitation for request for proposals, referencing Project Number _____.

I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs).

Good Faith Effort will be documented by a two part HUB Subcontracting Plan (HSP) process. Part one (1) of the HSP submission will reflect self-performance with the appropriate sections completed per the instructions in Option One of the HSP Quick Checklist located on page 9 of The University of Texas Exhibit H Policy on Utilization of Historically Underutilized Businesses (HUBs).

As the scope of work/project is defined under this ID/IQ contract, part two (2) of the process will require a revised HUB Subcontracting Plan (HSP) and the Good Faith Effort will be documented per instructions in Attachment B (page 15-16) and Option Four of the HSP Quick Check List. The revised HUB Subcontracting Plan will be submitted to the HUB Coordinator prior to execution of each contract process. Documentation of subcontracted work will be provided with each pay request.

Sincerely,

Contractor's Name

cc: Project Manager

UT SYSTEM HUB SUBCONTRACTING PLAN (HSP)

QUICK CHECKLIST

Option One -

If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources, complete the following sections:

- Section 1 – Respondent and Requisition Information
- Section 2 a. – No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources
- Section 3 – Self Performing Justification
- Section 4 - Affirmation

Option Two -

If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:

- Section 1 – Respondent and Requisition Information
- Section 2 a. – Yes, I will be subcontracting portions of the contract
- Section 2 b. – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors
- Section 2 c. – Yes
- Section 4 – Affirmation
- GFE Method A (Attachment A) – Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- Attach copies of HUB certification documents

Option Three -

If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract* in place for five (5) years or less meets or exceeds the HUB Goal the contracting agency identified in the “Agency Special Instructions/Additional Requirements”, complete:

- Section 1 – Respondent and Requisition Information
- 2 a. – Yes, I will be subcontracting portions of the contract
- Section 2 b. – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
- Section 2 c. – No
- Section 2 d. – Yes
- Section 4 – Affirmation
- GFE Method A (Attachment A) – Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- Attach copies of HUB certification documents

Option Four -

If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract* in place for five (5) years or less does not meet or exceed the HUB Goal the contracting agency identified in the “Agency Special Instructions/Additional Requirements”, complete:

- Section 1 – Respondent and Requisition Information
- Section 2 a. – Yes, I will be subcontracting portions of the contract
- Section 2 b. – List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
- Section 2 c. – No
- Section 2 d. – No
- Section 4 – Affirmation
- GFE Method B (Attachment B) – Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- Section 4 – Affirmation
- Attach copies of HUB certification documents

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into “new” contracts.



HUB SUBCONTRACTING PLAN (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders contracts,
- 32.7 percent for all special trade construction contracts,
- 23.6 percent for professional services contracts,
- 24.6 percent for all other services contracts, and
- 21 percent for commodities contracts.

-- Agency Special Instructions/Additional Requirements --

In accordance with 34 TAC §20.13(d)(1)(D)(iii), the goals below are the applicable goals for the University of Texas System Administration only.

Other Service HUB Goal – 24.6%

Commodities HUB Goal – 34%

Special Trades HUB Goal – 32.7%

- Responses for Special Trades construction shall submit a HUB Subcontracting Plan (HSP) that meets the Good Faith Effort prescribed in Method B (Attachment B). See instructions for Option Four on the HSP Quick Check List. **No other Good Faith Effort method will be accepted.**
- Responses for Miscellaneous Services Agreements for indefinite duration/indefinite quantity – Two (2) part process:
 1. Submit a Letter of HUB Commitment (page 8) and a Good Faith Effort described in Option One.
 2. Submit a revised HSP prior to execution of each contract process as described in Option Four of Quick Check List.
- Respondents shall submit a completed HUB Subcontracting Plan (HSP) to be considered responsive. Failure to submit a completed HSP shall result in the bid, proposal or other expression of interest to be considered Non-responsive.
- Respondents who intend to Self-Perform all of their work shall submit an HSP for Self Performance HUB Subcontracting Plan (HSP).
- Prime Contractor Progress Assessment Report (PAR) shall be submitted with each request for payment as a condition of payment.
- Please note that phone logs are no longer acceptable documentation of Good Faith Effort. Only fax, email and certified letter are acceptable.

SECTION 1 RESPONDENT AND REQUISITION INFORMATION

a. Respondent (Company) Name: _____ State of Texas VID #: _____

Point of Contact: _____ Phone #: _____

E-mail Address: _____ Fax #: _____

b. Is your company a State of Texas certified HUB? - Yes - No

c. Requisition #: _____ Bid Open Date: _____

(mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION 2 SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

- a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:
 - **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b, of this SECTION and continue to Item c of this SECTION.)
 - **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If **No**, continue to SECTION 3 and SECTION 4.)
- b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract</u> * in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract</u> * in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs .
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>)

- c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.
 - **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
 - **No** (If **No**, continue to Item d, of this SECTION.)
- d. Check the appropriate box (Yes or No) that indicates whether the **aggregate expected percentage** of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract* in place with for five (5) years or less **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements".
 - **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
 - **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

**Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

SECTION 3 SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- Yes (If *Yes*, in the space provided below **list the specific page(s)/section(s)** of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- No (If *No*, in the space provided below **explain how** your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

SECTION 4 AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

 Signature Printed Name Title Date
(mm/dd/yyyy)

REMINDER: ➤ If you responded "*Yes*" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

➤ If you responded "*No*" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method B (Attachment B)

Enter your company's name here: _____	Requisition #: _____
---------------------------------------	----------------------

IMPORTANT: If you responded "No" to SECTION 2, Items c and d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanAttachment-B.doc>

SECTION B-1 SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing this attachment.

Item #: _____ Description: _____

SECTION B-2 MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If **Yes**, to continue to SECTION B-4.)
- No / Not Applicable (If **No** or **Not Applicable**, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3 NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you MUST comply with items a, b, c and d, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and minority or women trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and minority or women trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://www.window.state.tx.us/procurement/cmb/cmbhub.html>. HUB Status code "A" signifies that the company is a Texas certified HUB.
- b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	VID #	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more minority or women trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to minority or women trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>
- d. List two (2) minority or women trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Minority/Women Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

HSP Good Faith Effort - Method B (Attachment B) *Cont.*

Enter your company's name here: _____	Requisition #: _____
---------------------------------------	----------------------

SECTION B-4 SUBCONTRACTOR SELECTION

a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item #: _____ Description: _____

b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

Company Name	Texas certified HUB	VID # <small>(Required if Texas certified HUB)</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more minority or women trade organizations or development centers at least seven (7) working days prior to submitting its bid response to the contracting agency.

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

Section A	PRIME CONTRACTOR'S INFORMATION
Company Name:	_____ State of Texas VID #: _____
Point-of-Contact:	_____ Phone #: _____
E-mail Address:	_____ Fax #: _____

Section B	CONTRACTING STATE AGENCY AND REQUISITION INFORMATION
Agency Name:	_____
Point-of-Contact:	_____ Phone #: _____
Requisition #:	_____ Bid Open Date: _____ <small>(mm/dd/yyyy)</small>

Section C	SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION
1. Potential Subcontractor's Bid Response Due Date:	<p>If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than <input type="text" value="Select"/> Central Time on: _____ Date (mm/dd/yyyy)</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><i>In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, we must provide the same notice to two (2) or more minority or women trade organizations or development centers at least seven (7) working days prior to submitting our bid response to the contracting agency.</i></p> <p><i>(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)</i></p> </div>
2. Subcontracting Opportunity Scope of Work:	_____
3. Required Qualifications: <input type="checkbox"/> - Not Applicable	_____
4. Bonding/Insurance Requirements: <input type="checkbox"/> - Not Applicable	_____
5. Location to review plans/specifications: <input type="checkbox"/> - Not Applicable	_____

APPENDIX THREE

SAMPLE PREFERRED SUPPLIER AGREEMENT

for

PRIMARY AND SECONDARY ANTIBODIES

between

THE UNIVERSITY OF TEXAS SYSTEM

and

University of Texas Agreement Number: _____

This Preferred Supplier Agreement, dated effective as of _____, 2014 ("**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 certain primary and secondary antibodies and related services to UT System and 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, a 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.

"**Antibodies**" means the primary and secondary antibodies and related services described in **Rider 100**, Scope of Work.

“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 300** and incorporated for all purposes, to be executed by each Institutional Participant.

“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 five 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 products and services comparable to Antibodies, 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 products and 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 Antibodies available for purchase by Institutional Participants after _____, 2019 (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.
- The Administrative Fee provided for in **Rider 100** (Scope of Work) will apply to all Antibodies purchased hereunder during the Transition Period, and all related obligations of Preferred Supplier under this Agreement (such as to report sales volumes to UT System) will continue during such period.
- The Administrative Fee will apply to all future payments made by Institutional Participants for purchases of Antibodies initiated during this Agreement, including the Transition Period, even if such payments are made following expiration of 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.

Pursuant to Section 361.965, Texas Health and Safety Code, Preferred Supplier also certifies that it is in full compliance with the State of Texas Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in Chapter 361, Subchapter Y, Texas Health and 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. Preferred Supplier acknowledges that this Agreement may be terminated and payment may be withheld if this certification is 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
 201 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
 201 W. 7th Street
 Attn: Executive Vice Chancellor for Business Affairs
 Austin, Texas 78701-2982
 Fax: 512-499-4289
 Email: LegalNotices@utsystem.edu

and

The University of Texas System Supply Chain Alliance
 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 all Antibodies supplied 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 Antibodies supplied 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 100**, 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 4.11.1.1, 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 Party'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 UT System which error or overpayment is confirmed by Preferred Supplier, Preferred Supplier will refund UT System the full amount of such overpayments within thirty (30) days of such audit findings, or UT System, at its option, reserves the right to deduct such amounts owing to UT System from any payments due Preferred Supplier

SECTION 18 – Access to Documents:

To the extent applicable to this Agreement, in accordance with Section 1861(v)(l)(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, 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, 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, The University of Texas System and Institutional Participant. No policy will be canceled until after thirty (30) days' unconditional written notice to Institutional Participant. **All insurance policies** will be

endorsed to require the insurance carrier providing coverage to send notice to Institutional Participant thirty (30) 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.

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 UT System’s Conflicts of Interest Policy available at <http://www.utsystem.edu/policy/policies/int160.html>, UT System’s Standards of Conduct Guide available at <http://www.utsystem.edu/systemcompliance/>, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Preferred Supplier nor its employees, agents, representatives or subcontractors will assist or cause UT Party’s employees to violate UT System’s Conflicts of Interest Policy, provisions described by UT System’s Standards of Conduct Guide, or applicable state ethics laws or rules. Preferred Supplier represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of 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 500** 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 31st 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 600** 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**"). However, it is expressly agreed that UT Party will not provide to Preferred Supplier, and Preferred Supplier will never seek to access, any UT Party Records that contain personally identifiable information regarding any individual that is not available to any requestor under the *Texas Public Information Act*, Chapter 552, Texas Government Code, including "directory information" of any student who has opted to prohibit the release of their "directory information" as that term is defined under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("**FERPA**") and its implementing regulations. 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 Applicable Laws, or (c) otherwise authorized by UT Party in writing; (2) safeguard UT Party Records according to reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security, as well as Payment Card Industry Data Security Standards) that are no less rigorous than the standards by which Preferred Supplier protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that UT Party Records are safeguarded and the confidentiality of UT Party Records is maintained in accordance with all Applicable Laws and the terms of this Agreement; and (4) comply with UT Party Rules regarding access to and use of UT Party's computer systems, including UTS 165 at <http://www.utsystem.edu/bor/procedures/policy/policies/uts165.html>. At the request of UT Party, Preferred Supplier agrees to provide UT Party with a written summary of the procedures Preferred Supplier uses to safeguard and maintain the confidentiality of 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.

36.3 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**.

36.4 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.

36.5 Public Information. UT Party strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* ("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.

36.6 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.

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

SECTION 37 – Tax Exemption

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

SECTION 38 – 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 39 – 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 40 – 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 41 – 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 42 – 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 43 – 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 44 – 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 45 – 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 46 – 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 47 – 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 48 – 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 49 – 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, browsewrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that UT Party, or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided solely by Preferred Supplier.

SECTION 50 – 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 51 – Attachments:

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

- Rider 100** – Scope of Work
- Rider 200** – Pricing Schedule
- Rider 300** – Institutional Participation Agreement Form
- Rider 400** – Supplier Relationship Management
- Rider 500** – HUB Subcontracting Plan
- Rider 600** – Affirmative Action Compliance Program

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: _____

Signed: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX THREE- 300

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 _____, 2014 (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 a broad range of office products and services at discounted prices.

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 the "preferred supplier" for primary and secondary antibodies and related services.
- Organize and share benefits of the PSA at one or more “kick-off” events.
- Facilitate and promote at least one (1) Preferred Supplier products show per year, involving the Antibodies available for purchase under the PSA.
- Assist in the organization of technical presentations by Preferred Supplier.
- Permit Preferred Supplier, at its sole cost, to create and distribute sales and technical materials involving Antibodies 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 projects by Institutional Participant that might provide opportunities for supply of Preferred Supplier’s Antibodies 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 quarterly business reviews to review reports and commitments.
- Facilitate resolution of customer/supplier conflicts.

Institutional Participant's notice address and contact information is:

The University of Texas at _____
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:

The University of Texas _____

By: _____

Printed Name and Title: _____

Signature: _____

Street: _____

City: _____ State: _____ Zip: _____

Date: _____

Upon activation of this Institutional Participation Agreement, Institutional Participant's Primary Contact will receive notification of activation via email. Please return signed completed form to the UT System Supply Chain Alliance Strategic Sourcing Team at utsscainfo@mdanderson.org.

APPENDIX THREE - 400

SUPPLIER RELATIONSHIP MANAGEMENT

1.0 Supplier Relationship Management (“SRM”) Program Requirements

Quarterly Business Reviews (“QBRs”) of Preferred Supplier’s performance under this Agreement will be conducted by the UT System Contract Administrator on behalf of UT System. QBRs will be held four times annually and generally scheduled within sixty (60) days after the end of a calendar year quarter. Institutional Participants may elect to establish a local level SRM program by separate agreement with Preferred Supplier.

2.0 Quarterly Business Reviews

2.1 QBRs will consist of two major components:

- (a) Key Performance Indicators: Preferred Supplier’s performance will be determined as measured against the Service Level for each Performance Measure set forth in **Table 1** below.
- (b) Business Relationship Indicators: The Business Relationship Indicators (defined and set forth in **Table 2** below) are designed to confirm that the objectives and goals of the relationship between Preferred Supplier and the Alliance remain aligned and moving in a mutually beneficial direction.

Table 1: Key Performance Indicators

Performance Measure	Service Level	Variance from Service Level	Maximum Score	Definition and Measurement
Fill Rate for Routine delivery	98%	$\leq 1\%$ $>1\%-\leq 3\%$ $>3\%-\leq 5\%$ $>5\%$	15 8 5 0	Total number of items delivered on first delivery scheduled for Routine Delivery, compared to total number of items ordered for Routine Delivery, in each case aggregated across all Institutional Participants
Pricing Accuracy	99%	$\leq 1\%$ $>1\%-\leq 5\%$ $>5\%$	10 5 0	Proportion of items posted on supplier’s website reflecting accurate contract pricing, as confirmed by Alliance audit
Invoice Accuracy	98%	$\leq 1\%$ $>1\%-\leq 5\%$ $>5\%$	20 5 0	Proportion of invoices reflecting accurate contract pricing, as confirmed by Alliance audit

Administrative Fees & Incentive Payments	Not more than 5 days late	Y	10	Paid accurately and on time within contract schedules
		N	0	
Reports	Not more than 5 days late	Y	10	Submitted within contract schedule each month to the Alliance
		N	0	
Customer Satisfaction	90% of metric	$\leq 3\%$	35	Preferred Supplier will attain customer satisfaction score of 90% or greater. Survey content and distribution to be agreed with Preferred Supplier to ensure appropriate measures recorded.
		$>3\%-\leq 8\%$	25	
		$>8\%-\leq 15\%$	15	
		$>15\%$	0	

Table 2: Business Relationship Indicators

Performance Measure	Goal	Definition
Campus Outreach	Number and type of communications and events as defined in the Strategic Action Plan	Implement targeted communications and educational programs for end-users and purchasing personnel at each Institutional Participant to: a) foster cooperation and collaboration, b) increase understanding of the value of this Agreement, and c) create greater awareness of savings and savings opportunities.
Value Proposition	TBD	Report on savings, process changes, Improvements, and or innovations that have created increased value for the Institutional Participants
Research Support and Development	Two (2) Research Events annually as defined in the Strategic Action Plan	To implement an ongoing program to identify and deliver value-added services, educational programs, and collaboration opportunities for the Institutional Participant's research community

2.2 Business Relationship Indicators

Within sixty (60) days after the Effective Date of this Agreement, Preferred Supplier will submit for approval to the UT System Contractor Administrator a written Strategic Action Plan to achieve the goals in **Table 2**, above. At a minimum the Strategic Action Plan will define the specific strategies, tasks, responsibilities, reports, and timelines to be executed to achieve each goal.

2.3 QBR Meeting Reports and Metrics

Preferred Supplier will prepare and deliver to the UT System Contract Administrator for review at each QBR a report of the Key Performance Indicators and Business Relationship Indicators. The Key Performance Indicator report will be provided both in the aggregate, reflecting the total score

for all Institutional Participants, and also will be reported separately for each Institutional Participant.

An advance copy of the Key Performance Indicator Report will be sent to the UT System Contract Administrator no less than five (5) days prior to the scheduled QBR meeting date.

All report requirements may be modified by Institutional Participants within Preferred Supplier's reasonable capabilities to meet local requirements and service levels. Metrics may be revised upon mutual agreement between Preferred Supplier and the UT System Contract Administrator or the applicable Institutional Participant.

3.0 Preferred Supplier Evaluation and Rating

No less than once each quarter the UT System Contract Administrator will prepare and present to Preferred Supplier a scorecard of Preferred Supplier's performance based on their measured results under each of the KPIs for the preceding quarter. The scorecard will be presented and reviewed by Preferred Supplier and the UT System Contract Administrator during each QBR.

Beginning the second full calendar quarter after the Effective Date, Preferred Supplier must obtain a minimum composite score of 65, from UT System for each quarter during the remaining term of this Agreement.

4.0 Corrective Action Plan

The UT System Contract Administrator will notify Preferred Supplier during a QBR if Preferred Supplier receives a composite score of less than 65, during the previous quarter or a score of Zero (0) for any KPI.

Within fifteen (15) calendar days after receipt of such notice, Preferred Supplier will provide the UT System Contract Administrator with a written corrective action plan ("**CAP**") acceptable to the UT System Contract Administrator to address such unacceptable scores. At a minimum, the CAP will address Preferred Supplier's performance issues resulting in unacceptable score(s) and contain a root cause analysis of the problems causing such performance issue, proposed solutions to those problems, proposed process modifications to prevent recurrence of such problems, a time frame for Preferred Supplier's implementation of the proposed solutions and process modifications, and the person(s) who will be responsible for Preferred Supplier's implementation of the CAP. The CAP will be presented to the UT System Contract Administrator for concurrence prior to implementation. Concurrence with the CAP by the UT System Contract Administrator will not be unreasonably withheld or delayed. Concurrence with the CAP will not constitute a waiver by UT System of any rights regarding remedies.

5.0 Corrective Action and Remedies

If Preferred Supplier's implementation of the CAP does not result in a minimum composite score of 65 or greater or if two (2) or more KPI's remain with a score of Zero ("0") during each subsequent calendar quarter, UT System may, at its sole discretion:

- Permit Preferred Supplier to resubmit a further Corrective Action Plan, or
- Exercise other remedies available under this Agreement or applicable law.

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.