



**University
Health System**

Procurement Services

This file contains a set of supporting documents that are required to be included in your response to our solicitation. Please print and complete documents 1 – 4 as instructed *as well* as complete the Vendor Questionnaire online at the website listed below, *print it out* and include with bid packet.

Document 1: Terms and Conditions

Document 2: Conflict of Interest

Document 3: Workforce Composition

Document 4: IRS W-9

Document 5: Vendor Questionnaire – please visit

www.UniversityHealthSystem.com/vendors to register and fill out the questionnaire. Both are required by close date and time to be considered for a bid opportunity.

Thank you!



STANDARD PURCHASE TERMS AND CONDITIONS

As used herein, the term "Seller" shall mean any bidder, offeror, vendor, service provider or other person or entity responding to this procurement opportunity. Upon award of a contract hereunder, the term "Seller" shall apply to the contract awardee (or contractor). "Buyer" shall mean the University Health System, a political subdivision of the State of Texas and includes the University Hospital, all affiliated clinics and facilities operated by the Bexar County Hospital District and all affiliated entities, including Community Medicine Associates, Community First Health Plans and the University Health System Foundation. Any references to "this contract" or "this agreement" shall mean any contract or agreement anticipated to ultimately be awarded hereunder regardless of whether a formal contractual document is executed or the award is made through notification of the successful bidder, offeror, vendor, service provider or other person or entity responding to this procurement opportunity without a contractual document labeled as such. In the event no formal contractual document is executed, the contract or agreement shall consist of the RFP/IFB (including the specifications/description of work and General Conditions) Seller's response (as accepted and to the extent it does not conflict with the terms contained herein) and these Standard Purchase Terms and Conditions.

Seller and Buyer agree as follows:

1. **SELLER TO PACKAGE GOODS:** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows:
 - a. Seller's name and address;
 - b. Consignee's name, address and purchase order or purchase release number and the supply agreement number if applicable;
 - c. Container number and total number of containers, e.g. box 1 of 4 boxes; and
 - d. The number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carrier and any applicable specifications. Buyer's count shall be final and conclusive on shipments not accompanied by packing lists.
2. **SHIPMENT UNDER RESERVATION PROHIBITED:** Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
3. **DELIVERY TERMS AND TRANSPORTATION CHARGES F.O.B.:** If goods are to be delivered pursuant to the contract, destination freight must be pre-paid unless delivery terms are specified otherwise in the procurement solicitation. Buyer agrees to reimburse Seller for transportation costs in the amount specified in Seller's bid, or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs, provided Buyer shall have the right to designate what method of transportation shall be used to ship the goods. If Seller shall fail to make delivery in accordance with the established delivery schedule, the Buyer shall have the right to cancel the purchase in whole or in part and to purchase elsewhere and hold Seller responsible. Buyer reserves the right to invoice Seller for any increased costs incurred by the Buyer on any item purchased elsewhere, when Seller cannot supply according to the terms of the contract.
4. **MINIMUM ORDER:** Minimum order requirements and assessed handling fees by companies are unacceptable terms to the Buyer and will not be honored.
5. **NO REPLACEMENT OR DEFECTIVE TENDER:** Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided where the time for performance has not yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.

6. **INVOICES AND PAYMENTS:**
 - a. Seller shall submit separate invoices, in duplicate, on each purchase order or purchase release after each delivery, or if this contract is one for services, for services rendered during the previous month, by the 10th day of each month (unless otherwise specified). Invoices submitted after the due date may be rejected, at Buyer's option. Invoice shall indicate the purchase order or purchase release number and the supply or service agreement number if applicable. Invoices shall be itemized and transportation charge, if any, shall be listed separately. A copy of the bill of lading and the freight waybill when applicable should be attached to the invoice. Mail to Accounts Payable Department, University Health System, 355-2 Spencer Lane, San Antonio, Texas 78201. Payment shall not be due until forty-five (45) days of administrative approval after the above instruments are submitted in acceptable form. Seller shall keep the Accounts Payable Department advised of any changes in its remittance addresses.
 - b. Invoices for items purchased through a prime vendor are to be sent to the respective prime vendor distributing the product.
 - c. Buyer's obligation is payable only and solely from funds available for the purpose of this purchase. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to Seller by Buyer.
 - d. Seller shall not include Federal Excise, State or City Sales Tax, or use taxes. University Health System will furnish exemption certificate.
 - e. In connection with any discount offered, time will be computed from the date of receipt of supplies or services or from the date a correct invoice is received, whichever is the later date. Payment is deemed to be made on the date of mailing of the check.
7. **GRATUITIES:** The Buyer may, by written notice to Seller, cancel this contract without liability to Seller if it is determined by Buyer that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Seller or any agent with a view toward securing this contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of the contract. In the event this contract is cancelled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.
8. **WARRANTY-PRICE:** The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this contract for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative, Buyer may cancel without liability to Seller for breach or Seller's actual expense.
9. **WARRANTY-PRODUCT:** Seller shall not limit or exclude any implied warranties and any attempt to do so shall be of no effect and shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the bid invitation, and to the sample(s) furnished by Seller if any. In the event of a conflict between the specifications, drawing, and descriptions, the specifications shall govern.
10. **SAFETY WARRANTY:** Seller warrants that the product sold to Buyer (if any) shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event that the product is not satisfactory it will be returned at the Seller's expense for repair or correction. In the event Seller fails to make the appropriate repair or correction within a reasonable time, repair or correction made by Buyer will be at Seller's expense. If Buyer deems repair or correction not feasible, Buyer may consider the option to cancel the contract.
11. **RIGHT OF INSPECTION:** Buyer shall have the right to inspect the goods (if any) at delivery before accepting them. Buyer shall have the right to review and inspect the progress of any work or services for which award is anticipated to be made hereunder, at all times.

12. **CANCELLATION:** The Buyer reserves the ultimate right for contract cancellation upon immediate notice should products or services be found to be inferior as defined according to specifications or patient care, human life is threatened.
13. **TERMINATION:**
 - a. **FOR CONVENIENCE:** This contract may be terminated by Buyer upon thirty (30) days written notice to Seller. Further, the performance of work or delivery of goods under this order may be terminated in whole or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to Seller of a "Notice of Termination" thirty days prior to cancellation.
 - b. **FOR DEFAULT:** This contract may be terminated by Buyer for breach of any material terms or conditions of this contract by the Seller, which breach is not corrected by Seller within ten (10) calendar days after written notice thereof is given to Seller.
 - c. **NON-EXCLUSIVE:** Such rights of termination are in addition to and not in lieu of rights of Buyer set forth in clause 12.
14. **FORCE MAJEURE:** The term "Force Majeure" as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the below requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlements is unfavorable in the judgment of the party having the difficulty. If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract then such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.
15. **ASSIGNMENT-DELEGATION:** No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
16. **WAIVER:** No claims or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
17. **MODIFICATIONS:** This contract can be modified only by a subsequent writing signed by both of the parties or their duly authorized agents.
18. **APPLICABLE LAW:** This contract shall be governed by the applicable laws of the State of Texas (including but not limited to, the Texas Business and Commerce Code, Texas Local Government Code, Texas Government Code, and Texas Health and Safety Code).
19. **ADVERTISING:** Seller shall not advertise or publish, without Buyer's prior consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

20. **RIGHT TO ASSURANCE:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
21. **VENUE:** Both parties agree that venue for any litigation arising from this contract shall lie in San Antonio, Bexar County, Texas.
22. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer or employee of the University Health System shall make recommendations regarding any contract from which the employee stands to gain financial benefit. Any conflict of interest must be declared according to the University Health System policy. Any willful violation of this section shall constitute malfeasance in office and any officer or employee guilty thereof shall be subject to removal from his office or position. Any violation of this section, with the knowledge, expressed or implied, of the person or corporation contracting with the University Health System may render the contract void and non-enforceable at the option of the University Health System.
23. **RECORDS RETENTION:** For the purpose of implementing Section 1861 (v)(1)(I) of the Social Security Act, as amended, and any written regulations thereto, and for Buyer's own purposes, Seller agrees to comply with the following statutory requirements governing the maintenance of documentation to verify the cost of services rendered under this contract:
- a. Until the expiration of six (6) years after the furnishing of such services pursuant to such contract, Seller shall make available, upon written request, to the Buyer, the Secretary of HHS, or the Comptroller General of the U.S., or any of their duly authorized representatives, the contract, and books, documents, and records of Seller that are necessary to certify the nature and extent of such costs, and
 - b. If Seller carries out any of the duties of the contract through a subcontract, with a value or cost of \$10,000 or more over a 12-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of six (6) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request, to the Buyer, the Secretary, or the Comptroller General or any of their duly authorized representatives, the subcontract, and books, documents, and records of such organization that are necessary to verify the nature and extent of such costs.
24. **EMPLOYMENT OF PERSONNEL:** Seller agrees to employ, at its own expense, all personnel required in performing the services under this contract. Personnel employed by Seller shall not be employees of, nor have any contractual relationship with Buyer. All personnel engaged in the work shall be fully qualified and shall be authorized or licensed to perform such work as required. This contract does not create an employment relationship, partnership, or joint venture between the Seller, its subcontractors or employees and the Buyer. Neither the Seller nor its subcontractors or employees shall be deemed employees of the Buyer for any purpose whatsoever, and neither shall be eligible to participate in any benefit program provided by the Buyer.
25. **SUBCONTRACTS:**
- a. The Seller may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.
 - b. The Seller shall not award any work to any subcontractor without prior written approval of Buyer, which approval will not be given until the Seller submits to Buyer a written statement concerning the proposed award to the subcontractor. Which statement will be required prior to award and shall include:
 - (1) A description of the supplies or services to be called for by the subcontract; and
 - (2) Identification of the proposed subcontractor.
 - c. The Seller shall be as fully responsible to Buyer for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by the subcontractor, as Seller is similarly responsible for the acts and omissions of persons directly employed by Seller.

- d. The Seller shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Seller by the terms of this contract insofar as applicable to the work of subcontractors and to give the Seller the same power as regards terminating any subcontract that Buyer may exercise over the Seller under any provision of this contract.
- e. Nothing contained in this contract shall create any contractual relation between any subcontractor and Buyer.
- f. Neither consent by the Buyer to any subcontract nor any provisions thereof nor approval of the Seller's procurement system shall be construed to be a determination of the acceptability of any subcontract price or of any amount paid under any subcontract or to relieve the Seller of any responsibility for performing under this contract, unless such approval or consent specifically provides otherwise.
- g. The Seller agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost-basis.
- h. By submission of a bid or proposal (as the case may be) the Seller agrees that he/she/it will indemnify and save Buyer harmless from all claims growing out of any lawful demands of subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The Seller shall, at Buyer's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated be paid, discharged or waived. If the Seller fails to do so, then Buyer may, after having served written notice, direct, or withhold from the Seller's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Seller shall be resumed, in accordance with the terms of this contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon Buyer to either the Seller or his Surety.
- i. All substitution of subcontractors will require written approval from Buyer.

26 **HOLD HARMLESS AND INDEMNITY:** To the extent not prohibited by the laws of the State of Texas, Seller agrees to indemnify and hold harmless the Buyer, its officers, agents and/or employees from and against any and all liability and costs (including attorney's fees) incurred in connection with any claims or demands for damages of any nature whatsoever, including but not limited to bodily injury, death, personal injury or property damage arising from or caused by the intentional or negligent acts or failure to act of Seller, its officers, agents and/or employees.

27 **INSURANCE:** Buyer reserves the right to require insurance coverage to protect Seller and Buyer in amounts deemed appropriate by Buyer for the type of goods or services procured. By way of example, coverage typically is required as follows:

Worker's Compensation	Statutory Amount
Automobile	\$500,000 combined single limit
Comprehensive General Liability	\$1,000,000 each claim/\$2,000,000 aggregate
Professional Liability	\$600,000 each occurrence/\$1,200,000 aggregate

28 **PROPRIETARY RIGHTS:** Seller agrees not to release data or information about the results of the project to any person outside of Buyer without first obtaining written authorization to release such information from Buyer.

29 **CONTRACTING AUTHORITY PROTECTION:** Any and all of the employees of Seller while engaged in the performance of any work required by Buyer under this contract shall be considered employees of Seller only and not of Buyer, and any and all claims that may arise from the Workers Compensation Act on behalf of said employees while so engaged, and any and all claims made by any third party as a consequence of any act or omission on the part of Seller's employees while so engaged in any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of Seller. Seller indemnifies, saves, and holds harmless Buyer against all claims, demands, actions, or causes of action of whatsoever nature or character, as permitted by law, arising out of or by reason of the execution or performance of the work provided for herein and further agrees to defend, at its sole cost and expense, any action or proceeding commenced for the purpose of asserting any claim of whatsoever character arising hereunder.

- 30 **EFFECT OF EXTENSIONS OF TIME:** Granting of or acceptance of extensions of time to complete the work or furnish the labor or materials will not operate as a release to the Seller from the covenants and conditions of this contract.
- 31 **CHANGES AND MODIFICATIONS:**
- a. If, during the performance of any work or services under this contract, the Seller finds it impracticable to comply strictly with the specifications, the Seller will notify the Buyer immediately in writing.
 - b. Any proposals by Seller that vary or add to this contract shall be construed as additional terms or modifications and shall not become part of this contract unless accepted in writing by the Buyer.
 - c. All changes in the work or services contemplated in the solicitation and award hereunder, shall be made only with the prior approval of the Buyer and only by appropriate written change order. The Buyer may, at any time, by a written change order, and without notice to the Surety (if any); make changes within the general scope of this contract. If the change affects the Seller's costs, then the Buyer shall also make an equitable adjustment in the Seller's compensation, after compliance by the Seller with the price request procedure provided below.
 - d. Where the Buyer foresees issuing a change order affecting Seller's costs, a price request will be issued to the Seller. Unless otherwise specified therein, the Seller shall fully respond to the price request within 10 days of issuance.
- 32 **PARTIAL INVALIDITY:** If any term, provision, covenant, or condition of this contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- 33 **TITLES AND HEADINGS FOR CONVENIENCE ONLY:** As used throughout this contract, titles and headings of sections are for convenience only, and shall not be used to aid in interpretation of the provisions contained herein.
- 34 **COVENANT AGAINST CONTINGENT FEES:** The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty, Buyer shall have the right to annul this contract without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
- 35 **NON-COLLUSION:** The Seller represents and warrants that its bid/proposal is genuine and not sham or collusive or made in the interest or in behalf of any person not therein named, and that the Seller has not, directly or indirectly, induced or solicited any other person to submit a sham bid/proposal, or any other person, firm, or corporation to refrain from submitting a bid/proposal, and that the Seller has not in any manner sought by collusion to secure itself an advantage over any other bidder/proposer. If at any time it shall be found that the person, firm, or corporation to whom a contract has been awarded has, in presenting any bid/proposal, colluded with any other party or parties, then the contract so awarded shall be voidable by Buyer; and the Seller shall be liable to Buyer for all loss or damage which Buyer may suffer thereby.

- 36 **RELEASE OF INFORMATION:** Buyer is a governmental entity. Documents submitted pursuant to this procurement solicitation become a government record. Access by the public to government records is governed by the Texas Public Information Act ("PIA"). Proprietary information, such as trade secrets and confidential commercial and financial information submitted in response to this procurement solicitation which Seller (or any offeror responding to this procurement solicitation) believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating a whole document or pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not assure confidentiality, especially if information is contained in the designated areas that clearly is not of a confidential nature. In the event a request is made for information designated as proprietary, Buyer may determine in its sole discretion whether sufficient legal justification exists for withholding the information and whether an opinion should be requested from the Texas Attorney General. If an opinion is requested from the Texas Attorney General, Buyer will notify Seller (or the particular offeror affected) and Seller/offeror has the responsibility, in accordance with PIA, to assert any arguments it may have in opposition to release of the information. In the event Seller/offeror requests judicial intervention, the party so requesting shall indemnify Buyer for its costs (including attorney's fees) associated with the judicial action. Under no circumstances will Buyer be liable for any costs, damages, or claims of any nature, related to release or disclosure of any information contained in documents submitted pursuant to this procurement solicitation.
- 37 **TIME OF THE ESSENCE:** The time of Seller's performance of all of the covenants, conditions and agreements of this contract is of the essence of this contract.
- 38 **REJECTION OF BIDS or PROPOSALS:** Buyer reserves the right to reject any and all bids or proposals (as applicable).
- 39 **PREPARATION COSTS:** All costs related to responding to this contract, including (if applicable) the cost of any oral presentations required, shall be the sole responsibility of and shall be borne by each firm.
- 40 **ACCEPTANCE OF FINAL PAYMENT:** The acceptance by the Seller of final payment shall be and shall operate as a release to Buyer of all claims and all liability to the Seller for all things done or furnished in connection with this work and for every act and neglect of Buyer and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Seller or the Seller's Surety or Sureties from any obligation under this contract or Performance and Payment Bond (if any).
- 41 **CLAIMS OF NON-PAYMENT/LIMITATIONS:** Unless otherwise agreed in writing or as provided in section 6, above, Seller must invoice Buyer for all accrued claims of monies owed, once a month for the supplies or work performed in the previous month. In the event of non-payment, prior to seeking any judicial recourse, Seller must provide written notice to Buyer within ninety days of the date any invoice is not paid by Buyer. Written notice to Buyer must include documentation which substantiates Seller's claim that payment is justified, including, without limitation, reference to specific applicable contract provisions. **SELLER MUST BRING SUIT WITHIN TWO YEARS OF THE TRIGGERING EVENT FOR ANY CLAIMS RELATED TO THIS CONTRACT, INCLUDING BUT NOT LIMITED TO ANY AMOUNTS CLAIMED TO BE DUE FROM BUYER, OR BE FOREVER BARRED.**
- 42 **COMPLIANCE WITH LAWS AND REGULATIONS:** Seller shall comply, and upon request, Seller shall submit evidence of such compliance, with all State and federal certifications, regulations, or licensure requirements pertaining to the services provided hereunder. Evidence of such compliance shall be submitted to Buyer consistent with applicable Joint Commission standards. Seller agrees to give immediate notice to Buyer in the case of suspension or revocation, or initiation of any proceeding that could result in suspension or revocation, of licensure or of any circumstance that would cause Seller to be noncompliant with any such statutes, rules, regulations, standards, or directives. Further, Seller shall provide all services in accordance with applicable Medicaid and Medicare requirements.

- 43 **CONFIDENTIAL INFORMATION.** Seller acknowledges that in connection with the services to be performed under this contract by Seller, Seller may be acquiring and making use of certain confidential information of the Buyer which includes, but is not limited to, management reports, financial statements, internal memoranda, reports, patient lists, and other materials or records of a proprietary nature ("Confidential Information"). Therefore, in order to protect the Confidential Information, Seller shall not after the date hereof use the Confidential Information except in connection with the performance of services pursuant to this contract, or divulge the Confidential Information to any third party, unless the Buyer consents in writing to such use or divulgence or disclosure is required by law.
- 44 **CONFIDENTIAL PATIENT INFORMATION.** Sellers who will have access to patients and patient records, shall adequately instruct all personnel that may provide services pursuant to this contract, regarding the confidentiality and privacy of patients and patients' medical records. All such instructions shall be in accordance with the formal policies and rules of the Buyer and with all federal and state laws and regulations regarding patient and medical record confidentiality. Seller assumes full responsibility for any breach of confidence by its personnel with regard to the provision of services under this contract.
- 45 **AUTHORITY:** Only the President/CEO or a person designated by the President/CEO in writing or otherwise authorized in Buyer's purchasing policy (such as the Director of Procurement Services) has authority to bind the Buyer to any contractual commitments, order changes in the scope of work or otherwise incur any costs on behalf of the Buyer. The Director of Procurement Services is the contracting officer for Buyer. Seller shall not claim, AND DO HEREBY WAIVE ANY DEFENSE OR CLAIM THEY MAY HAVE, OF APPARENT AUTHORITY, in accepting direction from any unauthorized person claiming to represent the Buyer.
- 46 **PRIORITY:** The provisions of these Terms and Conditions constitute material terms of the offer and award of a contract hereunder. By submission of a bid or proposal, Seller agrees that these Terms and Conditions shall take priority in the event of a conflict of terms, over any terms contained in a contract document (if any) provided by Seller and executed by Buyer regardless of whether the contract document contains any clause to the effect that the contract document constitutes the whole agreement between the parties and supercedes any prior agreements. **No language contained in a contract document provided by Seller and executed by Buyer shall be construed as to waive or modify the terms contained herein unless such contract document contains a clause specifically agreed to by Buyer as evidenced by Buyer's authorized representative's (see Authority, above) initials placed immediately after the clause that is intended to override this provision.**
- 47 **NO THIRD PARTY BENEFICIARIES:** Except as may be required to carry out the purposes and intent of the Health Insurance Portability and Accountability Act, nothing in this contract, express or implied, is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this contract or any term, covenant or condition hereof, as third party beneficiaries or otherwise, and all of the terms, covenants and conditions hereof shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns.
- 48 **AUTHORITY OF SELLER:** If Seller is a corporation or a partnership (general or limited), each person submitting this bid/proposal on behalf of Seller represents and warrants as to Seller, that: Seller is an existing corporation or partnership (general or limited), qualified to do business in Texas; the corporation or partnership (general or limited) has full right and authority to enter into this contract; and each person signing on behalf of the corporation or partnership (general or limited) is authorized to do so.
49. **REPORT OF FRAUDULENT ACTIVITIES:** Seller understands and acknowledges that Seller has an affirmative duty to report to the University Health System Integrity Office any suspected or known "fraudulent activities" that may come to its attention. "Fraudulent Activities" shall have the same meaning as defined in University Health System Policy No. 2.10 "Fraud" as may be revised or amended from time-to-time. A copy of Policy No. 2.10 shall be available from the Procurement Services Department or the Integrity Office on the 1st Floor of University Hospital. Seller may at its option choose to report Fraudulent Activities through the Integrity Hotline 1-877-225-7152.

50. **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA):** During the term of this agreement, Seller may receive from the Buyer, or may receive or create on behalf of the Buyer, certain confidential health or medical information ("Protected Health Information" or "PHI" as further defined below). This PHI is subject to protection under and it is the intent of the parties to be in full compliance with state and federal law, including the Health Insurance Portability and Accountability Act, Texas Health and Safety Code Chapter 181, and implementing regulations issued pursuant thereto (collectively "HIPAA" herein). To the extent that HIPAA applies and Seller is considered a "Business Associate," Seller shall comply with the terms of provisions (including subsections) applicable to Business Associates and Recipients. Further, Seller may receive information through Limited Data Sets or in electronic Transactions. Information in Limited Data Sets or exchanged electronically is also subject to protection under and it is the intent of the parties to be in full compliance with HIPAA, to the extent such law and regulations apply during the term hereof.
- a. **Definitions.** Capitalized terms in this provision (including subsections) have the same meaning set forth in HIPAA. Without limitation:
- (1) Seller shall be considered a "Business Associate" of the Buyer if it receives from the Buyer, or may receive or create on behalf of the Buyer, Protected Health Information (PHI) and a recognized exception to HIPAA does not apply. If Seller believes a HIPAA recognized exception applies, Seller shall present evidence to Buyer, sufficient to establish the exception. If Buyer does not agree that an exception applies, Seller shall nevertheless comply with the applicable provisions (including subsections) as a Business Associate.
 - (2) The Buyer (including affiliated covered entities such as Community Medicine Associates and the University Health System Foundation) shall be considered a "Covered Entity."
 - (3) "Data User" means the Seller; to the extent it is receiving PHI through a Limited Data Set. To the extent required under HIPAA, provisions applicable to Data Users and Recipients are intended to comply with requirements for establishment of a Data Use Agreement between the parties, securing satisfactory assurances that the Data User will only use or disclose the PHI for limited purposes related to research, public health and healthcare operations.
 - (4) "Limited Data Set" means PHI that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual:
 - (i) Names;
 - (ii) Postal address information, other than town or city, State and Zip Code;
 - (iii) Telephone and fax numbers;
 - (iv) e-mail addresses;
 - (v) Social security, medical record, account or health plan beneficiary numbers;
 - (vi) Certificate/license numbers;
 - (vii) Vehicle identifiers and serial numbers (including license plate numbers);
 - (viii) Device identifiers and serial numbers;
 - (ix) Web Universal Resource Locators (URLs);
 - (x) Biometric identifiers (including finger and voice prints); and
 - (xi) Full face photographic images and any comparable images.
 - (5) "Protected Health Information" or "PHI" means generally, any information, whether oral or recorded in any form or medium that (1) relates to the past, present or future physical or mental 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 (2) identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
 - (6) "Recipient" means the Seller to the extent it is a Business Associate or Data User (references to Recipient apply to Business Associates and/or Data Users).
 - (7) "Standard" means a prescribed set of rules, conditions, or requirements describing the following information for products, systems, services or practices:
 - (i) Classification of components.
 - (ii) Specification of materials, performance, or operations.
 - (iii) Delineation of procedures.
 - (8) "Trading Partner" means the Seller; to the extent it receives information through an electronic Transaction. To the extent required under HIPAA, provisions applicable to Trading Partners are intended to comply with requirements for establishment of a Trading Partner Agreement between the parties, specifying the duties and responsibilities of each party in conducting a standard Transaction.

- (9) "Transaction" means the transmission of information between two parties to carry out financial or administrative activities related to health care. It includes the following types of information transmissions:
- (i) Health care claims or equivalent encounter information.
 - (ii) Health care payment and remittance advice.
 - (iii) Coordination of benefits.
 - (iv) Health care claim status.
 - (v) Enrollment and disenrollment in a health plan.
 - (vi) Eligibility for a health plan.
 - (vii) Health plan premium payments.
 - (viii) Referral certification and authorization.
 - (ix) First report of injury.
 - (x) Health claims attachments.
 - (xi) Other transactions that the Secretary of Health and Human Services (or designee) may prescribe by regulation.

b. Scope of Use of Protected Health Information.

(1) Recipient shall not:

- (i) use or otherwise disclose PHI except as permitted or required in this agreement solely to accomplish the work to be performed and the results to be gained;
- (ii) use or otherwise disclose PHI for purposes independent of helping the University Health System carry out its health care functions; and
- (iii) notwithstanding any other provisions of these Terms and Conditions, use or disclose PHI in any manner that violates or would violate HIPAA if such activity were engaged in by the University Health System.

(2) In addition to (1) above, Seller as Data User shall not:

- (i) use or allow receipt of the Limited Data Set by anyone other than authorized persons performing services directly authorized pursuant to this Agreement;
- (ii) use or otherwise disclose the Limited Data Set for purposes other than research, public health and healthcare operations;
- (iii) re-identify the source data (such as, without limitation, discovering any of the direct identifiers described in the definition of Limited Data Set); or
- (iv) contact the individuals, the subjects of the Limited Data Set.

(3) Seller as Trading Partner shall not:

- (i) change the definition, data condition, or use of a data element or segment in a Standard;
- (ii) add any data elements or segments to the maximum defined data set;
- (iii) use any code or data elements that are either marked "not used" in the Standard's implementation specifications or are not in the Standard's implementation specifications;
or
- (iv) change the meaning or intent of the Standard's implementation specifications.

c. **Safeguards for the Protection of PHI.** Recipient shall implement and maintain, and by submission of a response to this solicitation, warrants that it has implemented, such safeguards as are necessary to ensure that the PHI is not used or disclosed by Recipient except as is provided in this agreement.

d. **Reporting Of and Corrective Action Related To Unauthorized Use or Disclosure.** Recipient shall report to Buyer any use or disclosure of PHI not permitted or required herein, or any actual or suspected breach of security or intrusion, within 24 hours of such use, disclosure or breach and shall permit the Buyer to investigate any such report and to examine Recipient's premises, records and practices and interview/examine personnel. Recipient shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

- e. **Use of Subcontractors.** To the extent that Recipient uses one or more subcontractors or agents to provide services hereunder, Recipient shall ensure that any agents, including subcontractors, to whom it provides PHI received from, or created or received by Recipient on behalf of the Buyer agrees to the same restrictions and conditions that apply to Recipient with respect to such information and further signs an agreement with Recipient containing substantially the same provisions as this provision (including subsections) and identifying the Buyer as a third party beneficiary with rights of enforcement and indemnification from such subcontractors or agents in the event of violation. This provision (including subsections) shall not be construed to grant Recipient the right to use subcontractors or agents, in contradiction of other provisions contained in this agreement.
- f. **Uses of Open Communication Channels; Encryption.**
 - (i) Recipient may not transmit PHI over the internet or any other insecure or open communication channel unless such information is encrypted or otherwise safeguarded using procedures no less stringent than those required by Buyer, through utilization of reasonably accessible off-the-shelf software.
 - (ii) If Recipient stores or maintains PHI in encrypted form, Recipient shall, promptly at the Buyer's request, provide the Buyer with the key or keys to decrypt such information.
- g. **Authorized Access To and Alteration Of Information.** Recipient shall:
 - (i) make available PHI to the individual having a right of access in accordance with applicable requirements, including 45 CFR §164.524;
 - (ii) make available to the Buyer such information as the Buyer may require to fulfill the Buyer's obligations to provide access to, provide a copy of, and account for disclosures with respect to PHI pursuant to HIPAA;
 - (iii) make available PHI to the Buyer for amendment and incorporate any amendments to PHI in accordance with applicable requirements, including 45 CFR §164.526; and
 - (iv) make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Recipient available to the Buyer and/or the Secretary of Health and Human Services (or any other officer or employee of HHS to whom the authority involved has been delegated) for purposes of determining compliance with HIPAA and this provision (including subsections).
- h. **Effect of Termination.** Recipient shall, upon termination of this agreement for any reason, return to the Buyer, or at Buyer's direction, destroy all PHI received from, or created or received by Recipient on behalf of the Buyer that Recipient still maintains in any form and retain no copies of such information. If such return or destruction is not feasible, Recipient shall extend the protections of this agreement and HIPAA to the information and shall limit further uses and disclosures, to those purposes that make the return or destruction of the information infeasible.
- i. **Amendment.** The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA and other applicable laws relating to the security or confidentiality of PHI. Upon the Buyer's request, Recipient agrees to promptly enter into negotiations with the Buyer concerning the terms of an amendment to this agreement embodying written assurances consistent with the standards and requirements of HIPAA or other applicable laws. Failure to enter into negotiations may be considered a material breach of this agreement, invoking termination for default or other remedies.
- j. **Disclaimer.** The Buyer makes no warranty or representation that compliance by Recipient with this provision (including subsections) or HIPAA will be adequate or satisfactory for Recipient's own purposes or that any information in Recipient's possession or control, or transmitted or received by Recipient, is or will be secure from unauthorized use or disclosure. Recipient is solely responsible for all decisions made by Recipient regarding the safeguarding of PHI. The failure by the Buyer to exercise any right to audit, investigate or otherwise take any action related to HIPAA shall not subject the Buyer to liability nor relieve Recipient of its responsibility to comply with this provision (including subsections) and shall not constitute acceptance of such practice or constitute a waiver of the Buyer's enforcement rights under this agreement.

- k. **Indemnity.** Recipient shall fully indemnify and hold harmless the Buyer and the appointed officials, employees, officers, directors, volunteers and representatives of the Buyer, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes-of-action, liability and suits of any kind and nature made upon the Buyer directly or indirectly arising out of, resulting from or related to Recipient's activities or obligations under this provision (including subsections), including any acts or omissions of Recipient, any agent, officer, director, representative, employee, consultant or subcontractor of Recipient, and their respective officers, agents, employees, directors and representatives, all without however, waiving any governmental immunity available to the Buyer under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this indemnity are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- l. **Injunctive Relief.** Recipient agrees that violation of any of the provisions contained in this Article would result in irreparable harm to the Health System.
- m. **Survival of Terms.** The obligations of Recipient relative to, and the provisions contained in this provision (including subsections) shall survive termination and be ongoing.

51. ACCESS TO BUYER'S INFORMATION ASSETS: Any access by Seller to Buyer's information assets shall require Seller to comply with Buyer's security processes and requirements prior to access. Seller agrees to comply with and to supply any executed documents and information reasonably required by Buyer to help insure security and preservation of the integrity of Buyer's information assets. Buyer agrees to keep social security numbers confidential and secure.

52. TECHNICAL AND SECURITY: If any software applications are supplied pursuant hereto, Seller represents that such software applications presently satisfy the applicable technical and security implementation requirements found in currently published regulations under HIPAA. If HIPAA requires new technical or security procedures/functionality during the term hereof, that are not already part of Seller's existing specifications/product, Seller will deliver this new capability in compliance with HIPAA, at no additional cost to Buyer.

53. MANDATORY STEPS FOR RECONCILIATION OF GRIEVANCES:

- a. Any Seller/offeror who believes he/she is or may be aggrieved in connection with solicitation specifications or requirements; or award of a contract or purchase order or any matter related to the work performed hereunder, and who wishes to protest, must protest the same to the Director of Procurement Services in accordance herewith. **ALL PROTESTS MUST BE RESOLVED UNDER THIS SECTION.** Protests received after the dates described below, will be returned to the protestor and will be considered overruled. All protests must refer to specific incidents forming the basis for the grievance and must describe specifically how the specific incidents materially affect the award, by hindering competition or otherwise or by affecting the work.
 - (1) On protests of solicitation specifications or requirements the protest must be submitted in writing and received in the Procurement Services office no later than seven (7) days prior to the closing date for receipt of offers/bids.
 - (2) On protests of awards (where solicitation specifications and requirements are not disputed), protests must be received in the Procurement Services office no later than seven (7) days after the award of any resulting contract or purchase order.
 - (3) On protests of any decisions, directions, or other matters during performance of the work under this contract, protests must be received in the Procurement Services office no later than seven (7) days after Seller knows or should have known of the grievance.
- b. The Director of Procurement Services has the authority to resolve a protest following a review of the facts in regards to the solicitation and/or award (whichever is applicable, or both). The Director of Procurement Services shall prepare a written response to the protest letter and forward the same to the Seller/offeror stating the official decision regarding the protest.

- c. If the protest is not resolved to the satisfaction of the Seller/offeror, and the Seller/offeror seeks further remedy, the Seller/offeror shall submit a request for administrative review of the protest to the Director of Procurement Services within seven (7) days of receipt of the Director of Procurement Services written response to the protest. The request for administrative review will be forwarded with comment from the Director of Procurement Services to the Vice President of Supply Chain Management for final review. The Vice President of Supply Chain Management shall review the protest, the Director of Procurement Services written response to the protest, the request for administrative review and any other documents deemed necessary to fully and fairly evaluate the protest. The Vice President of Supply Chain Management shall prepare a written response to the request for administrative review and forward the same to the Seller/offeror, with a copy to the Director of Procurement Services. This written response shall be the final determination of the protest.
- d. Any and all protests or requests for administrative review shall be mailed or hand carried directly to the Procurement Services Department and time and date stamped upon arrival. No other format for submission will be accepted including fax, phone (verbal) or email.

54. REQUESTS FOR CLARIFICATION; DEFECTS OR DISCREPANCIES IN SPECIFICATIONS OR CONTRACT: Requests for clarification of specifications or contract terms must be submitted to the Procurement Services office no later than seven (7) days prior to the closing date for receipt of offers/bids, unless a specific date is given in the IFB/RFP document, or unless the time is extended by the Buyer, in its sole discretion. If it should appear to Seller/offeror that the performance of the Work under the Contract, or any of the matters relating thereto, is not sufficiently described or explained in the IFB/RFP or Contract documents, or that any conflict or discrepancy exists between different parts thereof or with any federal, state, local law, ordinance, rule, regulation, or other standard or requirement, then the Seller/offeror shall submit a written request for clarification to the Procurement Services office within the time period specified above.

55. SUPPLIER DIVERSITY: As a recognized leader in the health care industry, the Health System is committed to supplier diversity. The Health System will make every effort to ensure that Diverse Vendors such as Small, Minority, Women, Veteran and/or Disabled Individual-Owned Business Enterprises (SMWVDIBE) are provided the maximum practicable opportunity to participate as a supplier, vendor or contractor for products and/or services provided to the Health System. Accordingly, Prime Vendor agrees to use its best effort to provide Diverse Vendors the maximum practicable opportunity to participate in the subcontracts it awards as it relates to the Health System.

56. CONFLICT OF INTEREST: State of Texas House Bill 914 amended the Local Government Code by adding Chapter 176: DISCLOSURE OF CERTAIN RELATIONSHIPS WITH LOCAL GOVERNMENT OFFICERS; PROVIDING PUBLIC ACCESS TO CERTAIN INFORMATION.

This amendment requires vendors and other persons doing business, or seeking to do business with University Health System, a local governmental entity, to file a conflict of interest questionnaire when the vendor or other persons has an association or business relationship with a University Health System Board member, the President/CEO, or an employee with purchasing authority or influence. Disclosures from the questionnaire must then be posted on the University Health System Internet website.

This questionnaire must be filed with the Health System's Integrity Officer no later than the seventh business day after the date the person,

- 1) begins contract discussions or negotiations with University Health System; or
- 2) submits to University Health System an application, response to a request for proposals, or bids, correspondence, or another writing related to a potential agreement with University Health System.

Additionally, the questionnaire must be updated with 7 business days after you (the Vendor) become aware of an event that makes any of the statements made on your questionnaire incomplete or inaccurate.

FAILURE TO COMPLY WITH THIS SECTION OF THE LOCAL GOVERNMENT CODE IS A CLASS C MISDEMEANOR

In order to maintain public trust in the activities of University Health System we require those seeking to do business with the Health System inform us about any actual or potential relationships (business or personal) which could undermine the public's confidence in the governance and administration of the Health System's mission. If you have a relationship that you feel might be considered a conflict of interest, please contact our Integrity Officer at 358-2193 for guidance.

Sellers/offerors with a relationship with one of the parties listed above must provide complete answers to, and signature on, the attached Conflict of Interest questionnaire. Failure to do so may result in Seller/offeror being considered non-responsive and in disqualification of the bid/proposal.

Vendor Signature

Date

Kourtney Mosby
Director of Procurement Services
University Health System

Date

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.

2 Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Signature of person doing business with the governmental entity

Date



Workforce/Employee Composition

Do you have an Affirmative Action Plan or Policy? Yes No

If yes, briefly explain the policy or attach a copy. _____

Please complete the following by filling in numbers for each EEO-1 category:

Non-Professional Workforce	American Indian	Asian American	African American	Hispanic	White	Total
Female Total						
Male Total						
Combined Non-Prof Total						
Professional Workforce	American Indian	Asian American	African American	Hispanic	White	Total
Female Total						
Male Total						
Combined Prof Total						
Total Workforce						

Request for Taxpayer Identification Number and Certification

**Give form to the
 requester. Do not
 send to the IRS.**

Print or type See Specific Instructions on page 2	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/ Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶	
	<input type="checkbox"/> Exempt from backup withholding	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number									

OR

Employer identification number									

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here	Signature of U.S. person ▶	Date ▶
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Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien.

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments (after December 31, 2002). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 4 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules regarding partnerships* on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line. Check the appropriate box for your filing status (sole proprietor, corporation, etc.), then check the box for "Other" and enter "LLC" in the space provided.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt From Backup Withholding

If you are exempt, enter your name as described above and check the appropriate box for your status, then check the "Exempt from backup withholding" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

Exempt payees. Backup withholding is not required on any payments made to the following payees:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt recipients listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt recipients except for 9
Broker transactions	Exempt recipients 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt recipients 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt recipients 1 through 7 ²

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees; and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-owner LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter your SSN (or EIN, if you have one). If the LLC is a corporation, partnership, etc., enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.socialsecurity.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer ID Numbers under Related Topics. You can get Forms W-7 and SS-4 from the IRS by visiting www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Writing "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt recipients, see *Exempt From Backup Withholding* on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship or single-owner LLC	The owner ³
For this type of account:	Give name and EIN of:
6. Sole proprietorship or single-owner LLC	The owner ³
7. A valid trust, estate, or pension trust	Legal entity ⁴
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one). If you are a sole proprietor, IRS encourages you to use your SSN.

⁴ List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules regarding partnerships* on page 1.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.