

# REQUEST FOR PROPOSAL

by

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

for

selection of a

## SUPPLIER

of

# NATIONAL HEALTH GROUP PURCHASING ORGANIZATION (GPO) SERVICES

RFP No. UTS/A82

**Submittal Deadline: January 19, 2021  
@ 3:00 PM, Houston Time**

Issued: December 16, 2020

Issued By: Christine Bradford,  
Associate Director,  
Sourcing & Contracts

## INTRODUCTION

### 1.1 Description of The University of Texas System and the Alliance

The University of Texas System is comprised of System Administration and 14 institutions of higher education with campuses across the State of Texas whose missions are devoted to world class healthcare, teaching, research, and public service (collectively, “**UT System**”). UT System is one of the larger education systems in the United States. With an operating budget of \$22.1 billion, UT System has a current student enrollment of nearly 240,000. UT System employs about 106,000 faculty and staff, making UT System one of the largest employers in the State of Texas.

UT System is comprised of the following institutions:

- The University of Texas Southwestern Medical Center (UTSW)
- The University of Texas Medical Branch at Galveston (UTMB)
- The University of Texas Health Science Center at Houston (UTHSCH)
- The University of Texas Health Science Center at San Antonio (UTHSCSA)
- The University of Texas MD Anderson Cancer Center (UTMDACC)
- The University of Texas Health Science Center at Tyler (UTHSCT)
- The University of Texas at Arlington (UTA)
- The University of Texas at Austin (UT Austin)
- The University of Texas at Dallas (UTD)
- The University of Texas at El Paso (UTEP)
- The University of Texas of the Permian Basin (UTPB)
- The University of Texas at San Antonio (UTSA)
- The University of Texas at Tyler (UTT)
- The University of Texas Rio Grande Valley (UTRGV)

UT System has established The UT System Supply Chain Alliance (the “**Alliance**”) to conduct and coordinate strategic purchasing initiatives across UT System. The Alliance essentially operates as UT System’s own, in-house group purchasing organization. The Alliance is also affiliated with various non-UT System institutions of higher education. At present, the Alliance has roughly 75 master agreements in place, under which spend by UT System institutions and Alliance affiliates is about \$468 million annually.

Through collaborative relationships, the Alliance seeks to combine supply chain and contracting activities and obtain best value goods and services while reducing total acquisition costs. The Alliance has created a team of supply chain professionals (the “**Strategic Services Group**”) that has been tasked with executing Alliance purchasing initiatives. The Strategic Services Group assembles a team of subject matter experts (“**SMEs**”) from participating institutions to assist in developing each sourcing event and evaluating suppliers during the procurement process. SMEs are involved from the sourcing event’s inception and work with the Alliance and UT System to select the best value supplier(s). Any agreement resulting from this Request for Proposal (this “**RFP**”) will be extended and marketed to all UT System institutions. Various non-UT System institutions that are affiliated with the Alliance may participate, too, in any agreement resulting from this RFP.

By participating in this RFP, proposer(s) (collectively, “**Proposer**”) agrees to extend all services and pricing to any Alliance member or affiliate 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 of national health GPO services more specifically described in **Section 5.4** (Scope of Work) of this RFP (collectively, the “**Services**”). The successful Proposer(s) to whom business may be awarded is referred to in this RFP as the “**Awarded GPO.**”

Specifically this RFP process should:

- Provide a comprehensive and guaranteed pricing structure for the Services;
- Leverage the aggregate purchasing volumes of affected institutions;
- Achieve cost savings for affected institutions;
- Improve overall customer satisfaction; and
- Enhance relationships between Awarded GPO and affected institutions.

UT System seeks to identify the proposer(s) that will provide the most practical and cost-effective business model to serve the needs of affected institutions as their national health GPO. UT System hopes to conclude an agreement that will provide affected institutions with access to the Services at discounted prices and that will permit all parties to reduce procurement and transaction costs and improve business processes.

Proposer should propose charges for the Services that will be guaranteed to be discounted as compared to the then-current market rates for comparable services available from other reputable providers of these services. UT System will work through the Alliance to team with the Awarded GPO to develop business processes that will foster a strong working relationship and produce a win-win for all parties.

The Awarded GPO will be enrolled in the Alliance’s Supplier Relationship Management (“**SRM**”) Program to monitor the Awarded GPO’s performance and pricing. The SRM Program will be administered by the Executive Director of the Alliance in coordination with a primary point of contact for each of UT System’s three largest health institutions – UTMDACC, UTSW and UTMB. UT System expects the Awarded GPO to work closely with the Alliance and each affected institution and produce benefits for all parties involved in the relationship.

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

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

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

## 1.3 Background and Scope of Opportunity

At present, UT System and individual UT System institutions have participation agreements

with a prominent national health GPO. These agreements are scheduled to expire on September 30, 2021, so Proposers should plan on providing their Services after this date, while also planning to support a reasonable transition of services from the existing GPO to the Awarded GPO, if the incumbent GPO is not the Awarded GPO.

The med/surg & physician preference item (PPI) spend of UTSW, UTMB and UTMDACC is currently \$761M out of a \$1.8B total annual spend for med/surg & PPI items, med/surg distribution, pharmacy wholesaler distribution, and purchased services through the incumbent GPO. The table below represents the current annual spend by these three institutions by category through the incumbent GPO:

Category	GPO Spend
Med/Surg & PPI Items	<b>\$761M</b>
Med/Surg Distribution	<b>\$124M</b>
Pharmacy Wholesaler Distribution	<b>\$926M</b>
Purchased Services	<b>\$42M</b>
Total Annual Spend	<b>\$1.8B</b>

Total annual spend by UTSW, UTMB and UTMDACC, including spend through the incumbent GPO, is approximately \$4.4B.

**The above figures do not include spend by other UT System institutions or Alliance affiliates.**

THE ABOVE FIGURES (AS WELL AS THOSE IN **SECTION 5.6** OF THIS RFP) 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**, Houston Time, on **January 19, 2021** (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**”):

Christine Bradford, Associate Director, Sourcing & Contracts  
UT System Supply Chain Alliance  
[Cmbradford1@mdanderson.org](mailto:Cmbradford1@mdanderson.org)

UT System specifically instructs all interested parties to restrict all contact and questions regarding this RFP to written communications forwarded to the UT System Contact. The UT System Contact must receive all questions or concerns no later than **5:00 PM**, Houston Time, on **January 6, 2021**. 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. UT System has secured the services of a third-party advisor, Huron Consulting Services LLC, to assist in the preparation of this RFP and in the analysis of submitted proposals.

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 Awarded GPO 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 Awarded GPO, 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;

- 2.3.1.2 Ability of UT System to comply with laws regarding purchases from persons with disabilities.
- 2.3.1.3 Whether Proposer has knowingly or intentionally failed to comply with Texas Government Code, Chapter 552, Subchapter J in a previous bid or contract and, if so, whether Proposer has taken adequate steps to ensure future compliance with the requirements of that Subchapter J (see **Section 2.6** of this RFP.)
- 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;
- 2.3.2.7 Proposer's diversity and inclusion activities; and
- 2.3.2.8 Proposer's contract forms, policies, exceptions and redlines as set forth in **Section 4** of this RFP.

## 2.4 Key Events Schedule

Issuance of RFP	December 16, 2020
Deadline for Indicating Interest in Attending Pre-Proposal Conference (ref. <b>Section 2.7</b> of this RFP)	December 22, 2020 5:00 PM Houston Time
Pre-Proposal Conference (ref. <b>Section 2.7</b> of this RFP)	January 5, 2021 10:00 AM Houston Time
Deadline for Questions/Concerns (ref. <b>Section 2.2</b> of this RFP)	January 6, 2021 5:00 PM Houston Time
Submittal Deadline (ref. <b>Section 2.1</b> of this RFP)	January 19, 2021 3:00 PM Houston Time
Selection of Finalists	March 2021
Finalists Interviews and Negotiations	May 2021
Anticipated Contract Award(s)	June 2021

**IMPORTANT NOTICE:** The Key Events Schedule represents many sourcing and contracting activities occurring within a short period of time. Proposer would need 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 must understand the importance of concluding a fair, final agreement with UT System (and with other affected UT System institutions) quickly, in order to meet the urgent needs of UT System institutions served by the Alliance. With this in mind, Proposer must:
  - (a) if requested by the Alliance, make its chief legal and business officers available, for concurrence in a “kick-off call” conducted in advance of any contract award, in a written, non-binding term sheet containing all key business terms;
  - (b) make its chief legal and business officers available for commencement of subsequent contract negotiations within 72 hours of notice of award;
  - (c) assign to the contract negotiations task its most senior and experienced legal counsel who has responsibility for contracting (with a strong preference for the Proposer’s general counsel) and who has significant business acumen and strategic focus; and
  - (d) assign to the contract negotiations task a strategic, senior business representative with ultimate decision-making authority on the contract, and who will remain directly engaged with UT System and immediately available and responsive to UT System throughout the negotiations.
3. Negotiations of the agreement resulting from any contract award usually will take place face-to-face in order to expedite the contracting phase, and the awarded Proposer must be prepared to participate in these discussions, with the intention of achieving final agreement on all key terms before the face-to-face discussions are concluded. If feasible, the anticipated location of this activity is Houston, Texas.
4. Proposer is requested to reference **Section 4.1** of this RFP (General Terms and Conditions) and must provide any forms, policies and redlines 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, Awarded GPO subcontracts any of its performance hereunder, Awarded GPO must make a good faith effort to utilize HUBs certified by the Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency. Proposals that fail to comply with the requirements contained in this **Section 2.5** will constitute a material failure to comply with advertised specifications and will be rejected by UT System as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP. Proposer acknowledges that, if selected by UT System, its obligation to make a good faith

effort to utilize HUBs when subcontracting hereunder will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting hereunder by Proposer is subject to review by UT System to ensure compliance with the HUB program.

2.5.2 UT System has reviewed this RFP in accordance with Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter D, Division 1, Section 20.285, and has determined that subcontracting opportunities may be possible under this RFP.

2.5.3 A HUB Subcontracting Plan (“**HSP**”) is required as part of Proposer’s proposal.

Each Proposer must complete and return the HSP in accordance with the terms and conditions of this RFP, including the requirements set forth in Utilization of Historically Underutilized Businesses attached as **APPENDIX TWO** and incorporated herein for all purposes. Proposals that fail to do so will be considered non-responsive to this RFP in accordance with Section 2161.252, Texas Government Code.

Awarded GPO will not be permitted to change its HSP unless: (1) Awarded GPO completes a newly modified version of the HSP that sets forth all changes requested by Awarded GPO, (2) Awarded GPO 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 Awarded GPO to conform to the modified HSP.

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

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

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

2.5.5 UT System may offer Proposer the opportunity to seek an informal review of its draft HSP by the UT System Office of HUB Development. If so, details regarding this opportunity will be provided in the Pre-Proposal Conference (ref. **Section 2.7** of this RFP) or by other means. This process of informal review is designed to help address questions Proposer may have about how to complete its HSP properly. Any concurrence in or comments on



the draft HSP by the UT System Office of HUB Development will NOT constitute formal approval of the HSP, and will NOT eliminate the need for Proposer to submit its final HSP to UT System, concurrently with its proposal, in accordance with the detailed instructions in this **Section 2.5**.

## 2.6 Requirements Related to the Texas Public Information Act

Chapter 552 of the *Texas Government Code* sets forth the Texas Public Information Act (TPIA). Subchapter J of the TPIA ("**Subchapter J**") applies to each state contract with a non-governmental contractor for the purchase of \$1 million or more of goods/services. The contractor under such a contract is required to provide to the governmental body contracting information (as defined in Section 552.003(7) of the *Texas Government Code*) related to the contract that is in the custody or possession of the entity and not maintained by the governmental body, if the governmental body receives a written request for that contracting information under the TPIA.

Notwithstanding any other provision of this RFP, UT System may not accept a proposal for an agreement or contract resulting from this RFP or award such an agreement or contract to a Proposer that UT System has determined has knowingly or intentionally failed to comply with Subchapter J in a previous bid or contract, unless UT System determines and documents that Proposer has taken adequate steps to ensure future compliance with the requirements of Subchapter J. **Correspondingly, each Proposer must identify in its proposal whether it has knowingly or intentionally failed to comply with Subchapter J in a previous bid or contract, and, if so, what adequate steps the Proposer has taken to ensure future compliance with the requirements of Subchapter J.** Failure of Proposer to provide the above information, or Proposer's provision of inaccurate information, will result in that Proposer's proposal being disqualified as nonresponsive to this RFP. UT System may also independently obtain and consider information for the purpose of making a determination regarding whether Proposer has knowingly or intentionally failed to comply with Subchapter J in a previous bid or contract and whether Proposer has taken adequate steps to ensure future compliance with the requirements of Subchapter J.

The requirements of Subchapter J, Chapter 552, *Texas Government Code*, may apply to any contracts or agreements resulting from this RFP, and any Awarded GPO under the Agreement resulting from this RFP (ref. **Section 2.3**) agrees that the Agreement can be terminated if Awarded GPO knowingly or intentionally fails to comply with a requirement of that Subchapter J.

## 2.7 Pre-Proposal Conference

UT System will hold a pre-proposal conference at **10:00 AM**, Houston Time, on **January 5, 2021**, with Proposers attending a webinar broadcast via the Internet utilizing the "Go-to-Meeting" webinar conference service.

The Pre-Proposal Conference will allow all Proposers an opportunity to ask the Alliance, the Strategic Services Group, and UT System HUB representatives relevant questions and clarify provisions of this RFP. Proposer should notify the UT System Contact **by no later than 5:00 PM Houston Time, on December 22, 2020**, whether it will attend the Pre-Proposal Conference, by emailing the UT System Contact. UT System will provide complete details and instructions (including personal computer requirements).

## **SECTION 3**

### **SUBMISSION OF PROPOSAL**

#### **3.1 Electronic Submission Notice**

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

#### **3.2 Proposal Validity Period**

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

#### **3.3 Terms and Conditions**

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

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

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

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

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

#### **3.4 Submittal Checklist**

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

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

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

- 3.4.3 Signed and Completed Pricing Affirmation (ref. **Section 6** of this RFP).
- 3.4.4 Signed and completed copy of the HUB Subcontracting Plan or other applicable documents (ref. **Section 2.5** of this RFP and **APPENDIX TWO**).
- 3.4.5 Responses to Proposer's Survey (ref. **Section 5.5** of this RFP).
- 3.4.6 Proposer's Price Schedule (ref. **Section 5.6** of this RFP).

## **SECTION 4**

### **GENERAL TERMS AND CONDITIONS**

#### **4.1 General Information regarding Structure of Transaction and Terms and Conditions**

It is anticipated that the term of any agreement resulting from this RFP (the “**Agreement**”) will be up to ten years in total, consisting of an initial term of five years, with UT System having the option to extend the term of the Agreement unilaterally for up to five additional years, on an annual basis, upon written notice given to Proposer at least 90 days in advance of the renewal term(s).

UT System typically includes in RFPs issued by the Alliance a template for the Agreement and requires Proposer to accept the template as written or submit redlines with proposed changes. In the present case, UT System expects Proposers will want to use some variation of their own standard forms for any Agreement with UT System and/or its individual institutions. (UT System anticipates that Proposer may want separate GPO participation agreements to be signed by UT System and by UT’s larger, individual health institutions.) At the same time, UT System institutions are agencies of the State of Texas, which means that various Agreement provisions are mandated by TX law to be included in any contract with Proposer. These provisions appear in **APPENDIX THREE – 1** (UT System’s Legally Required Provisions). Further, UT System anticipates that, in operating under the Agreement, the winning Proposer occasionally may be exposed to protected health information maintained by one or more affected institutions. **APPENDIX THREE – 2** is UT System’s standard, System-wide Business Associate Agreement (“**BAA**”) that addresses how any such information would be handled by Proposer.

In light of the above, Proposer must submit, as part of its proposal, the following:

- (a) an indication whether it accepts the proposed initial term and UT System renewal options referenced above;
- (b) all of the standard forms it proposes to use for the Agreement (whether with UT System itself and/ or with UT System’s individual institutions, and including agreements relating both to sourcing and contracting services, and to other, optional, value-added services), along with written copies of all Proposer’s policies that any participant in Proposer’s GPO would be required to adhere to;
- (c) its proposed redlines, if any, to each of **APPENDIX THREE – 1** and **APPENDIX THREE – 2**.

**UT System’s strong preference is to award a contract to a Proposer that accepts APPENDICES THREE – 1 and THREE – 2 as written. If Proposer takes exception to any terms or conditions set forth in these Appendices, Proposer must submit detailed redlines to these Appendices (as well as to the proposed Scope of Work contained in Section 5.4) as part of its proposal in accordance with Section 5.3 of this RFP. Proposer’s redlines will be reviewed by UT System and may result in disqualification of Proposer’s proposal as non-responsive to this RFP. If Proposer’s redlines do not result in disqualification of Proposer’s proposal, UT System may consider Proposer’s redlines when UT System evaluates the Proposer’s proposal. If Proposer does not submit redlines, Proposer will be deemed to have accepted all the UT System terms and conditions embodied in the Appendices, and the wording for the Scope of Work contained in Section 5.4 of this RFP, and there will be no further negotiation of these materials.**

## **SECTION 5**

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

#### **5.1 General**

The requirements and specifications for the Services, as well as certain requests for information to be provided by Proposer as part of its proposal, are set forth below.

It is the intent of the UT System to make a sole award to a Proposer as a supplier of national health GPO services involving procurement and contracting for goods and services. Such sole award will depend on Proposer's ability to meet the demands for the services and other requirements of this RFP for, in order of priority, UT System's three largest health institutions (UTMDACC, UTSW and UTMB), other UT System institutions, and Alliance affiliates, all at their respective locations. The sole award also would be subject to the right of UT System and affected institutions, in their sole discretion, to utilize other sources of procurement and contracting. Proposer should understand that awards may be made under this RFP to one of more other Proposers for services not directly involving procurement and contracting and which are characterized elsewhere in this RFP as optional value-added services.

#### **5.2 Minimum Requirements**

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

- 5.2.1 Proposer must be accredited, or must promptly qualify for accreditation following assessment by UT System, under UT System's GPO Accreditation Program. An overview of this Program appears at <https://www.utsystem.edu/offices/business-affairs/group-purchasing-organization-gpo-accreditation-program>.

#### **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 mentioned in **Section 4** of this RFP, Proposer must submit detailed redlines of proposed changes, as described in **Section 4**.
- 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 affected institutions.

- 5.3.4 By signing the Execution of Offer (ref. **Section 2 of APPENDIX ONE**), Proposer agrees to comply with Section 2252.908, Government Code (“**Disclosure of Interested Parties Statute**”), and 1 Texas Administration Code Sections 46.1 through 46.5 (“**Disclosure of Interested Parties Regulations**”), as implemented by the Texas Ethics Commission (“**TEC**”), including, among other things, providing the TEC and UT System with the information required on the form promulgated by the TEC and set forth in **APPENDIX FIVE**. Proposers may learn more about these disclosure requirements, including use of TEC’s electronic filing system, by reviewing information on the TEC website at [https://www.ethics.state.tx.us/whatsnew/FAQ\\_Form1295.html](https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html). **The Certificate of Interested Parties must be submitted by Awarded GPO upon delivery to UT System of a signed Agreement.**

## 5.4 Scope of Work

The details noted below will form the basis for the description of Services to be included in the Agreement concluded between UT System / affected institutions and the Awarded GPO.

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

**“UT System Contract Administrator”** means the Executive Director of the Alliance, who will be responsible for day-to-day management of the Awarded GPO – UT System relationship and will serve as the Awarded GPO’s primary contact for and on behalf of affected institutions on all matters relating to this Agreement. The UT System Contract Administrator will coordinate this oversight with a primary point of contact for each of UT System’s three largest health institutions – UTMDACC, UTSW and UTMB.

**“Group Purchasing Organization” or “GPO”** refers to an entity whose primary business function is to achieve cost savings by leveraging the combined purchasing power of its members to procure and contract for purchased goods and services.

- 5.4.2 General Description. UT System intends to select a single national health GPO that offers the services, resources, and tools to achieve UT System’s mission. In particular, UT System is seeking a GPO that will provide the best value in the GPO’s core offering involving sourcing and contracting (“**Core GPO Services**”), including, but not limited to, the following:

- Analytics and Informatics
- Contracting Portfolio
- Product Pricing & Financial Impact to UT System
- Technology
- Disaster (Hurricane) Preparedness and Mitigation
- COVID-19 & Pandemic Response
- Pharmacy
- Supply Chain
- Value Analysis Tools and Support
- Onsite / Dedicated Resources
- Market Intelligence & Delivery System Strategy

Through this RFP process, UT System seeks to understand and evaluate how each GPO, based on their individual strengths, assets, and vision for the future, would partner with UT System to achieve the following outcomes:

- Guaranteed best-in-class pricing for commodities and pharmaceuticals (including standardization and utilization capabilities).
- Autonomy to self-contract, as deemed necessary and without limitation, with the understanding that a reduction in volume could affect the level of GPO benefits from rebates and other incentives such as tiered pricing.
- Financial value with a focused emphasis on the price paid at procurement or acquisition and aggressive administrative fee share-back models. Rebates will also be pursued; however, they should be additive to the overall financial value proposition.
- Access to best-in-class subject matter expertise and technical resources within targeted contracting areas and for specific UT System initiatives; fees to access and utilize these resources must be transparent.
- Access to best-in-class analytics, reporting, tools and resources with a proven ability to capture and analyze data from disparate information systems and subsequently produce actionable information to be used by UT System's internal and/or external subject matter experts.
- Ability to interview and provide input for all dedicated resources and/or subject matter experts assigned to UT System.
- Access to a best-in-class alternate care portfolio, analytical tools, and field support resources (such as home health offerings and supporting tools) to ensure the successful development and implementation of a UT System alternate care strategy in order to provide the appropriate cost reduction services to the ambulatory, ancillary and physician practice markets affiliated with UT System.

UT System is not simply seeking a traditional GPO relationship. On the contrary, UT System is seeking a partner to co-develop and implement innovative, industry leading approaches to the strategic, organizational, and operational challenges facing UT System. While traditional GPO services and a basic GPO portfolio with best-in-class pricing for UT System's current and future members is an assumed deliverable, UT System will highly value applicants for their innovative capabilities and creativity in their proposed partnership structure, including but not limited to: joint-ventures, PPE sourcing solutions, regional GPO offerings etc.

In addition to the Core GPO Services described above, UT System is seeking best value in Proposer's supply of optional, value-added products and services that are related to, but different than, Core GPO Services, such as:

- Consulting on performance improvement and other procurement / purchasing matters
- Patient safety data and reporting
- Technology
  - Item master support
  - Procure-to-Pay (P2P) tools
  - Supply analytics and benchmarking
  - Enterprise Resource Planning (ERP) tools

- Private label products
- Regional GPO offerings
- Other services requested by UT System

**Importantly, however, clinical quality data tools are excluded altogether from the scope of this RFP.**

It is vital for all Proposers to incorporate realistic targets for projected spend into their Proposals.

#### 5.4.3 Campus Requirements.

5.4.3.1 Each affected institution will have its own unique set of rules and regulations for conducting business on its campuses. Awarded GPO will be responsible for compliance with each affected institution's rules and regulations, including any and all requirements for background checks, badging/credentialing, and security.

5.4.3.2 Awarded GPO will cause its representatives, agents, employees and permitted subcontractors (if any) to become aware of, fully informed about, and in full compliance with all applicable UT System's and affected institutions' rules and policies, including, without limitation, those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions; consideration for students, patients and their families as well as employees; parking; and security.

5.4.4 Awarded GPO-Alliance Account Support Team. Awarded GPO will provide a Senior Management Account Representative with the authority and responsibility for the overall success of the Agreement within Awarded GPO's organization. The Awarded GPO also will designate an individual assigned to the Alliance account responsible for: (i) receiving and providing ongoing communications by and between Awarded GPO and UT System; (ii) monitoring the overall implementation of the Agreement at each affected institution and providing updates to the UT System Contract Administrator (who will be designated by UT System as responsible for day-to-day management of the Awarded GPO – UT System relationship and who will serve as Awarded GPO's primary contact for and on behalf of affected institutions on all matters relating to the Agreement); (iii) identifying and fostering process improvements; (iv) serving as the liaison to engage resources with Awarded GPO's organization to troubleshoot and resolve problems; (v) organizing Periodic Business Reviews ("**PBRs**"); monitoring Key Performance Indicators ("**KPIs**") and (vi) providing early warning notices of service performance and other concerns to Awarded GPO's management team and the UT System Contract Administrator.

5.4.5 Management Reports. Awarded GPO will submit to the UT System Contract Administrator the reports listed below, within thirty (30) days after the close of each calendar quarter. The reports will be provided in electronic format or computer-generated spreadsheets, in accordance with a template to be provided by UT System. At a minimum, the reports will provide, for the current quarter and for total calendar year to date:

5.4.5.1 Spend Details: spend by each affected institution through the Awarded GPO, with spend broken out in greater detail as requested by UT System, including, e.g., lists of contracts activated by UT System institutions.



- 5.4.5.2 Fee Details: Administrative fees collected by the Awarded GPO (broken out for each supplier), and related share backs to affected institutions, as well as all other fees and charges, rebates, incentives, etc.
- 5.4.5.3 HUB Report: information required by the HUB subcontracting plan, as applicable, as well as updates on efforts by the Awarded GPO to achieve greater diversity and inclusion in its operations.
- 5.4.5.4 Contract Implementation Plan – schedule of completed and planned contract implementations, along with detailed savings metrics for each affected institution.
- 5.4.6 Awarded GPO Relationship Management (“SRM”). Awarded GPO and the UT System Contract Administrator will meet to conduct Periodic Business Reviews (“PBRs”) as further described in **APPENDIX THREE – 3**.

## 5.5 Proposer’s Survey

Proposer must complete the Proposer’s Survey (ref. **Attachment C**).

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 Jaggaer 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.

## 5.6 Market Basket Data Form and Financial Proposal Form (ref. **Attachments A and B**)

**Proposer must complete the Market Basket (Attachment A) and Financial Proposal (Attachment B) Forms.** The purpose of this section is to evaluate your proposed pricing.

### Attachment A

Attached is an Excel file with five tabs, including instructions for completion.

The market basket pricing submitted must be at the line-item level and include best available pricing for UT System (and commitment levels required, if applicable) and **be exclusive of any rebates or other incentives**. If a rebate is available on a certain product, please provide the necessary information within the “Notes” columns within the market basket file. The pricing submitted for UT System must be that for which GPO administrative fees are earned and a share-back is provided. **Do not include any distribution markups or cost minus in the pricing submitted.**

- Additional Instructions:
  - Please complete **all** relevant columns.
  - In the PPI and Commodity Market Basket, please provide appropriate GPO pricing only at the tier levels for which UT System currently qualifies.

- In the Pharmacy Market Basket, please provide GPO Acute Care Pricing (prior to wholesaler discount) only at the tier levels for which UT System currently qualifies. Do not include 340B or DSH pricing. Rebates and generic equivalent package sizes should be included in the notes.
- Indicate the tier level and commitment requirements for all provided pricing. Do not include any locally negotiated tiers, regional tiers, or any targeted future prices.
- All pricing provided should be based as of December 1st, 2020.
- Substitute products may only be used when exact matches are not available. If a substitute product is proposed, please provide requested information in the columns titled “GPO Contract Clinically Equivalent (Substitution).”
- Please state all assumptions for the pricing provided.
- There are two tabs in the market basket detailing annual med/surg spend by UTSW, UTMB and UTMDACC, by category and manufacturer. Please use this information when proposing market basket pricing to estimate UT System's tier levels as accurately as possible. Note: the table in the Attachment B section below shows **all** spend by UTSW, UTMB and UTMDACC, not just what goes through the incumbent GPO.
- **Additional instructions are included in the Excel Spreadsheet.**

### **Attachment B**

This form consists of a separate financial spreadsheet that Proposer must complete and submit as part of its Proposal. Utilizing the spreadsheet, Proposer must provide a summary of all financial aspects of its Proposal. Add additional rows if required to ensure that all financial aspects of the Proposal are included.

The following assumptions should be used when completing the financial Proposal (Attachment B):

Total Annual Spend by UTSW, UTMB and UTMDACC	\$4,400,000,000
Total Annual Spend by UTSW, UTMB and UTMDACC Through the Incumbent GPO	\$1,854,000,000
Percentage of Total Annual Spend by UTSW, UTMB and UTMDACC Through the Incumbent GPO	42.1%

**SECTION 6**  
**PRICE SCHEDULE AND AFFIRMATION**

**6.1 Price Schedule**

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

**6.2 Pricing Affirmation**

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

**Proposal of:** \_\_\_\_\_  
(Proposer Company Name)

**To:** The University of Texas System  
**Ref.:** Supplier of National Health GPO Services - **RFP No. UTS/A82**

Ladies and Gentlemen:

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

The prices quoted in in response to this RFP (see **Section 5.6**) will be Proposer's guaranteed pricing.

Proposer certifies and agrees that all prices proposed in Proposer's proposal have been reviewed and approved by Proposer's executive management.

Respectfully submitted,

**Proposer:** \_\_\_\_\_

**By:** \_\_\_\_\_  
(Authorized Signature for Proposer)

**Name:** \_\_\_\_\_

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

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

# APPENDIX ONE

## PROPOSAL REQUIREMENTS

### SECTION 1 GENERAL INFORMATION

#### 1.1 Purpose

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

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

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

#### 1.2 Inquiries and Interpretations

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

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

#### 1.3 Public Information

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

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

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

request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under Sections 552.101, 552.104, 552.110, 552.113, and 552.131, *Government Code*.

#### 1.4 Type of Agreement

Awarded GPO, 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 Awarded GPO 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 Awarded GPO.

UT System may make the selection of Awarded GPO on the basis of the proposals initially submitted, without discussion, clarification or modification. In the alternative, UT System may make the selection of Awarded GPO 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 Awarded GPO; 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 Awarded GPO is made, UT System may permit a Proposer to revise its proposal in order to obtain Proposer's best and final offer. In that event, representations made by Proposer in its revised proposal, including price and fee quotes, will be binding on Proposer. UT System will provide each Proposer within the competitive range with an equal opportunity for discussion and revision of its proposal. UT System is not obligated to select Proposer offering the most attractive economic terms if that Proposer is not the most advantageous to UT System overall, as determined by UT System.

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

and all proposals and re-solicit proposals, or (c) reject any and all proposals and temporarily or permanently abandon this selection process, if deemed to be in the best interests of UT System. Proposer is hereby notified that UT System will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by UT System.

## **1.6 Proposer's Acceptance of Evaluation Methodology**

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

## **1.7 Solicitation for Proposal and Proposal Preparation Costs**

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

## **1.8 Proposal Requirements and General Instructions**

- 1.8.1 Proposer should carefully read the information contained herein and submit a complete proposal in response to all requirements and questions as directed.
- 1.8.2 Proposals and any other information submitted by Proposer in response to this RFP will become the property of UT System.
- 1.8.3 UT System will not provide compensation to Proposer for any expenses incurred by Proposer for proposal preparation or for demonstrations or oral presentations that may be made by Proposer, unless otherwise expressly agreed in writing. Proposer submits its proposal at its own risk and expense.
- 1.8.4 Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFP in any way; or (iii) contain irregularities of any kind, are subject to disqualification by UT System, at UT System's sole discretion.
- 1.8.5 Proposals should be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet the requirements and specifications of this RFP. Emphasis should be on completeness, clarity of content, and responsiveness to the requirements and specifications of this RFP.
- 1.8.6 UT System makes no warranty or guarantee that an award will be made as a result of this RFP. UT System reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP when deemed to be in UT System's best interest. UT System reserves the right to seek clarification from any Proposer concerning

any item contained in its proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to UT System, at UT System's sole discretion. Representations made by Proposer within its proposal will be binding on Proposer.

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

## 1.9 Preparation and Submittal Instructions

### 1.9.1 Specifications and Additional Questions

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

### 1.9.2 Execution of Offer

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

### 1.9.3 Pricing Affirmation

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

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

### 1.9.4 Submission

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

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

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

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

Except as otherwise provided in this RFP, no proposal may be changed, amended, or modified after it has been submitted to UT System. However, a proposal may be withdrawn and resubmitted at any time prior to the Submittal Deadline. No proposal may be

withdrawn after the Submittal Deadline without UT System's consent, which will be based on Proposer's submittal of a written explanation and documentation evidencing a reason acceptable to UT System, in UT System's sole discretion.

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



## **SECTION 2**

### **EXECUTION OF OFFER**

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

- 2.1 By signature hereon, Proposer represents and warrants the following:
- 2.1.1 Proposer acknowledges and agrees that (1) this RFP is a solicitation for a proposal and is not a contract or an offer to contract; (2) the submission of a proposal by Proposer in response to this RFP will not create a contract between UT System and Proposer; (3) UT System has made no representation or warranty, written or oral, that one or more contracts with UT System will be awarded under this RFP; and (4) Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
  - 2.1.2 Proposer is a reputable company that is lawfully and regularly engaged in providing the subject goods and services.
  - 2.1.3 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform under the Agreement.
  - 2.1.4 Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances.
  - 2.1.5 Proposer understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in Section 4 of this RFP, under which Proposer will be required to operate.
  - 2.1.6 If selected by UT System, Proposer will not delegate any of its duties or responsibilities under this RFP or the Agreement to any sub-contractor, except as expressly provided in the Agreement.
  - 2.1.7 If selected by UT System, Proposer will maintain any insurance coverage as required by the Agreement during the term thereof.
  - 2.1.8 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. Proposer acknowledges that UT System will rely on such statements, information and representations in selecting Awarded GPO. If selected by UT System, Proposer will notify UT System immediately of any material change in any matters with regard to which Proposer has made a statement or representation or provided information.
  - 2.1.9 PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UT SYSTEM, INDEMNIFY, AND HOLD HARMLESS UT SYSTEM, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENT

ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF PROPOSER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROPOSER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.

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

- 2.2 By signature hereon, Proposer offers and agrees to comply with all terms, conditions, requirements and specifications set forth in this RFP.
- 2.3 By signature hereon, Proposer affirms that it has not given or offered to give, nor does Proposer intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its submitted proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting contracts, and Proposer may be removed from all proposal lists at UT System.
- 2.4 By signature hereon, Proposer certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, *Tax Code*, or that Proposer is exempt from the payment of those taxes, or that Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at UT System's option, may result in termination of any resulting contract or agreement.
- 2.5 By signature hereon, Proposer hereby certifies that neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, or anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in Section 15.01, et seq., *Business and Commerce Code*, or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
- 2.6 By signature hereon, Proposer certifies that the individual signing this document and the documents made a part of this RFP, is authorized to sign such documents on behalf of Proposer and to bind Proposer under any agreements and other contractual arrangements that may result from the submission of Proposer's proposal.
- 2.7 By signature hereon, Proposer certifies as follows:
- "Under Section 231.006, *Family Code*, relating to child support, Proposer certifies that the individual or business entity named in Proposer's proposal is not ineligible to receive the specified contract award and acknowledges that any agreements or other contractual arrangements resulting from this RFP may be terminated if this certification is inaccurate."
- 2.8 By signature hereon, Proposer certifies that (i) no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Proposer that is a sole proprietorship, the officers or directors of any Proposer that is a corporation, the partners of any Proposer that is a partnership, the joint venturers of any Proposer that is a joint venture or the members or managers of any Proposer that is a limited liability company, on one hand, and any member of the Board of Regents of the

University of Texas System or an employee of any component of The University of Texas System, on the other hand, other than the relationships which have been previously disclosed to UT System in writing; (ii) Proposer has not been an employee of any component institution of The University of Texas System within the immediate twelve (12) months prior to the Submittal Deadline; and (iii) no person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in Proposer's proposal or any contract resulting from this RFP (ref. Section 669.003, *Government Code*). All disclosures by Proposer in connection with this certification will be subject to administrative review and approval before UT System enters into a contract or agreement with Proposer.

- 2.9** By signature hereon, Proposer certifies that in accordance with Section 2155.004, *Government Code*, no compensation has been received for its participation in the preparation of the requirements or specifications for this RFP. In addition, Proposer certifies that an award of a contract to Proposer will not violate Section 2155.006, *Government Code*, prohibiting UT System from entering into a contract that involves financial participation by a person who, during the previous five years, has been convicted of violating federal law or assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Pursuant to Sections 2155.004 and 2155.006, *Government Code*, Proposer certifies that Proposer is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if these certifications are inaccurate.
- 2.10** By signature hereon, Proposer certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 2.11** By signature hereon, Proposer represents and warrants that all products and services offered to UT System in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and the *Texas Hazard Communication Act*, Chapter 502, *Health and Safety Code*, and all related regulations in effect or proposed as of the date of this RFP.
- 2.12** Proposer will and has disclosed, as part of its proposal, any exceptions to the certifications stated in this Execution of Offer. All such disclosures will be subject to administrative review and approval prior to the time UT System makes an award or enters into any contract or agreement with Proposer.
- 2.13** If Proposer will sell or lease computer equipment to UT System under any agreements or other contractual arrangements that may result from the submission of Proposer's proposal then, pursuant to Section 361.965(c), *Health & Safety Code*, Proposer certifies that it is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in Chapter 361, Subchapter Y, *Health & Safety Code* and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in Title 30, Chapter 328, Subchapter I, *Texas Administrative Code*. Section 361.952(2), *Health & Safety Code* states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term "computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.
- 2.14** **Proposer should complete the following information:**

If Proposer is a Corporation, then State of Incorporation: \_\_\_\_\_

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

RFP No.: UTS/A-\_\_\_\_\_

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

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

**Submitted and Certified By:**

\_\_\_\_\_  
(Proposer Institution's Name)

\_\_\_\_\_  
(Signature of Duly Authorized Representative)

\_\_\_\_\_  
(Printed Name/Title)

\_\_\_\_\_  
(Date Signed)

\_\_\_\_\_  
(Proposer's Street Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(FAX Number)

## APPENDIX TWO

### **UT SYSTEM POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES**

All Proposers are **REQUIRED** to complete the HUB documentation. Proposals that do not include this documentation will be automatically rejected.

For any questions or assistance regarding the HUB documentation, please contact Cynthia Booker at 409-772-1353 or via email at [cbooker@utsystem.edu](mailto:cbooker@utsystem.edu)

The fillable form can be found at:

<https://www.utsystem.edu/offices/historically-underutilized-business/hub-forms/hub-plan-templates-commodities-services-procurement>

The goal for this event is 26%

## APPENDIX THREE – 1

### LEGALLY REQUIRED PROVISIONS

The following terms and conditions in this Rider are incorporated into and form a part of the agreement (**Agreement**) to which they are attached. Unless otherwise specified, all defined terms used herein have the same meaning as assigned to those terms in the Agreement. Proposer is sometimes referred to herein as "**Contractor.**"

**Representations and Warranties by Contractor.** Contractor represents and warrants Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization; it is duly authorized and in good standing to conduct business in the State of Texas; it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

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

**Payments and UT Party Tax Exemption.** In connection with any payments that may be due from a UT Party under this Agreement, UT Party will pay Contractor in accordance with [Chapter 2251, Texas Government Code](#). UT Party (a state agency) is exempt from Texas Sales & Use Tax on goods and services in accordance with [§151.309, Texas Tax Code](#), and [Title 34 Texas Administrative Code \(TAC\) §3.322](#). Pursuant to 34 TAC §§3.322(c)(4) and (g)(3), this Agreement is sufficient proof of UT Party's tax exempt status, and UT Party is not required to provide further evidence of its exempt status.

**Payments by Electronic Funds Transfer.** [§51.012, Texas Education Code](#), authorizes UT Party to make payments through electronic funds transfer methods. Contractor agrees to accept payments from UT Party through those methods, including the automated clearing house system (ACH). Contractor agrees to provide Contractor's banking information to UT Party in writing on Contractor letterhead signed by an authorized representative of Contractor. Prior to the first payment, UT Party will confirm Contractor's banking information. Changes to Contractor's bank information must be communicated to UT Party in writing at least thirty (30) days before the effective date of the change and must include an IRS Form W-9 signed by an authorized representative of Contractor.

**Payment of Debt or Delinquency to the State.** Pursuant to §§[2107.008](#) and [2252.903](#), *Texas Government Code*, Contractor agrees any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency Contractor owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until paid in full.

**Texas Family Code Child Support Certification.** Pursuant to [§231.006, Texas Family Code](#), Contractor certifies it is not ineligible to receive the award of or payments under this Agreement, and acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Contractor Certification regarding Boycotting Israel.** Pursuant to [Chapter 2271, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Contractor certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Access by Individuals with Disabilities.** Contractor represents and warrants (**EIR Accessibility Warranty**) the electronic and information resources and all associated information, documentation, and support Contractor provides to UT Party under this Agreement (**EIRs**) comply with applicable requirements in [1 TAC Chapter 213](#) and [1 TAC §206.70](#) (ref. [Subchapter M, Chapter 2054, Texas Government Code](#)). To the extent Contractor becomes aware the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants 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. If Contractor fails or is unable to do so, UT Party may terminate this Agreement and, within thirty (30) days after termination, Contractor will refund to UT Party all amounts UT Party paid under this Agreement. Contractor will provide all assistance and cooperation necessary for performance of accessibility testing conducted by UT Party or UT Party’s third party testing resources, as required by [1 TAC §213.38\(g\)](#).

**Notices.** Except as otherwise provided by this Section, notices, consents, approvals, demands, requests or other communications provided or permitted under this Agreement, will be in writing and sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

**If to UT System:**

Office of Business Affairs  
The University of Texas System  
210 W. 7th Street  
Attn: Executive Vice Chancellor for Business Affairs  
Austin, Texas 78701-2982  
Fax: 512-499-4289  
Email: [Lloyd@utsystem.edu](mailto:Lloyd@utsystem.edu)

*with copy to:*

The University of Texas System Supply Chain Alliance  
Mid Campus Building  
7007 Bertner Ave., Suite 13.2339  
Houston, TX 77030  
Attention: Director  
Fax : 713-792-8084  
Email: \_\_\_\_\_@mdanderson.org

**If to Contractor:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**If to a UT Party:**

The contact information for UT Party as set forth in the agreement under which UT Party agrees to participate in Contractor’s GPO program.

*with copy to:*

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

*and*

The University of Texas System Supply Chain Alliance  
 Mid Campus Building  
 7007 Bertner Ave., Suite 13.2339  
 Houston, TX 77030  
 Attention: Director  
 Fax: 713-792-8084  
 Email: \_\_\_\_\_@mdanderson.org

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

**Venue; Governing Law.** Travis County, Texas will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions, all rights and obligations of the parties, and all claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the internal laws of the State of Texas.

**Breach of Contract Claims.** To the extent that [Chapter 2260, Texas Government Code](#), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by UT Party and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief business officer of UT Party will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims. The parties specifically agree (i) neither 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.

**Entire Agreement; Modifications.** This Agreement supersedes all prior agreements, written or oral, between Contractor and UT Party and will constitute the entire Agreement and understanding between the parties with respect to its subject matter. 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 Party and Contractor.

**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 (**Legislature**) and/or allocation of funds by the Board of Regents of The University of Texas System (**Board**). If Legislature fails to appropriate or allot necessary funds, or Board fails to allocate necessary funds, then UT Party will issue written notice to Contractor and UT Party may terminate this Agreement without further duty or obligation. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond UT Party's control.



**State Auditor's Office.** Contractor understands acceptance of funds under this Agreement constitutes acceptance of authority of the Texas State Auditor's Office or any successor agency (**Auditor**), to conduct an audit or investigation in connection with those funds (ref. §§[51.9335\(c\)](#), [73.115\(c\)](#) and [74.008\(c\)](#), *Texas Education Code*). Contractor agrees to cooperate with Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.

**Force Majeure.** Neither UT Party nor Contractor will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("**force majeure occurrence**"); *provided, however*, in the event of a force majeure occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that UT Party may continue to provide services during the occurrence.

**Limitations.** THE PARTIES ARE AWARE THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS (**LIMITATIONS**) ON THE AUTHORITY OF UT PARTY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THIS AGREEMENT, INCLUDING TERMS AND CONDITIONS RELATING TO LIENS ON UT PARTY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY, AND TERMS AND CONDITIONS RELATED TO LIMITATIONS WILL NOT BE BINDING ON UT PARTY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

**Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand UT System's Conflicts of Interest Policy at <http://www.utsystem.edu/board-of-regents/policy-library/policies/int180-conflicts-interest-conflicts-commitment-and-outside->, UT System's Standards of Conduct Guide at <https://www.utsystem.edu/documents/docs/policies-rules/ut-system-administration-standards-conduct-guide>, and applicable state ethics laws and rules at <http://www.utsystem.edu/offices/general-counsel/ethics>. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause UT Party's employees to violate UT System's Conflicts of Interest Policy, UT System's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement. Further, Contractor agrees to comply with [§2252.908, Texas Government Code](#) (**Disclosure of Interested Parties Statute**), and [1 TAC §§46.1 through 46.5](#) (**Disclosure of Interested Parties Regulations**), as implemented by the Texas Ethics Commission (**TEC**), including, among other things, providing the TEC and UT Party with information required on the form promulgated by TEC. Proposers may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at [https://www.ethics.state.tx.us/whatsnew/FAQ\\_Form1295.html](https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html).

**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 §§[552.002](#) and [2252.907](#), *Texas Government Code*, and at no additional charge to UT Party, Contractor 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.

**Non-Exclusivity; No Required Quantities or Minimum Amounts.** Contractor acknowledges that this Agreement is non-exclusive and does not obligate any UT Party to purchase any specific amount of goods or services from Contractor 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 Contractor during the term of this Agreement.

**Subcontracting.** Contractor will use good faith efforts to subcontract work performed under this Agreement in accordance with the Historically Underutilized Business Subcontracting Plan (**HSP**) (ref. **Rider** \_\_\_\_). Except as specifically provided in the HSP, Contractor will not subcontract any of its duties or obligations under this Agreement, in whole or in part. This Agreement is subject to [34 TAC §20.285](#). Contractor will comply with all of its duties and obligations under [34 TAC §20.285](#). In addition to other rights and remedies, UT Party may exercise all rights and remedies authorized by [34 TAC §20.285](#).

**Cybersecurity Training Program.** If Contractor and/or its subcontractors, officers, or employees will have an account on a State of Texas computer system (for example, an account to an application, database, or network), then pursuant to Section 2054.5192, *Texas Government Code*, Contractor and its subcontractors, officers, and employees using such an account must complete a cybersecurity training program certified under [Section 2054.519, Texas Government Code](#) and selected by UT System. The cybersecurity training program must be completed by Contractor and its subcontractors, officers, and employees during the term and any renewal period of this Agreement. Contractor will verify completion of the program to UT System.

**Texas Public Information Act - Subchapter J Requirements.** Pursuant to [Section 552.372 of the Texas Government Code](#), Contractor must:

- (1) preserve all contracting information (ref. [Section 552.003\(7\), Texas Government Code](#)) related to this Agreement as provided by the records retention requirements applicable to UT Party for the duration of this Agreement;
- (2) promptly provide to UT Party any contracting information related to this Agreement that is in the custody or possession of Contractor on request of UT Party; and
- (3) on completion of this Agreement, either:
  - (A) provide at no cost to UT Party all contracting information related to this Agreement that is in the custody or possession of Contractor, or
  - (B) preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to UT Party.

The requirements of [Subchapter J, Chapter 552, Government Code \(Subchapter J\)](#) may apply to this Agreement, and Contractor agrees that this Agreement can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of Subchapter J.

UT Party may not accept a bid for a contract described by [Section 552.371, Texas Government Code](#) or award the contract to an entity that UT Party has determined has knowingly or intentionally failed to comply with Subchapter J in a previous bid or contract described by Section 552.371 unless UT Party determines and documents that the entity has taken adequate steps to ensure future compliance with the requirements of Subchapter J.

If Contractor fails to comply with the requirements of Subchapter J applicable to Contractor, then UT Party shall provide written notice to Contractor stating the requirement(s) of Subchapter J that Contractor has violated. Such notice will also advise Contractor that UT Party may terminate this Agreement without further obligation to Contractor if (a) Contractor does not cure the violation on or before the 10th business day after the date UT Party provides the notice, (b) UT Party determines that Contractor has intentionally or knowingly failed to comply with a requirement of Subchapter J, and (c) UT Party determines that Contractor has not taken adequate steps to ensure future compliance with the requirements of Subchapter J. For purposes of the above, Contractor has taken adequate steps to ensure future compliance with Subchapter J if: (1) Contractor produces contracting information requested by UT Party that is in the custody or possession of Contractor not later than the 10th business day after the date UT Party makes the request and (2) Contractor establishes a records management program to enable Contractor to comply with Subchapter J.

**Rider Controlling.** If there is a conflict between the terms and conditions of this Rider and the agreement to which it is attached, this Rider controls.

## APPENDIX THREE – 2

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

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

#### RECITALS

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

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

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

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

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

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

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

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

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

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

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

## **2. Permitted Uses and Disclosures.**

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

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

### **3. Nondisclosure.**

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

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

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

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

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

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

**5. Additional Business Associate Obligations.**

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

c. Accounting of Disclosures of PHI.

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

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

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

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

## 7. **Material Breach, Enforcement and Termination.**

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

b. Termination. Either Party may terminate this BAA:

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

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

## 8. General Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **APPENDIX THREE – 3**

### **SUPPLIER RELATIONSHIP MANAGEMENT PROGRAM**

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

The Alliance’s Strategic Services Group (“SSG”) will conduct Periodic Business Reviews (“PBRs”) of Awarded GPO’s performance under this Agreement beginning approximately six (6) months after the Effective Date of this Agreement and then every three (3) months thereafter, based on the Alliance SSG’s assessment of contract performance risk as high. In addition to these PBRs, further monthly monitoring meetings may occur either by the affected institution and/or the Alliance SSG.

#### **Periodic Business Reviews**

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

- a. Account Management**
- b. Reporting / Project Tracking**
- c. HUB Outreach**
- d. Customer Service & Support**

#### **KPI Reporting**

Awarded GPO will report to the Alliance SSG monthly, at each PBR and as requested on the following KPIs.

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

- Year-to-date and period-over-period spend
- Administrative Fee Report
- Additional Admin Fee Report
- Contract Types (Healthcare GPO/Local/Other)
- Activation Submission Rate by Institution
- Contract Penetration Rate by Institution
- Savings (Value Creation) - Monthly
  - UT System Saving total
  - Savings by Institution
- Supply expenses per Net Patient Revenue (NPR)
- Supply Expense per Case Mix Index – Acute adjusted discharge (CMI-AAD)
- Manufacturer rebates
- Distribution rebates
- Expiring Healthcare GPO Contracts – Monthly/Quarterly
- New Healthcare GPO Contracts – Monthly/Quarterly

##### **CUSTOMER SATISFACTION REPORTS & METRICS**

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

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

If the Alliance SSG deems Awarded GPO’s performance against the above KPIs to be unsatisfactory, the

Alliance SSG and Awarded GPO may discuss an appropriate corrective action plan, before UT System exercises its legal remedies under this Agreement.

Affected institutions will report Awarded GPO performance concerns to the Alliance SSG in a timely manner, for discussion at PBRs.



## APPENDIX FOUR

### ACCESS BY INDIVIDUALS WITH DISABILITIES

**Access by Individuals with Disabilities.** Awarded GPO 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 Awarded GPO becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Awarded GPO 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 Awarded GPO fails or is unable to do so, UT Party may terminate this Agreement, and Awarded GPO will refund to UT Party all amounts UT Party has paid under this Agreement within thirty (30) days after the termination date.

## APPENDIX FIVE

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

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

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

## APPENDIX SIX

### ELECTRONIC AND INFORMATION RESOURCES ENVIRONMENT SPECIFICATIONS

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

University is primarily a [OPTION: \_\_\_\_\_] [ALTERNATE OPTION: Microsoft products] environment.

#### Basic Specifications

If the EIR will be hosted by University, please describe the overall environment requirements for the EIR (size the requirements to support the number of concurrent users, the number of licenses and the input/output generated by the application as requested in the application requirements).

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

If the EIR will be hosted by Proposer, describe in detail what the hosted solution includes, and address, specifically, the following issues:

- A. Describe the audit standards of the physical security of the facility; and
- B. Indicate whether Proposer is willing to allow an audit by University or its representative.

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

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

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

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

#### Security

1. Has the EIR been tested for application security vulnerabilities? For example, has the EIR been evaluated against the Open Web Application Security Project (**OWASP**) Top 10 list that includes flaws like cross site scripting and SQL injection? If so, please provide the scan results and specify the tool used. University will not take final delivery of the EIR if University determines there are serious vulnerabilities within the EIR.

2. Which party, Proposer or University, will be responsible for maintaining critical EIR application security updates?
3. If the EIR is hosted, indicate whether Proposer's will permit University to conduct a penetration test on University's instance of the EIR.
4. If confidential data, including HIPAA or FERPA data, is stored in the EIR, will the data be encrypted at rest and in transmittal?

### Integration

1. Is the EIR authentication Security Assertion Markup Language (**SAML**) compliant? Has Proposer ever implemented the EIR with Shibboleth authentication? If not, does the EIR integrate with Active Directory? Does the EIR support TLS connections to this directory service?
2. Does the EIR rely on Active Directory for group management and authorization or does the EIR maintain a local authorization/group database?
3. What logging capabilities does the EIR have? If this is a hosted EIR solution, will University have access to implement logging with University's standard logging and monitoring tools, RSA's Envision?
4. Does the EIR have an application programming interface (**API**) that enables us to incorporate it with other applications run by the University? If so, is the API .Net based? Web Services-based? Other?

Will University have access to the EIR source code? If so, will the EIR license permit University to make modifications to the source code? Will University's modifications be protected in future upgrades?

Will Proposer place the EIR source code in escrow with an escrow agent so that if Proposer is no longer in business or Proposer has discontinued support, the EIR source code will be available to University.

### Accessibility Information

Proposer must provide the following, as required by [1 TAC §213.38\(b\)](#):

1. Accessibility information for the electronic and information resources (**EIR**)<sup>1</sup> products or services proposed by Proposer, where applicable, through one of the following methods:
  - (A) URL to completed Voluntary Product Accessibility Templates (**VPATs**)<sup>2</sup> or equivalent reporting templates;
  - (B) accessible electronic document that addresses the same accessibility criteria in substantially the same format as VPATs or equivalent reporting templates; or
  - (C) URL to a web page which explains how to request completed VPATs, or equivalent reporting templates, for any product under contract; and
2. Credible evidence of Proposer's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, Proposer's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results. ]

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<sup>1</sup> Electronic and information resources are defined in [§2054.451, Government Code](#) and [1 TAC §213.1 \(6\)](#).

<sup>2</sup> Voluntary Product Accessibility Templates are defined in [1 TAC §213.1 \(19\)](#). For further information, see this [VPAT document](#) provided by the Information Technology Industry Council.

## Attachment A

The market basket pricing submitted must be at the line-item level and include best available pricing for UT System (and commitment levels required, if applicable) and **be exclusive of any rebates or other incentives**. If a rebate is available on a certain product, please provide the necessary information within the “Notes” columns within the market basket file. The pricing submitted for UT System must be that for which GPO administrative fees are earned and a share-back is provided. **Do not include any distribution markups or cost minus in the pricing submitted.**

### **Additional Instructions:**

- o Please complete **all** relevant columns.
- o In the PPI and Commodity Market Basket, please provide appropriate GPO pricing only at the tier levels for
- o In the Pharmacy Market Basket, please provide GPO Acute Care Pricing (prior to wholesaler discount) only at the tier levels for which UT System currently qualifies. Do not include 340B or DSH pricing. Rebates and generic
- o Indicate the tier level and commitment requirements for all provided pricing. Do not include any locally
- o All pricing provided should be based as of December 1st, 2020.
- o Substitute products may only be used when exact matches are not available. If a substitute product is proposed, please provide requested information in the columns titled “GPO Contract Clinically Equivalent (Substitution).”
- o Please state all assumptions for the pricing provided.
- o There are two tabs in the market basket detailing annual med/surg spend by UTSW, UTMB and UTMDACC, by category and manufacturer. Please use this information when proposing market basket pricing to estimate UT
- o **Additional instructions are included elsewhere in this Excel Spreadsheet.**

UT System GPO RFI  
 GPO Financial Comparison  
 16-Dec-20

Please complete the following deal model template with your GPO's proposed costs, savings, rebates, and any other financial impact UT can expect when joining your GPO. Cells highlighted in yellow indicate a required response from the Proposer.

Organization Total Spend	\$4,400,000,000					
Percentage of Total Annual Spend by UTSW, UTMB and UTMDACC Through the Incumbent GPO	42.1%					
Annual Spend Through Incumbent GPO	\$1,854,000,000					

Proposed Costs/Savings	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Total Annual Spend going through Incumbent GPO	\$1,854,000,000					
Manufacturer Admin Fee Percentage						
Distributor Admin Fee Percentage						
Pharmacy Admin Fee Percentage						
Percentage of Administrative Fees Shared with UT System						
Contractually Guaranteed Savings to UT System						
Non Guaranteed Savings to UT System						
Total Costs to be Paid to GPO						
<b>Total</b>						

Additional Savings/Costs	Year 1	Year 2	Year 3	Year 4	Year 5	Total
(Example: Standardization Rebates)						
(Example: Manufacturer Rebates)						
(Example: Membership Fees)						
(Example: Technology Fees)						
<b>Total</b>						

## ATTACHMENT C

### PROPOSER'S SURVEY

#### RFP UTS/A82 – National Health GPO Services

##### **1. GPO / Company Profile**

- 1.1. Provide your company's name.
- 1.2. Provide your company's main address, telephone and fax number.
- 1.3. Provide your company's Federal Employer Identification Number (FEIN).
- 1.4. Provide your company's DUNS number.
- 1.5. If you did not provide your DUNS number as requested in response to the question 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.
- 1.6. Provide your company's main contact for this RFP including telephone number and email address.
- 1.7. Provide your company's legal structure (e.g., corporation, partnership, etc.).
- 1.8. For all individuals, groups, corporations, etc. that holds 25% or greater equity in the company list their name and their percentage (%) held.
- 1.9. 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 or its institutions.
- 1.10. 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.
- 1.11. 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.
- 1.12. 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.
- 1.13. Please disclose any proposed acquisition, merger, or other business change that may affect our relationship.
- 1.14. What do you feel are your organizations leading differentiators to other GPOs?

- 1.15. Provide a listing of the five (5) largest current customers (healthcare or academic institutions, preferred) to 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 (\$), institution size (higher education) and a period of time for which work was performed.
- 1.16. Provide a brief overview of your company, its history, products, and markets served.
- 1.17. Provide a listing of all contracts your company has had that were terminated by customers prior to completion within the last three (3) years. Your response is to include the circumstances surrounding such early termination.
- 1.18. If requested, please indicate your company's agreement to provide the company's audited financial statement for the last two (2) years.
- 1.19. Describe the structure of your advisory group representing hospital departments, executive leaders, pharmacy, quality, cardiovascular, supply chain, value analysis, etc. How often do they meet and how do you utilize their recommendations? What is the eligibility of UT System to participate?
- 1.20. Provide a list of ambulatory programs, offers, and support for a growing ambulatory organization.
- 1.21. Provide a list of academic programs, offers, and support for academic institutions.

#### **UTSSCA Social Procurement Questionnaire**

The University of Texas System Supply Chain Alliance (“**UTSSCA**”) supports the commitment of our institutions to shift the trajectory of injustice by supporting a civil society through our focus on enhanced transparency and accountability while strengthening our culture of diversity and inclusion. UTSSCA is dedicated to providing a professional environment where all employees and suppliers are treated with the respect and dignity. We have an obligation to protect and care for all citizens in our community by ending racism, discrimination, intolerance, and marginalization of women and underrepresented groups (commonly defined as people who are African American, Latino, Pacific Islander or American Indian). In an effort to promote equal opportunities, the following survey questions will be utilized as a measure to improve the external supplier diversity we desire and are committed to achieve.

#### **Current Policies and Programs to Support Diversity and Inclusion for Your Employees**

- 1.22 What kinds of programs are in place at your company to promote diversity and inclusion of women and underrepresented groups in your workforce? In the description of your company's program(s), please provide details and supporting documentation as follows:
  - a. Performance measures tracking whether these programs have been successful with supporting data on the demographics of your company's workforce before/after implementing said program(s).
  - b. Please provide phone and email contact information for individuals, both internal and external to your company, who could serve as references regarding your company's diversity and inclusion efforts.



- 1.23 Please provide details on how women and underrepresented groups are represented on your governing board and in senior management and executive positions.
- a. Do you have mentor / protégé programs in place to help women and underrepresented individuals in your workforce succeed in their employment?
- 1.24 What diversity and inclusion training has been scheduled (optional or required) for all employees of your company, e.g. open dialogue of racial disparities, identifying unconscious biases, or related sensitive topics?

**Current Policies and Programs to Support Diversity and Inclusion for Your Business Partners**

- 1.25 What steps does your company take to search for and implement opportunities to subcontract to suppliers classified as Texas Historically Underutilized Businesses (HUBs)?

**Compliance of Equal Employment Opportunity Commission (EEOC) and Related Statutes**

- 1.26 Do you have a policy explicitly supporting equal employment opportunities and affirmative? If so, please furnish a copy.
- 1.27 In the last ten years has your company been involved in litigation or administrative proceedings challenging its hiring or employment practices in regard to women and underrepresented groups? If so, please provide details.
- 1.28 What programs exist in your company to make both job applicants and workforce members aware of your efforts to provide an inclusive, diverse work environment?
- 1.29 What colleges and universities does your organization visit to recruit college graduates? Do you actively recruit from any Historically Black Colleges or Universities (“HBCUs”)?
- 1.30 When hiring, does your organization present a diverse pool of candidates to hiring managers for interviews? How does your company attract qualified candidates that are women and/or members of underrepresented groups?
- 1.31 How does your company help facilitate Minority Business Enterprise (MBE), Veterans Business Enterprise (VBE), Women’s Business Enterprise (WBE), and Small Business Enterprise (SBE) purchase reporting for members? Please submit an example.
- 1.32 Do you have a policy explicitly supporting equal employment opportunities and affirmative? If so, please furnish a copy.
- 1.33 In the last ten years has your company been involved in litigation or administrative proceedings challenging its hiring or employment practices regarding women and underrepresented groups? If so, please provide details.

- 1.34 Describe your ability to assist UT System to implement “green” programs and other environmentally friendly practices.
- 1.35 Describe how you have utilized Historically Underutilized Businesses (HUBs) in the past on projects you have performed in the State of Texas.
- 1.36 Do you currently have a mentor-protégé program in place with a Hub firm(s)? If yes, provide details of you mentor-protégé relationship(s)
- 1.37 What programs exist in your company to make both job applicants and workforce members aware of your efforts to provide an inclusive, diverse work environment?
- 1.38 What colleges and universities do your organization visit to recruit college graduates? Do you actively recruit from any Historically Black Colleges or Universities (“HBCUs”)?
- 1.39 When hiring, does your organization present a diverse pool of candidates to hiring managers for interviews? How does your company attract qualified candidates that are women and/or members of underrepresented groups?

### **Community Outreach Programs and Policies**

- 1.40 What are the community outreach programs that your company participates in?
- 1.41 What partnerships does your company have with under-served communities?

## **2. Catalog of Supply Contracts**

- 2.1 Describe your programs in the following specialized contracting areas:
  - a. Capital Equipment (Medical equipment, diagnostic equipment, laboratory equipment, Imaging, Biomed, etc.)
  - b. Facilities
    - a. Construction
    - b. Maintenance & Operations
    - c. Furniture, Fixtures & equipment
  - c. Dietary/Food Service
  - d. Environmental Services
  - e. Laboratory
  - f. Information Technology
  - g. Pharmacy Auto Substitution Program (include and list drugs, strength, form, package size, package quantity, unit of measure, unit of measure price)
  - h. Physician Preference Items

- 2.2 Provide a contract portfolio for your company, in a spreadsheet format, with a complete list of vendors by individual contract, contract category, contract start and expiration date, product category covered, and pricing tier descriptions.
- 2.3 Describe how UT System and/or institution personnel would be involved in your vendor selection process.
- 2.4 How do you monitor vendor performance? What support do you provide your members in dealing with vendor performance and product quality issues?
- 2.5 How do you release your negotiation pipeline? How often and by what methodology? Include general timetables indicating time from completion to availability of contracts.
- 2.6 Describe your company's policies regarding failure to supply provisions for contracted pharmaceutical items and IV fluids.
- 2.7 Describe your contracting approach to physician preference items.
- 2.8 What services do you provide for affiliate alternate care organizations (including physician practices or other entities listed in UT System care areas)? Do they also have access to the same GPO pricing as the acute care member?
- 2.9 How do you benchmark your contract prices to ensure market competitiveness throughout the contract term?

### **3. Pharmacy**

- 3.1 Pharmacy Distribution Characteristics
  - a. Describe current contracts to include:
    - i. Competitive COGS discount across all classes of trade and accounts including competitive specialty division discount
    - ii. Robust online ordering portal with up-to-date and accurate product information
    - iii. Performance metrics scorecard
    - iv. Explain contract pharmacy experience
    - v. Minimal DC stock-outs and shortages
    - vi. Identify the stock out rates in the last 12 months and impact to assist UT System
    - vii. High fill-rates at DC
    - viii. On-time deliveries with minimal variance
    - ix. Product should have a minimum of 6-month shelf life upon receipt

- x. Reporting capabilities and data analysis
  - xi. Quarterly review of purchasing and performance metrics with pharmacy leadership
  - xii. Savings opportunities and 340b savings reports
  - xiii. Ad-hoc reports and data available upon request
  - xiv. Service Support
  - xv. Specialty Pharmacy Program
  - xvi. Dedicated service support for UT System provided by distributor
  - xvii. Product returns awarded full credit of purchase
  - xviii. Priority consideration for drug shortages
  - xix. Ability to order from secondary wholesaler for up to 5% of purchases and for any product not stocked or unavailable from the distributor
  - xx. Offer innovative services and tools to promote better utilization and inventory management for UT System Institutions.
  - xxi. Do you have a disaster plan? If so, please include details of your disaster plan, which should also include response to COVID-19 and hurricane disaster planning. Discuss how you would help to facilitate disaster recovery, including vendor communication and pharmacy supplies coverage.
- 3.2 Do you have an agreement for pharmacy automated dispensing equipment and service? If so, please elaborate on discount structure for members.
- 3.3 Additionally, please provide a list of all Authorized Distribution Agreements for Pharmacy.
- a. Please note which distributors are single/sole source relationships.
  - b. What role does your organization play in management of drug shortages? Elaborate on expectation of vendors during an active recall or shortage process including product price matching for substitutes.
  - c. How do you assist UT System in mitigating impact of anticipated or unanticipated drug shortages?
  - d. Describe your ability to notify clients of impending medication shortages.
- 3.4 Describe your program regarding specialty pharmacy services. How would you protect or enhance UT System's current pricing and discount levels?
- 3.5 What are your offerings for Specialty Drugs and what are your future plans regarding these products?
- 3.6 What are your offerings for Oncology Drugs and what are your future plans regarding these products?

- 3.7 Please provide detail regarding your organization's pharmacy technology and analytics tools, including ad hoc capabilities, available to proactively manage drug spend. Please indicate if there is an added cost for the pharmacy technology and analytics tools described.
- 3.8 Please provide detail on the availability of a personnel, specific to Pharmacy, to assist with pharmacy cost-saving and/or revenue-generating opportunities and be available for a quarterly business review.

#### **4. General Support Services** *(Account Management, staff, training, Diversity, Technology, HUB)*

##### **Account Management/Staff/Training/Diversity**

- 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 define their role in supporting the UT System account.
  - No
- 4.2 Provide an organization chart that identifies the proposed management team that will support the UT System account (UT System & its institutions); include a professional summary or resume, their length of service with the company.
- 4.3 Provide your criteria for hiring US based personnel, 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.
- 4.4 Provide your criteria for hiring Non-US based personnel, 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.
- 4.5 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.
- 4.6 Do you have a standard code of ethics for staff? If yes, please provide a copy.
- 4.7 Describe how you measure and evaluate performance of your personnel.
- 4.8 Describe your training and development program for both full time and part-time personnel as it relates to system applications & tools, customer service, policies and procedures, quality control, and general business operations.
- 4.9 How do you select personnel and determine the appropriate staffing level (management and project personnel) and expertise required to support UT System.

**HUB**

- 4.9 Describe how you have utilize Historically Underutilized Businesses (HUBs)/minority suppliers in the past on projects you have performed in the State of Texas
- 4.10 Do you currently have a mentor-protégé program in place with a HUB/minority supplier(s)? If yes, provide details of you mentor-protégé relationship(s).

**Technology**

- 4.11 Describe the various technology, tools, and methods that you will provide and/or that will be used in the delivery of the Services and the expertise your company will bring to the project and how they will be of benefit in the accomplishment of a project.
- 4.12 Describe how you ensure that best practice approaches and solutions are shared with customer both prior to and during a project.
- 4.13 Describe your approach for developing and maintaining technical and end-user documentation, systems and operational documentation, system configuration documentation, and procedural documentation, including manuals, quick reference guides, tutorials, online help, and other techniques as appropriate.
- 4.14 How do you supply your contract information to members including pricing, terms and conditions, contract expirations, renewals, and new contracts? Please elaborate on timeliness of updates, ease of access, and your view of user friendliness.
- 4.15 Do you have an electronic catalog that contains the complete contract portfolio including terms, conditions, and pricing?
- a. Is your system customizable for the individual facility?
  - b. Do you display price options including calculations for distribution markup/cost minus, freight factors, or other fees?
  - c. Is there a fee? If so, please include the fee for accessing your GPO catalog.
  - d. Describe what technology you can offer to support keeping GPO, national, regional, and local agreements in the same database.
- 4.16 Can your technology drill down to our net price, vendor cost plus, tier specific and wholesaler costs of goods?
- 4.17 Do you assist the member with budget projections based on its usage compared to future contract terms, market trends, or raw material pricing?
- 4.18 Does your contract database include cross referencing to equivalent products available in the GPO portfolio?
- 4.19 Please detail your current electronic commerce and EDI programs or any strategic relationships you have with EDI value added networks. Also, please list what features and

functions of the same you make available to members along with their costs.

- 4.20 What type of training will GPO use to train UT System (UT System & its institutions) in utilizing enhanced systems and programs provided by GPO? Describe your approach for developing and maintaining technical and end-user documentation, systems and operational documentation, system configuration documentation, and procedural documentation, including manuals, quick reference guides, tutorials, online help, and other techniques as appropriate.

## Distribution

### 4.21 Med Surg Distribution Partners

- a. List all fee, freight charges & distribution mark-up percentages by distributors under contract to include, but not limited; general med surg, IV fluids and accessories, custom packs and unitized systems, suture & endo-mechanicals, non-traditional.
  - i. Describe current contracts to include:
    - Elaborate on Low Unit of Measure (LUM) capabilities to include picking for par, min/max and Kanban stocking processes
    - Deliveries: 7 days a week, 2-or more trucks a day to meet customer's needs
    - Dedicated inside and outside sales, contracting, warehouse and invoicing representatives to assure efficient business practices.
    - Performance metrics scorecard
    - Minimal DC stock-outs and shortages
    - High fill-rates at DC
    - On-time deliveries with minimal variance
    - Other value-added programs such as, but not limited to: product evaluation assistance, new product quoting services, custom kitting options, customized receiving documents & invoices, palletization, and zoning.

### 4.22 Laboratory Distribution Partners

- a. State all distribution markup percentage scenarios including specific manufacturer fees, freight charges, etc.
- b. Explain palletization, zoning, customized receiving documents & invoices (provide samples)
- c. Explain lot control management for testing assays, controls, calibrators, etc.
- d. Provide examples of spend and other reports related to laboratory purchases (provide samples)
- e. Identify opportunities to help improve laboratory spend decisions

- f. What is your philosophy of laboratory instrumentation contracting?
- g. What are the typical number of vendors under contract per platform?
- h. What are typical number of years of warranty obtained per instrument purchase?
- i. What are typical number of training positions obtained per instrument purchase?

- 4.23 Additionally, please provide a list of all Authorized Distribution Agreements that are available to service UT System, including, but not limited to:
- a. Med/Surg
  - b. Laboratory
  - c. Radiology
  - d. Others: List any others
    - i. Please note which distributors are single/sole source relationships.
    - ii. Please provide your standard terms and conditions for your vendor contracts. Please highlight the way prices are protected following GPO contract execution.
    - iii. What role does your organization play in vendor recall management or product shortages? Elaborate on expectations of vendors during an active recall or shortage process including product price matching for substitutes.
    - iv. How do you assist UT System institutions in mitigating impact of anticipated or unanticipated supply shortage?

## **5. Implementation of GPO Services** (Quality Assurance)

- 5.1 In the instance of a GPO conversion, what full-time on-site resources will be provided to UT System (UT System & its institutions), and what fees are associated with this support?
- 5.2 Describe the various technology, tools, and methods that you will provide and/or that will be used in the delivery of the Services and the expertise your company will bring to the project and how they will be of benefit in the accomplishment of the project.
- 5.3 Describe how you ensure that best practice approaches and solutions are shared with customer both prior to and during a project.
- 5.4 Will the selected GPO provide the clinical support necessary for conversion of clinically sensitive items, at no cost? Describe your onsite resource to support UT System (UT System & its institutions) during the GPO conversion.



- 5.5 Describe your implementation plan and provide a typical implementation plan task list with timeline.
- 5.6 Describe an annual guaranteed savings process.
- 5.7 State resources provided for software tools (e.g., financial resources, IT assistance, software upgrades), including interfaces with distributor systems, maintenance, diagnostics, etc.
- 5.8 Describe resources to provide item master maintenance and cleansing, services, and fees.
- 5.9 Describe how you ensure that best practice approaches and solutions are shared with customer during implementation and ongoing.
- 5.10 Describe your company's quality assurance program, what are your company's requirements, and how are they measured?
- 5.11 Explain your scope control procedures. We are particularly concerned about controlling project 'Scope Creep'.
- 5.12 Please describe the strategies as to how project scope can be successfully managed and changes minimized.
- 5.13 Describe how you would manage issue resolution within a project and between your company and affected institution.
- 5.14 Describe your post project quality review process and user support model.

## **6. Financial Impact**

### **Membership:**

- 6.1 What is the size and type of membership base that utilizes your organization?
- 6.2 What is the annual purchasing volume of your membership for the last three (3) years?
- 6.3 What membership options are available?
- 6.4 Please outline including all fees and equity requirements.
- 6.5 Please provide the financial model for the various membership options offered with examples of investment and return.
- 6.6 What percentage of administrative fees, and other discounts and rebates paid by distributors and manufacturers, would you share with UT System?
- 6.7 Please provide a list of the average admin fee collected and shareback across all categories.

- 6.8 How do you distribute shareback fees? How do you monitor this annually? Are fees, discounts, and rebates negotiable? Please provide an example explaining the methodologies used.
- 6.9 Please explain your mechanism for ensuring that contracted supplier's reported sales correlate to customer purchases.
- 6.10 Would your membership options extend to regional affiliations, regional cooperatives, national cooperatives, hospital associations, etc. that provide aggregation opportunities for member improved pricing? If yes, please elaborate on how UT System will be able to participate.
- 6.11 Please elaborate on contracting programs that generate admin fees greater than safe harbor guidelines(3% or less).
- 6.12 Proposer may offer for UT System consideration visibility into all potential billing arrangements and pricing structures for providing Services. Proposers are asked to incorporate any creative offerings that will provide additional value to UT System or affected institutions.
- 6.13 Please indicate that your company agrees to pay UT System an administrative fee for total sales volume of UT System Institutions?
- 6.14 Please state how your company will ensure and maintain rate competitiveness during the full term of the agreement. Indicate how you benchmark your rates and under what conditions will you pass along decreases to the UT System?
- 6.15 How do you help members improve access/utilization of GPO Contracts? Please elaborate (include level of field support, where reps are located, and specifically what representation you are prepared to provide UT System & Institutions).
- 6.16 Please describe the details of any incentives, manufacturer rebates, committed programs, or product category standardization that are available.
- 6.17 Does your company offer a tiered discount structure off contract rates for large projects? If yes, please provide details.
- 6.18 Please indicate that you agree that reimbursement for travel, lodging and per diem will be in accordance with the rates, rules, regulations and guidelines established by the State of Texas.
- Yes
- No If no, please provide explanation
- 6.19 Please describe what, if any, additional financial benefit (for example, increased administrative fee share back) UT System and its institutions would receive, if they were

- to designate your company as their “primary” national health GPO. Please assume this would obligate UT System institutions to “look first” to your company for their sourcing and contracting needs, subject to their sole discretion to use other sources, if doing so would better meet the institutions’ purchasing needs.
- 6.20 Please indicate whether your company would allow UT System institutions to negotiate directly with your contracted suppliers, as appropriate, to enhance pricing and other terms available under your awarded contracts.
- 6.21 Please describe the circumstances, if any, in which a supplier to which your company awarded a contract would be obligated to pay an administrative fee to your company, even if a UT System institution were to procure and contract with the supplier independently of your company.

## 7. Optional Value Added Services

- 7.1 Please conclude your response to each topic listed below by responding to the following prompt: Given what you know about UT System & its institutions, describe your approach and recommendation for our System’s improvement and growth in the following areas:
- a. Consulting on performance improvement and other procurement / purchasing matters
  - b. Patient safety data and reporting
  - c. Technology
    1. Item master support
    2. Procure-to-Pay (P2P) tools
    3. Supply analytics and benchmarking
    4. Enterprise Resource Planning (ERP) tools
  - d. Private label products
  - e. Regional GPO offerings
  - f. Other services requested by UT System
- 7.2 Please indicate any additional "value added" services or programs not otherwise asked or disclosed herein that should be considered during the evaluation process.
- 7.3 What, if any, fees are associated with obtaining benchmarking reports? To what extent and in what manner will UT System be invited to participate in benchmarking studies?
- 7.4 What reports/tools are available to members to assist in identifying savings opportunities and how will your team work with UT System to prioritize opportunities and improve supply chain performance?
- 7.5 Please describe your Capital Equipment contracting approach (e.g., preferred vendor contracts, group buys, GPO negotiation support or third-party acquisition service like MEMdata, access to national databases like ECRI or MD Buyline, etc.)

- 7.6 How does your organization assist in controlling costs of purchased services? Please include a list of contracted national service providers (e.g., wireless/telecom, IT hardware & software, linen, equipment maintenance, professional staffing, etc.)
- 7.7 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 affected institutions.
- 7.8 Briefly describe your company's current advantage in the marketplace. Please provide only information not previously asked or disclosed herein.
- 7.9 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.
- 7.10 Describe how your organization can support strategic growth, programmatic development and quality improvement for the institutions within the UT System

## **8. Disaster / Pandemic Response**

- 8.1 What challenges have you faced during the Corona Virus Pandemic? How did you respond to these challenges?
- 8.2 When was the last time you updated and tested your Business Continuity and Pandemic plan?
- 8.3 What do you do to monitor infectious disease threats for your members?
- 8.4 How will you continue to provide support & services through Pandemic situations?
- 8.5 What programs do you have in place to support institutions and third party suppliers that need/supply critical PPE and Testing supplies?
- 8.6 What proactive communication plans are in place to notify members of potential supply shortages caused by the pandemic or disaster scenario?
- 8.7 What contingency plans are in place if a supplier is unable to continue to provide services or presents an unacceptable level of risk?
- 8.8 Disaster scenario plans – Please include details of your disaster plan, which should also include response to COVID-19/Pandemic and hurricane disaster planning. Discuss how you would help to facilitate disaster recovery, including vendor communication and supplies coverage