**Purchase Agreement - Vanderbilt University and Supplier**

This general purchase agreement (“Agreement”), effective upon the date of the last signature appearing below, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a [corporation, partnership, limited liability company or partnership, etc...] duly incorporated under the laws of [State and/or Country] with a principal place of business at [Address], (hereinafter referred to as "Supplier’), and **VANDERBILT UNIVERSITY**, a Tennessee not for profit corporation, located for purposes of this Agreement at 2201 West End Avenue, Nashville, TN 37235 (hereinafter "VANDERBILT”) sets forth the agreement whereby SUPPLIER agrees to provide the Deliverables de­scribed in various proposals to VANDERBILT and VANDERBILT agrees to utilize such Deliverables from SUPPLIER according to the terms and conditions hereinafter provided.

## ARTICLE I – GENERAL

* 1. **Definitions.**

1. The term **“Account Manager”** shall mean the individual assigned by the SUPPLIER hereto to be the focal point for communi­cations with VANDERBILT on matters related to this Agreement.
2. The **“Deliverables**” shall mean the products or services to be provided by the SUPPLIER to VANDERBILT and listed in Attachment A.
3. **“VANDERBILT** **Request for Proposal”** shall mean the commercial and technical and performance requirements as furnished by VANDERBILT to the SUPPLIER and incorporated herein as Attachment B.
4. The SUPPLIER’S Proposal is incorporated herein as Attachment C.

## ARTICLE II – TERM BUYING ARRANGEMENT

* 1. **Scope Of Work.** SUPPLIER will sell to VANDERBILT and VANDERBILT will purchase from SUPPLIER such quantities of Deliverables as are agreed to from time to time by the parties. All such purchases will be made pursuant to VANDERBILT’s standard Terms and Conditions of Purchase in effect at the time the affected order is placed with SUPPLIER. Neither party makes any promises or representations about the amount of the Deliverables which will be purchased pursuant to this Agreement, although the parties acknowledge that quantities purchased may affect pricing. VANDERBILT reserves the right to modify, drop, and add specific Deliverables to this Agreement. Prices will be established as described in Attachment A, as amended from time to time by the parties. Quantities, delivery dates, and other terms not defined herein will be as described on individual purchase orders completed pursuant to this Agreement.
  2. **Electronic Transactions**. From time to time, the parties may agree to process purchase orders, payments, invoices and other transactions implementing this Agreement electronically, and such electronic transactions will be deemed to be writings completed pursuant to this Agreement for all purposes.
  3. **Order of Priority.** In the event of inconsistency of terms the order of priority shall be this Agreement, then Attachment A (Deliverables), then Attachment B (VANDERBILT RFP) and then any SUPPLIER documents included as additional attachments.

**2.4 Change Control.** During the course of this Agreement, VANDERBILT may desire a change in the scope of the Agreement. Requests for changes are to be made in writing and delivered to the SUPPLIER’s Account Manager.

**2.5 Acceptance.** Acceptance shall occur when the Deliver­ables described in Attachment A meet the agreed upon acceptance criteria as described in the VANDERBILT RFP.

If the Deliverables do not meet the acceptance criteria as set forth in Attachment A when it is offered by SUPPLIER for VANDERBILT’s acceptance, VANDERBILT shall give SUPPLIER detailed written notifica­tion of the deficien­cy or non-conformance within thirty (30) business days of delivery. Within thirty (30) days of receipt of such written notifica­tion, SUPPLIER then shall either correct the deficien­cy or non-conformance or provide a plan accept­able to VANDERBILT for correcting the deficien­cy or non-con­for­mance. If the deficien­cy or non-con­form­ance is not corrected or if an accept­able plan for correcting such deficiency is not established during such period, then, upon notice by VANDERBILT and with the return of all Deliverables and copies thereof, SUPPLIER shall refund to VANDERBILT all amounts paid by VANDERBILT relating to such deficiency.

If VANDERBILT does not notify SUPPLIER of any deficiency or non-conformance within thirty (30) days of delivery of the Deliverables, then the Deliverables are considered as Accepted.

## ARTICLE III – PERSONNEL

**3.1 Subcontracting and SUPPLIER’s Employees**. SUPPLIER may subcontract specific assignments hereunder only with VANDERBILT’s prior written permission.

Personnel used or supplied by SUPPLIER in the performance of the work hereunder shall be employees or agents of SUPPLIER and under no circum­stances are such personnel to be considered employees or agents of VANDERBILT. SUPPLIER shall have the sole responsi­bility for the conduct of its employees and agents, and for payment of their entire compensation, including salary, with­hold­ing of income and social security taxes, worker’s compen­sation, employee and disability benefits and the like. SUPPLIER shall be responsible for all employer obligations towards all of its employees and agents under all applicable laws.

**3.2 Qualifications and Replacement**. VANDERBILT shall have the right to review and approve the qualifications of all personnel SUPPLIER assigns to perform work under this Agreement. VANDERBILT shall also have the right to designate that any such personnel be removed and replaced. SUPPLIER may also replace personnel when it determines such to be necessary and appropriate. SUPPLIER agrees to maintain a consistently high skill level among all of its personnel, replace­ment personnel and agents assigned to perform work under this Agreement.

* 1. **On Site Activity**. SUPPLIER agrees that while their personnel are on VANDERBILT’s premises, they will abide by VANDERBILT’s normal rules of work and its standard practices governing behavior of its own employees. If VANDERBILT has a written set of rules that apply to contractors, VANDERBILT shall furnish SUPPLIER with a copy of such work rules and standard employee practices. Also, SUPPLIER agrees to require such personnel to work in a manner which will comply with the current applicable OSHA regulations and with any and all other applicable laws, rules and regulations.
  2. **Background Checks.** SUPPLIER shall, at its expense, perform local, state and federal background and reference checks, including criminal background checks, on all prospective employees to be assigned to Vanderbilt, for every county of residence of prospective employees for the past 10 years. Such checks shall include any convictions involving any violent crime, any crime involving theft, possession, receipt of stolen property or sale/use or possession of drugs. SUPPLIER agrees not to refer or place at Vanderbilt University any individual having such a criminal record during the 10 year period preceding placement at Vanderbilt University, unless VANDERBILT specifically agrees. VANDERBILT reserves the right to have SUPPLIER remove any employee from placement at Vanderbilt University if such individual is arrested, charged or convicted of such crimes while placed at Vanderbilt University or has determined to falsify their application to conceal their information in anyway.
  3. **Social Security Number Validation.** SUPPLIER shall not knowingly assign undocumented employees to this Agreement. SUPPLIER shall execute and document social security number validation for each prospective employee to be assigned to this Agreement, and the social security number validation must be complete and documented for all SUPPLIER employees prior to any assignment to this Agreement.

### ARTICLE IV - PRICING, TERMS and CONDITIONS

* 1. **Prices.**  Prices for the Deliverables shall be as contained on Attachment A. Prices shall be firm for the duration of this Agreement.
  2. **Payment Terms.** Terms of Payment shall be Net 45 Days from the invoice date. The parties agree that SUPPLIER shall not invoice VANDERBILT, and that VANDERBILT shall not be obligated to pay any invoices submitted, more than 180 days after the performance of the services which are the subject of the invoice.
  3. **Term of Agreement.** This Agreement shall be in force and effect for a period of \_\_\_\_\_ ( ) years commencing **(**mm/dd/yyyy) and ending (mm/dd/yyyy**).** If mutually agreed to by the parties, this Agreement may be renewed for two (2) consecutive one (1) year periods.

**4.4 Purchase Orders**. Notwithstanding any prior negotiations, any subsequent Purchase Orders, in the form attached hereto, issued by VANDERBILT in connection with this Agreement is an offer to buy the Deliverables and any related material as described herein. By accepting the VANDERBILT Purchase Order or by delivering the Deliverables ordered, the SUPPLIER accepts all of the terms and conditions set forth therein to the extent that these terms and conditions are not inconsistent with those set forth within this Agreement. In the event of any inconsistency the terms of this Agreement shall control. VANDERBILT’s offer is expressly conditioned on acceptance by SUPPLIER of VANDERBILT’s terms and conditions. No preprinted term on any form of SUPPLIER shall be of any force or effect whatsoever.

**4.5 Non-Exclusivity**. Unless specially agreed to by the parties herein, this Agreement is a non-exclusive offer by VANDERBILT to buy Deliverables from SUPPLIER. VANDERBILT is free to contract with any other supplier for products or services that are similar or identical to the Deliverables**.**

**4.6 Most Favorable Terms**. To the best of SUPPLIER’s knowledge, all of the prices, warranties, benefits, and terms which will be granted by SUPPLIER to VANDERBILT during the term of the Agreement will be equal to or more favorable to VANDERBILT than the prices, warranties, benefits and terms that are offered by SUPPLIER to any similar medical or higher education customers that have purchased equipment and services comparable in size and scope to that purchased by VANDERBILT, or are currently contemplating such a purchase. If SUPPLIER enters into binding agreements with any other medical, commercial or higher education customers providing more favorable prices, warranties, benefits, or terms, the Agreement with VANDERBILT will automatically be deemed amended to provide the same to VANDERBILT.

**4.7 Taxes.** SUPPLIER’s invoice to VANDERBILT shall include all applicable taxes resulting from this Agreement. Such taxes shall not include taxes based on SUPPLIER’s income. VANDERBILT represents that it is a non-profit corporation and is exempt from sales and use taxes in the State of Tennessee and various other states and, therefore, at least with respect to sales in Tennessee, invoices should not include sales or use taxes. VANDERBILT’S sales and use tax exemption certificate number is **431938560**.

* 1. **Freight Terms.** Standard terms are F.O.B. Destination VANDERBILT delivery location specified in the Purchase Order.
  2. **Billing Disputes**. Billing disputes shall not be cause for non-performance under this Agreement.
  3. **Software.** On the terms and conditions set forth herein, SUPPLIER hereby grants to VANDERBILT and VANDERBILT accepts a fully paid-up, irrevocable, nonexclusive, nontransferable, perpetual license to use the licensed software and written and electronic documentation and data furnished solely in connection with the Deliverables to be supplied in this Agreement. The terms of the license granted hereunder shall be coterminous with the Agreement.

## ARTICLE V – CONFIDENTIALITY

**5.1** **Confidentiality Obligations of SUPPLIER.** Unless VANDERBILT advises SUPPLIER to the contrary, SUPPLIER shall treat any information including without limitation, financial, strategic, marketing, surveys, organizational, technical, client, faculty, staff, student and other sensitive information furnished by VANDERBILT to SUPPLIER as “Confidential Information”.Confidential Information shall include not only written information but also information transferred orally, visually, electronically or by any other means, as well as any compilations, interpretations, notes, analyses and summaries thereof. SUPPLIER shall limit access to the Confidential Information to SUPPLIER’s personnel or subcontractors assigned to VANDERBILT hereunder and shall not use, copy, or remove any Confidential Information from VANDERBILT’s premises except to the extent necessary to carry out the purposes of the assignments hereunder, without the prior written consent of VANDERBILT. Upon completion or termination of each assignment hereunder, SUPPLIER shall return to VANDERBILT all documents or other mate­rials, which contain VANDERBILT Confidential Information and destroy all copies thereof.

**5.2 Confidentiality Exceptions.** Confidential information shall not include, and these confidentiality obligations shall not operate as a restriction on SUPPLIER’s right to use, disclose, or otherwise deal with in­formation which:

1. is or becomes generally available to the public through no wrongful act of SUPPLIER;
2. was in SUPPLIER’s possession prior to the time it was acquired from VANDERBILT and which was not di­rectly or indirectly acquired from VANDERBILT;
3. is independently made available as a matter of right to SUPPLIER by a third party;
4. is required to be disclosed, in the opinion of SUPPLIER’s legal counsel, by court order or operation of law; or
5. is independently developed by or for SUPPLIER by persons not having exposure to VANDERBILT’s Confi­dential Information not excepted above.
   1. **Period of Confidentiality.** SUPPLIER’s obligations of confident­iality regarding VANDERBILT’s Confidential Information shall survive the termi­na­tion of this Agreement.

### ARTICLE VI – WARRANTIES

**6.1 General Warranty.** SUPPLIER warrants that the Deliverables are of good and merchantable quality free from defects (including latent defects) in design, material and workmanship and is fit and suitable for the purposes for which it is intended, provided such purposes are known to SUPPLIER.

**6.2 Professional Standards.** SUPPLIER warrants that Deliverables shall be performed by qualified personnel in a workman-like manner conforming to generally accepted industry standards and practices for qual­ity work as well as conforming to any special VANDERBILT standards that have been incorporated into this Agreement.

**6.3 Originality.** SUPPLIER represents, warrants, and covenants the originality of any work it performs hereun­der or that any Deliverables provided under this Agreement are appropri­ately licensed or do not violate any U.S. patent, U.S. copy­right, trade secret, or other intellectu­al property right of any third party.

**6.4 Conformity.** SUPPLIER represents, warrants, and cove­nants that for a period of \_\_\_\_\_\_\_\_days/years after accep­tance by VANDERBILT, the Deliverables shall substantially con­form to the Specifications. In the event that the Deliverables or any part thereof do not substantially conform to the Specifi­cations, SUPPLIER­ shall, within thirty (30) days of no­tice by VANDERBILT, without addi­tional cost to VANDERBILT: (i) restore such Deliverables to conformity, (ii) prepare a plan to restore the Deliverables to conformity, or (iii) at VANDERBILT’s option, (a) refund all fees paid by VANDERBILT to SUPPLIER that pertain to such non-conformity, or (b) retrieve the Deliverables and refund all amounts paid by VANDERBILT .

SUPPLIER, however, does not guarantee that customizations made to VANDERBILT’s Deliverable(s) shall be compatible with future releases of SUPPLIER’s standard software Deliverable(s). Any required modifi­cations to VANDERBILT’s customized software would be billable on a time and materials basis.

Notwithstanding the above, SUPPLIER shall have no obligation based on any claim of non-conformity because of:

1. a modification of or damage to the Deliverables made by someone other than SUPPLIER;
2. the combination, operation, or use of the Deliverables with other Deliverables, data, or materials not provided by SUPPLIER;
3. an allegation that any Deliverable provided by SUPPLIER infringes on a U.S. patent or U.S. copyright if the alleged infringing Deliverables were developed based on information provided by VANDERBILT.

**6.5 Releases**. Neither SUPPLIER or its permitted subcontrac­tors, nor any of their respective employees, agents, or designated representatives, by entering into this Agreement, using information or materials, and performing the Deliverables hereunder, has or will violate any consulting, employment, non‑compe­tition, propri­etary informa­tion, confidentiality or other agreement, arrange­ment, under­standing, or restriction between such party and a present or former employ­er, principal, client or other individual or entity. SUPPLIER shall assist VANDERBILT in all reasonable respects to obtain releases or other necessary or desirable information or documentation regarding any of the foregoing.

**6.6 Compliance With Laws**. SUPPLIER represents, warrants, and covenants that it is in full compliance with the Immigration Reform and Control Act of 1986, as amended, and will only provide VANDERBILT with personnel whose employment eligibility has been verified. SUPPLIER explicitly warrants that it is in compliance with all applicable Federal, state and local laws, as amended, including 41 CFR 60-1.4, 41 CFR 60-250.4 and 41 CFR 60-741.4, with respect to nondiscrimination in employment on the basis of race, religion, color, national origin or sex, equal opportunity, affirmative action, employment of disabled veterans and veterans of the Vietnam era, and employment of the handicapped.

**6.7 Intellectual Property.** All right, title and interest worldwide in any tangible work product or deliverable created by SUPPLIER in the course of performing this Agreement shall be the sole and exclusive property of VANDERBILT. It is the express intent of the parties that all work product or deliverables created by SUPPLIER hereunder shall be work made for hire as defined in United States copyright law, 17 U.S.C. § 101 et. seq. If for any reason SUPPLIER'S work product or deliverables are deemed not to constitute work made for hire, SUPPLIER hereby assigns to VANDERBILT all right, title, and interest worldwide in and to the work product and deliverables, since it is the express intent of the parties that VANDERBILT be the sole party with the right to exploit SUPPLIER’s work product and deliverables.

**6.9  Social Security Number Validation.** SUPPLIER shall not knowingly assign undocumented employees to this contract. SUPPLIER shall execute and document social security number validation for each prospective employee to be assigned to this contract, and the social security number validation must be complete and documented for all SUPPLIER employees prior to any assignment to this contract.

**6.10 Necessary Contracts From Employees**. SUPPLIER repre­sents, warrants, and covenants that it has or will obtain appro­pri­ate agreements with its employees and others, including any permitted subcontractors, whose services it may require, sufficient to enable full compliance with all the provisions of this Agree­ment.

**6.11 Insurance Coverage**. During the term of this Agreement, SUPPLIER shall maintain the following insurance coverage with limits not less than the amount specified and, if subcontracting is permitted, SUPPLIER shall require its subcontractor to maintain similar insurance coverage whenever subcontractors’ personnel are upon VANDERBILT’s premises:

1. Workers’ Compensation with statutory limits and Employers Liability with limits of $500,000 per accident, $500,000 per illness per employee and $500,000 per illness aggregate
2. Commercial General Liability insurance for bodily injury, property damage including products and completed operations, and personal and advertising injury with minimum limits of $1,000,000 each occurrence, $2,000,000 aggregate, $2,000,000 products and completed operations, $1,000,000 personal and advertising injury limits.
3. Automobile liability insurance (including owned, non-owned, and hired vehicles with a combined single limit for bodily injury, death, and property damage of not less than $1,000,000 per occurrence.
4. Umbrella/Excess Liability with a $5 million per incident and shall be excess of Commercial General Liability and Automobile Liability.

VANDERBILT should be included as additional insured on the general liability and auto liability policies. The following is the proper wording that will need to be used: VANDERBILT, for the benefit of itself and its affiliated entities and their respective officers, directors, employees, representatives and agents, are named additional insureds. The liability coverages shown on this certificate are primary, non-contributing and contain waivers of subrogation against any coverage held by VANDERBILT.

SUPPLIER shall furnish VANDERBILT with certificates of insurance, which provide sufficient information to verify that SUPPLIER has complied with the insurance requirements of this Section **6.9.** Such certificates shall indicate that VANDERBILT will be given at least thirty (30) days' advance written notice of any material change or cancellation of any policy and that the required waiver of subrogation or additional insured has been endorsed on the applicable policies. SUPPLIER shall not commence the rendering of any Deliverables on VANDERBILT's premises or permit its subcontractors to do so until the required insurance is obtained.

**6.12 Indemnity**.

**6.12.1 Infringement Indemnity**. Both parties agree that if a third party claims that any Deliverable or any part thereof supplied by SUPPLIER infringes the patent, copyright, or other intellectual property right, the SUPPLIER shall indemnify, defend, protect and hold harmless VANDERBILT from and against any and all claims, liabilities, demands, damages, judgments, awards, settle­ments, expenses or losses, costs of litigation, and reason­able attorneys’ fees in connection with that claim, provided that VANDERBILT:

1. promptly notifies SUPPLIER in writing of the claim;
2. allows SUPPLIER to control the defense of the claim; and
3. cooperates with all reasonable requests for assistance to SUPPLIER in the defense of the claim and any related settle­ment negotiations, at no cost to VANDERBILT.

After SUPPLIER has assumed sole control of the defense or settlement, SUPPLIER shall not be liable for any costs or expenses incurred by VANDERBILT with respect to any infringe­ment claim without SUPPLIER’s prior written authoriza­tion. Costs that SUPPLIER assumes for VANDERBILT that were incurred prior to SUPPLIER ‘s assuming sole control of the de­fense or settlement must be both reasonable and have been reasonably unavoidable.

If a judgment or settlement is obtained or reasonably anticipated against VANDERBILT’s use of any Deliverable for which SUPPLIER has indemnified VANDERBILT, SUPPLIER shall at SUPPLIER’s sole cost and expense promptly modify the item or items which were determined to be infringing, acquire a license or licenses on VANDERBILT’s behalf to provide the necessary rights to VANDERBILT to eliminate the infringement, or provide VANDERBILT with a non‑infringing substitute that provides VANDERBILT the same functionality. At VANDERBILT’s election, the actual or anticipated judgment may be treated as a breach of warranty by SUPPLIER, and VANDERBILT may receive the remedies provided under Section **7.1.**

Notwithstanding the above, SUPPLIER shall have no obligation for any claim based on the following:

1. modification of the Deliverables made by someone other than SUPPLIER if such infringe­ment would have been avoided in the absence of such modification; or
2. combination, operation, or use of the Deliverables with other Deliverables, data, or materials not provided by SUPPLIER, if such infringe­ment would have been avoided in the absence of such combination, operation or use.
3. use of other than the version of the Deliverables most recently provided to VANDERBILT by SUPPLIER, if such infringement would have been avoided by the use of such most recent ver­sion.
4. allegation that any Deliverables provided by SUPPLIER infringe on a patent or copyright if the alleged infringing Deliverables were devel­oped based on information provided by VANDERBILT.

**6.12.2 Personal Injury and Property Damage Indemnity.** Notwithstanding any terms or conditions of this Agreement to the contrary, SUPPLIER agrees at their own expense to indemnify, defend, and hold harmless VANDERBILT from and against any and all liability, loss, damage, expense, claims and demands of every kind and character, including reasonable attorneys’ fees, for injury or death to person or damage to property, (hereinafter referred to as “damage claims”), arising out of or in connection with the negligent acts or omissions of the SUPPLIER, its officers, directors, employees, agents and representatives.

### ARTICLE VII – GENERAL PROVISIONS

**7.1 Term and Termination.** VANDERBILT may terminate this Agree­ment with or without cause upon sixty (60) days written notice to the other party. In the event that either party breaches a material term of this Agreement that is not cured with 30 days of receipt of a written notice specifying the breach, the non-breaching party may terminate the Agreement immediately upon expiration of the 30-day notice. In the event that the breach cannot be cured within 30 days, the breaching party must demonstrate it is diligently making efforts to cure the breach to the satisfaction of the other party.

If either party files a petition for bankruptcy, is adjudicated bankrupt, becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver appointed for it or its business, or has a petition in bankruptcy filed against in that is not discharged within 30 days, then the other party may terminate this Agreement immediately.

In the event that either party terminates a Deliverable or Schedule accord­ing to this Section 7.1, VANDERBILT shall be entitled to ownership of any work in process and SUPPLIER shall be entitled to fair compensation for time and materials, including any charges incurred by SUPPLIER in terminat­ing the Deliverable or Schedule, at a price to be negotiated in good faith by the parties using SUPPLIER’s current published rates it charges for such work.

**7.2 Dispute Resolution Process.** In the event of any disagreement regarding performance under or interpretation of this Agreement, and prior to the commencement of any formal proceeding, the parties shall continue performance as set forth in this Agreement and shall attempt in good faith to reach a negotiated resolution by designating an appropriately authorized representative from each party to resolve the dispute. The parties may also agree to employ mediation to resolve the dispute prior to initiating formal proceedings.

**7.3 Assignment.** Neither party may assign this Agreement without the other party’s prior written consent.

**7.4 Entire Agreement, Partial Invalidity.** The making, execution, and delivery of this Agreement by SUPPLIER and VANDERBILT have been induced by no representations, statements, warran­ties, or agreements other than those herein expressed. This Agreement embodies the entire understanding of the parties hereto relating to SUPPLIER’s services regarding the subject matter hereof and supersedes any previous agreements or understandings, written or oral, in effect between the parties relating thereto. If any part, term, or provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agree­ment, the validity of the remaining portion or portions shall not be affected thereby.

**7.5 Changes In Writing, Notices.** This Agreement, including any Attachments, may be amended or modified only by an instrument of equal formality signed by duly autho­rized representatives of the respective parties. All notices, requests, demands, or other communica­tions hereunder other than day‑to‑day communica­tions within the duties of the representatives shall be in writing and shall be deemed given if personally delivered or mailed to the address set forth below:

|  |  |  |
| --- | --- | --- |
| VANDERBILT UNIVERSITY: |  | SUPPLIER: |
| Vanderbilt University |  | SUPPLIER Firm Name |
| Purchasing & Strategic Sourcing |  | Division/Department Name *(if applicable)* |
| Attn: Purchasing Contact Name |  | Attn: Contact Name |
| 110 21st Avenue South, Ste 900 |  | Street Address #1 |
| Nashville, TN 37203 |  | Street Address #2 *(if applicable)* |
| Email: |  | City, State, Zip Code |
| Phone: |  | Email: |
| Fax: |  | Phone: |
|  |  | Fax: |
|  |  |  |
| With Copy to: *(if applicable)* |  | With Copy to: *(if applicable)* |

**7.6 Waiver of Breach.** The waiver of a breach of this Agreement or the failure of a party to exercise any right under this Agreement shall in no event constitute a waiver as to any other breach, whether similar or dissimilar in nature, or prevent the exercise of any right under this Agreement.

**7.7 No Other Relationship/Obligations.** Neither party shall have any right, power, or authority to assume, create, or incur any expense, liability, or obligation, expressed or implied, on behalf of the other party, except as expressly provided herein. This Agreement is not intended to be nor shall it be con­strued as a joint venture, association, partnership, or other form of a busi­ness organization or agency relationship.

**7.8 Choice of Law.** This Agreement shall be construed and the legal relations between the parties determined in accordance with the laws of the state of Tennessee and the venue for any formal action initiated in connection with this Agreement shall be in Nashville, Davidson County, Tennessee.

**7.9 Audit**. VANDERBILT may, upon its request and at its cost, audit any and all work or expense records of SUPPLIER relating to Deliverables provided hereunder. SUPPLIER shall have the right to exclude from such inspection any of its confidential or proprietary informa­tion, which was not other­wise provided to VANDERBILT as a part of this Agreement. SUPPLIER further agrees to maintain its books and records relating to Deliverables provided hereunder for a period of two (2) years from the date such work was complet­ed, and to make such books and records available to VANDERBILT, during normal busi­ness hours, at any time or times within the two-year period. SUPPLIER shall have the right to bill VANDERBILT for the direct out-of-pocket costs of its staff involved in such audit.

**7.10 Force Majeure.** Neither party shall be liable for a delay in its performance of its obligations and responsibilities under this Agreement due to extraordinary causes beyond its control, such as but not limited to war, act of terrorism, embargo, national emergency, insurrection or riot, acts of the public enemy, fire, flood or other natural disaster provided that said party has taken reasonable measures to notify the other, in writing, of the delay. Failure of subcontractors and inability to obtain materials (unless such subcontractors and/or materials are specified by VANDERBILT or a subcontractor or material supplier is unable to perform for the above-specified reasons) shall not be considered as a force majeure delay. Further, in the event either party is unable to meet its obligations hereunder because of such force majeure, and such inability continues for a period of 30 days or more, then either party may terminate this Agreement effective immediately without further obligation to the other except as to delivery of and payment for the Deliverables consistent with the terms of Section **7.1** of this Agreement.

* 1. **Use of VANDERBILT Name.** SUPPLIER shall not use VANDERBILT’s name, logos or trademarks in any marketing and/or advertising media without prior written approval from the Vanderbilt Office of Trademark Licensing.
  2. **Headings Not Controlling.** Headings used in this Agreement are for reference purposes only and shall not be used to modify the meaning of the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized representatives to be effective as of the date first above written.

**VANDERBILT UNIVERSITY SUPPLIER NAME**

By: By:

(signature) (signature)

Name: Name:

Title: Title:

Date: Date:

**Attachment A- Deliverables**

**Attachment B**

**Request for Proposal**

Attachment C - Supplier Proposal