**Summary**

UT Contract #: Click or tap here to enter text.

Vendor Name: Click or tap here to enter text.

UT Vendor #: Click or tap here to enter text.

Supplier’s representative: Click or tap here to enter text.

Name: Click or tap here to enter text.

Email: Click or tap here to enter text.

**Agreement**

This supplier agreement is dated Click or tap to enter a date., and is between Click or tap here to enter text. (“Supplier”), and The University of Tennessee, an instrumentality of the State of Tennessee (“University”).

**Background**:

* The University of Tennessee, a public university system, is composed of the following:
  + Campuses:
    - Chattanooga;
    - Health Science Center;
    - Knoxville; and
    - Martin.
  + Institutes:
    - Institute of Agriculture (which includes the University’s College of Veterinary Medicine);
    - Institute for Public Service; and
    - Space Institute.
  + Administration:
    - University System Administration.
* The University published a bid solicitation (# Click or tap here to enter text.) on Click or tap to enter a date..
* The University awarded to Supplier.

**Agreement**: The parties agree as follows:

1. **Terms; Renewal; Termination:**
   1. Term: This agreement begins on the date stated in the introductory clause and ends at 11:59 PM Central Time on Click or tap to enter a date..
   2. Renewal: Upon mutual written agreement, the parties may extend this agreement through Click or tap to enter a date..
   3. Termination: Either party may terminate this agreement for any reason by giving the other party at least 30 days’ prior notice.
2. **Cooperative Procurement:** The University intends to promote efficient procurement methods. Accordingly, Supplier acknowledges that any institution of higher education (public or private) or government agency in the United States and U.S. territories (“Institution”) may enter into a separate agreement with Supplier, incorporating this agreement, by following the process specified in this agreement.
3. **Goods / Services**: Supplier shall provide the goods or services, or both, stated in Schedule 1.
   1. Expanded Scope: After the University makes an award to Supplier, the University may negotiate with Supplier to include any of Supplier’s services or products, including products or services not available from Supplier at the time of award. Any such expanded scope will be agreed in writing and signed by authorized officials of both parties.
4. **Financial**:
   1. Pricing: Supplier’s pricing is stated in Schedule 2.
   2. Prohibited Costs: Supplier shall not charge the University or Institution (together, “Customer”) any cost, unless the cost is explicitly stated in this agreement.
   3. Discounts / Special Quotes: All pricing specified is maximum or “not to exceed” pricing. At any time, Supplier may provide lower prices to Customer, including lower prices on a single purchase, on an ongoing basis, or as part of a solution offered by Supplier for a particular project by Customer (for example, outfitting a new healthcare simulation facility).
5. **Records; Audit**:
   1. Records: Supplier will maintain records for all charges made to Customer under this agreement. Supplier will maintain its records for at least 3 years, and will maintain its records in accordance with generally accepted accounting principles.
   2. Audit: During the term of this agreement and for 3 years after the last payment from the Customer to Supplier under this agreement, the State of Tennessee Comptroller, or the Customer (or its designee), or both, may audit Supplier’s records that relate to this agreement.
6. **Debarment**: Supplier hereby states that the following are true statements:
   1. Supplier is not currently debarred by the U.S. federal government.
   2. Supplier is not currently suspended by the U.S. federal government.
   3. Supplier is not currently named as an “excluded” supplier by the U.S. federal government.
7. **Nature of Agreement**:
   1. No Required Quantities or Minimum Amounts: Supplier acknowledges that that this agreement does not impose any minimum-quantity or minimum-spend-amount requirements on Customer. Accordingly, Supplier acknowledge that this agreement is not a requirements contract.
   2. Not Exclusive: Supplier acknowledges that this agreement does not impose any exclusivity obligations on the Customer.
8. **Fraudulent Orders**: Supplier is solely responsible for ensuring that Supplier fulfills only legitimate orders. The Customer is not responsible for any fraudulent orders (for purposes of this agreement, “fraudulent orders” means any order that is not: (a) made by the Customer, or (b) for the Customer’s official use.
9. **Background Checks**:
   1. General Obligation: Supplier will not knowingly assign any individual to provide services to Customer if the individual has a history of criminal conduct. For proposes of this agreement, “criminal conduct” means charges filed by any government agency, excluding non-moving violations and speeding violations.
   2. Tennessee Abuse Registry; Tennessee Sex Offender: Supplier must inform the University’s Office of Procurement Services immediately if any of Supplier’s employees or sub-contractors are listed in:
      1. The Tennessee Abuse Registry.
      2. The Tennessee Sex Offender Registry.
   3. Prompt Background Checks: If the University requests, Supplier must perform a comprehensive criminal background check on any Supplier employee or sub-contractor.
10. **Premises Rules**: When Supplier is physically present on Customer property, Supplier shall make reasonable efforts to cause its employees and permitted sub-contractors to become aware of, and in full compliance with, Customer’s rules, practices, and policies (collectively referred to as “rules.”). For example, Supplier shall ensure that it complies with the Customer’s applicable rules regarding safety, smoking, noise, access restrictions, parking, security, and consideration for minors (students and Customer visitors under age 18).
11. **Conduct**: Supplier will make reasonable efforts to ensure that Supplier’s employees and sub-contractors will conduct themselves in a professional manner while on Customer property, and while interacting with Customer employees, students, or visitors. Supplier must report, within 24 hours, to the University’s Office of Procurement Services any complaints about Supplier’s employees or sub-contractors engaging in the following behavior: sexually suggestive or harassing behavior; unwanted physical touching; unwanted photographs; alcohol use; illegal drug use; or physical manifestations of alcohol or drug use (e.g. Supplier’s employee emits smells that indicate that the individual consumed alcohol recently).
12. **Assignment**: Supplier may not assign any rights or delegate any of Supplier’s obligations under this agreement to any other person or entity.
13. **Customer Policies**:
    1. For University:
       1. Non-Solicitation: Supplier shall comply with the University’s “Vending and Solicitations on the University Campus” policy: <http://policy.tennessee.edu/fiscal_policy/fi0325/>
       2. Gift Acceptance: Supplier shall comply with the University’s “Employee Gift Acceptance Policy”: <http://policy.tennessee.edu/fiscal_policy/fi0717/>
    2. For All Customers: Supplier shall comply with all other policies established by Customer that relate to Supplier.
14. **Communication**:
    1. For University: Supplier shall ensure that its representatives coordinate with the University’s System Office of Procurement Services before engaging in marketing, communication, or other outreach efforts. Supplier shall not conduct any demonstrations, email marketing campaigns, etc. without first obtaining the written approval of the University’s System Office of Procurement Services. Moreover, Supplier shall not contact individual University employees regarding anything other than providing customer-service on orders without first obtaining the written approval of the University’s System Office of Procurement Services.
    2. For Institutions: Suppler shall comply with the policies of, and instructions given by, Institution regarding marketing, communication, or other outreach efforts, including demonstrations, email marketing campaigns, etc.
15. **Illegal Immigrants**: In compliance with the requirements of Tenn. Code Ann. § 12-3-309, Supplier hereby attests that it shall not knowingly utilize the services of an illegal immigrant in the United States in the performance of this agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the United States in the performance of this agreement.
16. **Force Majeure**: Neither party’s delay or failure to perform any provision of this agreement, as result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) will be deemed a breach of this agreement.
17. **Dispute Resolution**: The parties shall make reasonable efforts to resolve any dispute before filing any formal legal action.
18. **Governing Law**: The internal laws of the State of Tennessee, without giving effect to its principles of conflicts of law, govern this agreement. The University’s liability is governed by the Tennessee Claims Commission Act.
19. **Waiver of Claims**:
    1. Supplier’s Intent: Supplier intends to protect the University’s employees from personal liability. Accordingly, Supplier intends to waive and release any claims against the University’s employees.
    2. Irrevocable Waiver: Supplier hereby irrevocably waives any claims against the University’s employees or former employees. Supplier hereby covenants not to sue University employees or former employees in their individual capacity. This release and waiver applies to Supplier and Supplier’s successors, heirs, and assigns.
    3. Materiality: The University and Supplier state that this clause is material to this agreement.
20. **Notice**:
    1. For a notice or other communication under this agreement to be valid, it must be in writing and delivered (1) by hand, (2) by a national transportation company, with all fees prepaid, or (3) by registered or certified mail, return receipt requested and postage prepaid;
    2. Subject to sub-section (d) below, a valid notice or other communication under this agreement will be effective when received by the party to which it is addressed. It will be deemed to have been received as follows:
       1. if it is delivered by hand, delivered by a national transportation company, with all fees prepaid, or delivered by registered or certified mail, return receipt requested and postage prepaid, upon receipt as indicated by the date on the signed receipt; and
       2. if the party to which it is addressed rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver.
    3. For a notice or other communication to a party under this agreement to be valid, it must be addressed using the information specified below for that party or any other information specified by that party in a notice in accordance with this section.

**Supplier**:

**[add notice address here]**

**University**:

Legal notices only; do not send invoices to this address:

The University of Tennessee

5723 Middlebrook Pike

Knoxville, TN 37921-5946

ATTN: Office of Procurement Services

Fax: 865-974-2701

Email: [contracts@tennessee.edu](mailto:contracts@tennessee.edu)

* 1. If a notice or other communication addressed to a party is received after 5:00 p.m. on a business day at the location specified in the address for that party, or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next business day.

1. **Registration with Tennessee Department of Revenue**: In compliance with the requirements of Tenn. Code Ann. § 12-3-306, the Supplier hereby attests that it has registered with the State of Tennessee’s Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this agreement.
2. **Iran Divestment Act**: The Supplier certifies, under penalty of perjury, that to the best of its knowledge and belief the Supplier is not on the list created pursuant to Tenn. Code Ann. § 12-12-106. The Supplier further certifies that it shall not utilize any subcontractor that is on the list created pursuant to Tenn. Code Ann. § 12-12-106.
3. **Use of University Intellectual Property**: Except as allowed in this section, Supplier shall not use the University’s name, logo, or any other University-owned intellectual property for any reason, without the written consent of an authorized official of the University. During the term of this agreement, Supplier may list the University’s name in Supplier’s list of clients.
4. **Third-Party Beneficiaries**: There are no third-party beneficiaries to this agreement.
5. **Severability**: The parties intend as follows:
   1. that if any provision of this agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded;
   2. that if an unenforceable provision is modified or disregarded in accordance with this section, then the rest of the agreement will remain in effect as written; and
   3. that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.
6. **Modification; Waiver**:
   1. Modification:
      1. No amendment of this agreement will be effective unless: (1) it is in writing; (2) it is signed by authorized officials of both parties; and (3) it specifically references this agreement.
      2. Only the University’s authorized officials have the authority to bind the University. A list of the University’s authorized officials is located here: <http://treasurer.tennessee.edu/contracts/contractsignature.html>.
   2. Waiver: No waiver of satisfaction of a condition or failure to comply with an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or failure to comply with any other obligation.
7. **Counterparts**: If the parties sign this agreement in several counterparts, each will be deemed an original but all counterparts together will constitute one instrument.
8. **Attached Schedules**: Supplier must comply with all attached Schedules. The Schedules listed below are attached to and fully incorporated into this agreement as substantive parts of this agreement: Schedule 1, 2, 3, 4, 5, 6, 7, 8.
9. **Entire agreement**: This agreement constitutes the entire understanding between the parties with respect to the subject matter of this agreement and supersedes all other agreements, whether written or oral, between the parties. In the event Supplier’s invoices, order forms, or other Supplier-provided items contain terms, Supplier acknowledges that Supplier’s terms do not apply to the Customer. Further, in the event Supplier’s website, mobile applications, or other platforms contain click-wrap, browse-wrap, or shrink-wrap terms and conditions, Supplier states that such terms and conditions do not apply to Customer.

The parties are signing this agreement on the date stated in the introductory clause. Each party is signing this agreement electronically.

**The University of Tennessee** Click or tap here to enter text.

Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

**Schedule 1: Scope of Work**

*(to be completed after bid)*

1. **Definitions**: For purposes of this agreement, the following definitions apply:
2. **General Description**: Supplier will provide ***[describe Supplier’s goods or services, in a general/high-level manner]***.
3. **Pricing Accuracy**: Supplier shall make reasonable efforts to ensure that the Supplier charges the University accurate pricing for 100% of University’s order. Supplier shall take the following steps to self-audit Supplier’s pricing: ***[describe]***
4. **Pricing Transparency**: The University will not be responsible for paying any costs, unless the costs are specifically stated in this agreement.
5. **Ordering**:
6. **Cancelling Orders**:
7. **Restocking Fees**:
8. **Warranty**:
9. **Shipping:**
   1. Arrangement: Supplier will arrange shipping goods to the University’s specified locations.
   2. Costs: [state who will pay for shipping]
   3. Insurance: [state who will pay for insurance]
   4. Third-Party:
      1. Reporting Damages:
      2. Declared Value:
   5. Title: The University takes title to the goods upon University’s physical receipt of goods.
   6. Damages: Supplier is responsible for all damages that occur during shipment, regardless of cause, until the University takes title to the goods.
   7. Inspection and Rejection: The University may inspect the goods at any time from the point that University takes title to 14 calendar days later. Within the 14-day period, the University may reject any goods without penalty by providing the Supplier notice.
10. **Returns**:
11. **Refunds**:
12. **Blocked Items**: Supplier must block any items, as directed by Customer. Supplier shall not sell any Blocked Items to Customer regardless of Customer’s ordering method.
13. **Liquidated Damages**: In the event that Supplier cumulatively charges Customer $15,000, or more, above the contract price per calendar-year, Supplier shall pay Customer 15% of the total, cumulative over-charge as a liquidated damage to cover University staff time and resources.

**Schedule 2: Pricing**

*(to be completed after bid)*

**Schedule 3: Participation Form**

Supplier Agreement UT-[contract number]

The University of Tennessee (“UT”) has conducted a competitive bid process. A contract (“Supplier Agreement”) with [Supplier name] (“Supplier”) resulted from this bid.

The Supplier Agreement is available to all educational institutions, public or private, and to all government agencies (collectively, “Institution”) as long as this document (“Participation Form”) is executed by UT, Supplier, and each Institution seeking to use the Supplier Agreement.

**All Institutions seeking to use the Supplier Agreement must execute a Participation Form prior to use. Permission for Institution to use the Supplier Agreement is contingent on execution of this Participation Form by Institution, UT, and Supplier, and UT does not agree to extend the terms of the Supplier Agreement to any Institution unless this Participation Form is fully executed.**

If Institution is required by policy or law to include in its contracts specific terms, or is prohibited from agreeing to specific terms contained in the Supplier Agreement, Institution and Supplier may execute a schedule that contains the required revisions and attach it to this form as Exhibit 3.

By executing this Participation Form, all parties agree:

1. The terms of the Supplier Agreement govern all transactions between Institution and Supplier, except that terms specified in the attached Exhibit 3 will supersede the terms of the Supplier Agreement as to the relationship of Institution and Supplier. No terms in Exhibit 3 will have any effect on the relationship between Supplier and UT, between Supplier and other Institutions, or between UT and Institution. The terms of the Supplier Agreement govern the relationship between UT and Institution;
2. Institution shall provide to UT a copy of every agreement it enters or purchase order it creates that is based on the Supplier Agreement on the same day the agreement or purchase order is made final;
3. Supplier shall provide to UT a copy of every agreement or purchase order it receives that is based on or references the Supplier Agreement on the same day the agreement or purchase order is made final;
4. Supplier shall provide to UT at least annually the amount spent by Institution with Supplier through the Supplier Agreement; and,
5. No later than July 15 of every year, Institution shall provide to UT a completed copy of the Exhibit 2 attached to this agreement.
   1. UT will send the Exhibit 2 form via DocuSign to the Institution contact person listed in Exhibit 1 on the first business day of July, and Institution is responsible for completing the DocuSign envelope by July 15.

To the extent that any terms of this Participation Form conflict with the terms of the Supplier Agreement governing the relationship between UT and Supplier or UT and Institution, the terms of the Supplier Agreement will govern. This Participation Form is effective on the date of the last signature completed below.

|  |  |  |
| --- | --- | --- |
| **FOR SUPPLIER**  Supplier Name  Signer’s Name  Signer’s Title  Signature  Date Signed | **FOR INSTITUTION**  Institution Name  Signer’s Name  Signer’s Title  Signature  Date Signed | **FOR UT**  The University of Tennessee  Signer’s Name  Signer’s Title  Signature  Date Signed |

Participation Form – Exhibit 1

**Administrative Information**

Contract Updates: Renewals, amendments, or other modifications to the Supplier Agreement will be published on UT’s website[[1]](#footnote-1) and will also be sent via email to the designated contact person at every Institution.

Contact Information – Institution

Designated Contact Person:

Title:

Email:

Address:

Phone:

Contact Information – Supplier

Representative Name:

Title:

Email:

Phone:

Contact Information – UT

Contract Manager: Ryan Holliday

Email: [ryanholliday@tennessee.edu](mailto:ryanholliday@tennessee.edu)

Phone: (865) 974-8293

Participation Form – Exhibit 2

**Cooperative Procurement Annual Spend Report**

**Institution:**

**Cooperative Agreement:** UT-[contract number]

**Year:** [2018-2019]

**Total Spend[[2]](#footnote-2):**

**For the Institution:**

**Prepared by**

Name:

Title:

Date Completed:

Participation Form – Exhibit 3

**Institution-Specific Terms**

*Exhibit 3 should be completed only if required by Institution. Insert all revisions agreed upon by Institution and Supplier.*

**Schedule 4: Supplier Relationship Management**

1. **Generally**: The University intends to have an ongoing dialogue with its high-volume suppliers. Accordingly, the University engages in supplier-relationship management (commonly referred to as “SRM”).
2. **Quarterly Business Reviews**: Supplier must participate in meetings with the University’s System Office of Procurement Services no less than every 3 months, unless otherwise directed by University. During these meetings, the parties will discuss all matters related to this agreement. The University and Supplier will mutually agree on dates, times, and locations for each quarterly business review.
3. **Data:** Supplier must provide to University at least 5 business days prior to each quarterly review:
   1. The total spend by University and by Institutions (with spend by Institutions broken out by each Institution) with Supplier over the preceding 3 months.
   2. All other reporting mutually agreed upon by University and Supplier.

**Schedule 5: Data Reporting**

*(to be negotiated)*

**Schedule 6: Insurance**

During the term of this agreement, Supplier shall maintain the following insurance levels, at a minimum.

1. Supplier must maintain insurance that will protect Supplier, and the University, from any claims for bodily injury, property damage, or personal injury, which might arise out of this agreement.
2. Supplier must buy the insurance policies at Supplier’s expense, and must provide the University with an insurance certificate listing the University as certificate holder.
3. Supplier must provide applicable insurance certificates to the University within 10 business days after signing this agreement.
4. Supplier’s policies must contain a provision stating that the issuing insurance company cannot do the following, without providing written notice to the University no less than 30 calendar days in advance: cancel part or all of the policy; change any part of the policy; or allow the policy to expire.
5. Supplier’s insurance policies must be issued by an insurance company licensed to do business in the State of Tennessee, with a minimum AM Best rating of “A,” and must be signed by an authorized agent.
6. Supplier must ensure that its insurance certificates contain at least the following information:
   1. Name and address of authorized agent
   2. Name and address of insured
   3. Name of insurance company (licensed to operate in Tennessee)
   4. Description of coverage in standard terminology
   5. Policy period
   6. Limits of liability
   7. Name and address of certificate holder
   8. Acknowledgment of notice of cancellation to the University
   9. Signature of authorized agent
   10. Telephone number of authorized agent
   11. Details of policy exclusions in comments section of insurance certificate
7. During the term of this agreement, Supplier must maintain the following insurance types and limits (or higher limits):

Workers Compensation (WC): Statutory Limits – required in all contracts

Employers’ Liability Each Accident: $100,000

Employers’ Liability Disease – each employee: $100,000

Employers’ Liability Disease – policy limit: $500,000

Commercial General Liability (CGL):

Each Occurrence Limit: $1,000,000

Damage to Rented Premises – Ea. Occ.: $300,000

Medical Expense – any one person: $10,000

Personal & Advertising Injury Limit: $1,000,000

General Aggregate Limit: $2,000,000

Products/Completed Ops. Aggregate Limit: $2,000,000

Automobile Liability

Combined Single Limit – each accident: $1,000,000

Additional Insured: Supplier must add The University of Tennessee, its affiliates, subsidiaries and/or assigns as an additional insured under the commercial general and automobile liability policies.

**Schedule 7: Cooperative Use**

1. **Administrative Information**
   1. Institution Policies: Each Institution may have its own policies for conducting business with Supplier. Supplier will be responsible for its compliance with all applicable laws and policies.
2. **Liability**
   1. Indemnification: Supplier shall indemnify University for all claims arising from use of the Supplier Agreement by an Institution.
   2. University’s Liability: University is not responsible for any claims, damages, losses, or costs arising out of or related to an Institution’s use of the Supplier Agreement.
3. **Rebates**
   1. Generally: Supplier will pay University a Management Fee and a Volume Rebate for all purchases made through the Supplier Agreement.
   2. Net Sales: Both the Management Fee and Volume Rebate (“Rebates”) will be calculated from net sales. Net sales means the aggregate dollar amount of purchases from Supplier by Institutions and University, less credits, returns, applicable taxes, unpaid invoices, collections, and freight and delivery charges separately charged on an invoice in accordance with the Supplier Agreement.
   3. Rebate Period: Rebates are calculated for a 12 month period, beginning July 1 and ending June 30 of the following calendar year (for example, July 1, 2018 to June 30, 2019).
   4. Payment: Supplier shall pay the Rebates no later than August 1 of each year. Supplier shall make payment by check, with the payee designated as The University of Tennessee, and addressed as follows:

Office of Procurement Services  
ATTN: Director of Procurement Services

5723 Middlebrook Pike

Knoxville, TN 37929

* 1. Management Fee: Supplier shall pay University 1% of net sales as a Management Fee.
  2. Volume Rebate: Supplier shall pay University a Volume Rebate based on net sales according to the tier schedule that follows. The Volume Rebate is in addition to the Management Fee.

Net Sales Per Year Rebate Percentage

$0 to $499,999 0.5%

$500,000 to $999,999 1%

$1,000,000 to $2,00,000 1.5%

$2,000,000+ 2%

The rebate percentage is determined by net sales but is paid from dollar one, not in brackets (for example, gross sales of $550,000 would be rebated in the amount of 1% of $550,000 – not 0.5% of the first $499,999 and 1% of $50,001).

**Schedule 8: E-Procurement**

*(to be completed only if University and Supplier will place Supplier’s online catalog in University’s e-procurement system)*

**Recitals**:

1. The University has a presence in all 95 counties in Tennessee.
2. The University has approximately 1,400 bill-to locations.
3. The University encourages its departments to use the University’s electronic procurement (“e-procurement”) platform. The platform is supported by ESM Solutions, Inc.
4. Supplier is capable of supporting e-procurement orders and servicing all of the University’s locations throughout Tennessee.
5. Supplier is capable of developing and maintaining an electronic catalog.
6. The University has branded its e-procurement platform as the “UT Marketplace.”
7. The UT Marketplace contains two types of catalogs: “hosted catalogs” and “punch-out catalogs.”
   1. Hosted catalog: a catalog that is hosted on ESM Solutions, Inc.’s servers.
   2. Punch-out catalog: a catalog that is hosted on Supplier’s servers, and ESM Solutions, Inc. builds a portal from the University’s UT Marketplace to Supplier’s catalog.

**Agreement**: The parties agree as follows:

1. **Costs of development**: Supplier hereby acknowledges that Supplier is solely responsible for all costs related to Supplier developing and maintaining its electronic catalog. The University will not reimburse Supplier for any costs that Supplier incurs due to developing or maintaining Supplier’s catalog. Supplier hereby waives all claims that Supplier might otherwise have against the University related to the subject matter of this agreement, including costs that the Supplier incurs as a result of developing or maintaining the catalog.

1. **Pricing**:
   1. **Match**: Supplier shall make reasonable efforts to ensure that Supplier’s pricing in Supplier’s catalog matches that pricing in the Pricing Agreement. In the event that Supplier’s pricing in Supplier’s catalog is higher than the pricing in the Pricing Agreement, the University may request a refund. In the event that the University requests a refund, the Supplier shall pay the University the full amount of refunds within 30 days of the Supplier’s receipt of University’s request.
2. **Catalog Type**: Supplier will maintain a [punch out or hosted catalog] for the University.
   1. Our software provider, ESM Solutions, Inc., provides options to connect catalog content to the University via cXML connection. This connection is known as a ‘punch-out’. ESM Solutions, Inc. uses up to date industry standards. General specifications are available at [cxml.org](http://cxml.org/).
   2. Any questions regarding technical requirements should be directed to the University.
3. **Content**:
   1. **Allowed items**: Supplier’s catalog will contain only the items specified by the Supplier Agreement.
   2. **Blocked Items**: Supplier must block any items, as directed by the University. The University requires all suppliers to block gift cards, “mature content” (i.e. items that are for “mature audiences”), and aerial drones (i.e. remote-controlled vehicles capable of flight).
      1. Supplier must block, in addition to the items specified above:
         1. [specify as needed]
4. **Orders; Customer Service**:
   1. **Orders**:
      1. Data: Supplier will accept orders electronically via cXML data transfer.
      2. Payment: The University may pay for orders via:
         1. University-owned credit card (known at the University as procurement cards, or “p-cards”); or
         2. Payment on an invoice (known in ESM Solutions’ as “purchase order”).
      3. Shipping: Supplier is responsible for ensuring that its invoices and shipments arrive at the address specified by the University.
   2. **Invoices**: Supplier shall submit invoices electronically via cXML data transfer when University implements the invoicing module of the Marketplace. Payment terms will be 2/10 net 30 for all invoice payments.
   3. **Customer Service**: Supplier shall fulfill orders made by any of University’s departments, regardless of location. Supplier shall provide responsive customer service to University.
5. **Restrict Items**: The University may require Supplier to restrict any items in Supplier’s catalog. Supplier shall restrict any items that the University requests.
6. **Marketing**: Supplier shall make reasonable efforts to encourage the University’s departments to use the UT Marketplace and shall not maintain any other catalogs for use by University’s users.
7. **Applicable Laws; PCI**: Both parties shall comply with all applicable laws. Supplier states that Supplier is PCI compliant and is a merchant level [to complete]

1. <https://procurement.tennessee.edu/cooperative> [↑](#footnote-ref-1)
2. The total amount Institution paid Supplier between July 1 of prior calendar year and June 30 of current calendar year [↑](#footnote-ref-2)