

# **REQUEST FOR PROPOSAL**

**by**

**The University of Texas at El Paso**

**for**

**Selection of a Contractor to Provide  
Print Shop and Mail Room Services**

**RFP No. 724-1903-JBT**

**Submittal Deadline: February 5, 2019**

Issued: January 15, 2019

# REQUEST FOR PROPOSAL

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## SECTION 1

### INTRODUCTION

#### 1.1 Description of University

The University of Texas at El Paso's ("**University**") fundamental mission is to provide quality higher education to the citizens of El Paso, Texas, West Texas, and Northern Mexico. The University is located in one of the largest bi-national communities in the world. As an academic institution of the University of Texas System, the University is mandated to be an institution of the first class for the education of all qualified individuals who seek admission. The University's faculty and administration are committed to the transmission of knowledge through the instruction of students, the advancement of knowledge through research and publication, and the application of knowledge through service.

The University provides high-quality programs of study leading to bachelors, masters and doctoral degrees to a diverse population. The University is becoming increasingly known for the quality of faculty research and is committed to augmenting support for their efforts. With more than \$83 million in annual research spending, UTEP is dedicated to becoming the first national research university serving a 21<sup>st</sup> century student demographic. In the area of service, the University offers diverse programs for young people; continuing education; extensive programs in art, music and drama; lectures, and numerous other services. The University was also ranked 7<sup>th</sup> among the best universities in the nation in 2012 by Washington Monthly magazine. The University has an enrollment of approximately over 25,000 students in 81 degree-granting programs at the undergraduate level, 74 master's degree programs, and 22 doctoral programs. There are approximately 3,600 people employed by the University. The majority of the students commute to campus, with less than 1.5 percent of students residing in dormitories. The University is comprised of 75 buildings on a 360-acre campus. Most of the campus is contiguous. Off-campus locations are the College of Health Sciences, Graduate Business Center and the Office for Institutional Advancement. All sites are located approximately one and one-half miles from the main campus, near Downtown El Paso. There is the possibility that other facilities that are physically separate from the main campus will exist in the future.

#### 1.2 Background and Special Circumstances

The purpose of this solicitation is to obtain specific proposals for the selection of a contractor to provide combined Print Shop and Mail Services Operations at the University.

The contractor must provide the highest level of services to students, faculty and staff while providing the highest possible financial consideration to the University. The University currently operates one (1) full-service print shop and one mail service center. The products, prices and services provided by the selected contractor must promote confidence that the University campus community is obtaining the best possible combination of quality, customer service and price.

The Mail Services Operation is conveniently located on the first floor of the Union East Building (**ref. APPENDIX THREE CAMPUS MAP #24**), the Print Shop is located in the Hertzog Building (**ref. APPENDIX THREE CAMPUS MAP #34**). Combined, the University Print Shop and Mail Service centers contains approximately 7950 sq. ft. of total floor space (**ref. APPENDIX FOUR, FLOOR PLANS**).

Proposals must be clear, concise, and clearly follow the format detailed in this RFP. Proposals that are difficult to follow or that do not conform to the RFP format may be rejected. Contractors must include required information called for in this RFP. The University reserves the right to reject a proposal if required information is not provided or is not organized as directed. The University reserves the right to change the scope of work or any other provision in this RFP provided all contractors are notified of the change by posting a notice on the ESBD Electronic State Business Daily web site <http://esbd.cpa.state.tx.us/>. For this RFP, posting a notice on this web page constitutes written notification to all contractors. Contractors should check this site daily and are expected to review information on this site carefully before submitting a final proposal.

This request for proposal does not obligate the University to select any contractor or to award a contract, and the University reserves the right to cancel the solicitation at any time if it is considered to be in its best interest.

#### 1.3 Objective of Request for Proposal

The University of Texas at El Paso (“**University**”) is soliciting proposals, in response to this Request for Proposal for Selection of a Contractor to Provide Print Shop and Mail Services (the “**Services**”), RFP No.724-1903-JBT (this “**RFP**”), from qualified contractors to provide The Services, which are more specifically described in **Section 5.4** (Scope of Work). The possibility of split awards exists under this solicitation.

#### **1.4 Group Purchase Authority**

Texas law authorizes institutions of higher education (defined by [§61.003, Education Code](#)) to use the group purchasing procurement method (ref. §§[51.9335](#), [73.115](#), and [74.008](#), *Education Code*). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Proposer under this RFP. In particular, Proposer should note that University is part of The University of Texas System (**UT System**), which is comprised of fourteen institutions described at <http://www.utsystem.edu/institutions>. UT System institutions routinely evaluate whether a contract resulting from a procurement conducted by one of the institutions might be suitable for use by another, and if so, this RFP could give rise to additional purchase volumes. As a result, in submitting its proposal, Proposer should consider proposing a pricing model and other commercial terms that take into account the higher volumes and other expanded opportunities that could result from the eventual inclusion of other institutions in the purchase contemplated by this RFP. Any purchases made by other institutions based on this RFP will be the sole responsibility of those institutions.

## SECTION 2

### NOTICE TO PROPOSER

#### 2.1 Submittal Deadline

University will accept proposals submitted in response to this RFP until **3:00 p.m., Mountain Standard Prevailing Time, on Tuesday, February 5, 2019.**

Proposer must perform electronic submission and acknowledge the attributes (answer questions) for the documents requested in **Sections 3.4** (the “**Terms and Conditions**”) and **3.5** (the “**Submittal Checklist**”) of this RFP in Sourcing Manager at the Sourcing Manager Internet address at (<https://adminapps.utep.edu/sourcing/>).

2.1.1 The following are the steps to perform when registering as a new vendor in Sourcing Manager:

- 2.1.1.1 Go to <https://adminapps.utep.edu/sourcing/>
- 2.1.1.2 Click ‘Supplier Registration’
- 2.1.1.3 Review the Terms and Conditions and either click Accept Terms & Conditions and move forward, or Cancel
- 2.1.1.4 Enter Supplier Information. (\*denotes required fields)
- 2.1.1.5 Select Special Classifications
- 2.1.1.6 Select Commodity Codes
  - 2.1.1.6.1 Click ‘Add or Remove Selections’
  - 2.1.1.6.2 Choose appropriate Commodities
  - 2.1.1.6.3 Click ‘Save Selection’
- 2.1.1.7 Setup Primary User Information
- 2.1.1.8 Additional User’s will be established after registration is complete
- 2.1.1.9 Confirm all information and click Submit

University will contact you when the registration review has been completed.

Submission instructions are referenced in Section 3.2 of this RFP.

#### 2.2 RFP Contact Information and Questions

Proposers will direct all questions or concerns regarding this RFP to the following University contact (“**University Contact**”):

The University of Texas at El Paso  
Purchasing & General Services  
Kelly Hall 3rd Floor  
500 W. Universito Ave.  
El Paso, TX 79968-0505  
Attn: James Trejo  
Fax: 915-747-5932  
Email: [jbtrejo3@utep.edu](mailto:jbtrejo3@utep.edu)  
(Email communications are preferred.)

*University instructs interested parties to restrict all contact and questions regarding this RFP to written communications delivered (i) in accordance with this Section on or before **Tuesday, January 29, 2019, at 2:00 p.m., Mountain Standard Prevailing Time (Question Deadline)**, or (ii) if questions relate to **Historically Underutilized Businesses**, in accordance with **Section 2.5**.*

University will provide responses as soon as practicable following the Question Deadline. University intends to respond to all timely submitted questions. However, University reserves the right to decline to respond to any question.

## 2.3 Criteria for Selection

The successful Proposer, if any, selected by University through this RFP will be the Proposer that submits a proposal on or before the Submittal Deadline that is the most advantageous to University. **Contractor** means the successful Proposer under this RFP.

Proposer is encouraged to propose terms and conditions offering the maximum benefit to University in terms of (1) service, (2) total overall cost, and (3) project management expertise.

The evaluation of proposals and the selection of Contractor will be based on the information provided in the proposal. University may consider additional information if University determines the information is relevant.

Criteria to be considered by University in evaluating proposals and selecting Contractor, will be these factors:

### 2.3.1 Threshold Criteria Not Scored

- 2.3.1.1 Ability of University to comply with laws regarding Historically Underutilized Businesses; and
- 2.3.1.2 Ability of University to comply with laws regarding purchases from persons with disabilities.

### 2.3.2 Scored Criteria

- 2.3.2.1 Cost of goods and services; 25%
- 2.3.2.2 Proposer's experience performing services 15%
- 2.3.2.3 Total long-term cost to the University of acquiring the Proposer's goods or services; 15%
- 2.3.2.4 Reputation of the Proposer; 12%
- 2.3.2.5 Quality of the Proposer's goods or services  
Extent the goods or services meet the University's needs; 12%
- 2.3.2.6 Proposer's past relationship with the University; 6%
- 2.3.2.7 Consideration to proposer's additional services or benefits directly related to the goods and services solicited under the RFP 5%
- 2.3.2.8 Any unique or special services or benefits offered or advantages gained by accepting proposal 5%
- 2.3.2.9 Proposer's exceptions to the terms and conditions set forth in **Section 4.** 5%

## 2.4 Key Events Schedule

Issuance of RFP	<b>January 15, 2019</b>
Pre-Proposal Conference (Ref. <b>Section 2.6</b> of this RFP) Site Visit following conference	<b>January 22, 2019, 10:00 a.m.</b> Mountain Standard Prevailing Time
Deadline for Questions/Concerns (Ref. <b>Section 2.2</b> of this RFP)	<b>January 29, 2019, 2:00 p.m.</b> Mountain Standard Prevailing Time
Submittal Deadline (Ref. <b>Section 2.1</b> of this RFP)	<b>February 5, 2019, 3:00 p.m.</b> Mountain Standard Prevailing Time

## 2.5 Historically Underutilized Businesses

- 2.5.1 All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (**HUBs**) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP, Contractor subcontracts any Work, then Contractor must make a good faith effort to utilize HUBs certified by the Procurement and Support Services Division of the Texas Comptroller of Public Accounts. Proposals that fail to comply with the requirements contained in this **Section 2.5** will constitute a material failure to comply with advertised specifications and will be rejected by University as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP. Proposer acknowledges that, if selected by University, its obligation to make a good faith effort to utilize HUBs when subcontracting any Work will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of Work by the Proposer is subject to review by University to ensure compliance with the HUB program.
- 2.5.2 University has reviewed this RFP in accordance with [34 TAC §20.285](#), and has determined that subcontracting opportunities are probable under this RFP.
- 2.5.3 A HUB Subcontracting Plan (**HSP**) is a required part of the proposal. The HSP will be developed and administered in accordance with University's Policy on Utilization of Historically Underutilized Businesses, attached as **APPENDIX THREE**.

*Each Proposer must complete and return the HSP in accordance with the terms and conditions of this RFP, including **APPENDIX THREE**. Proposers that fail to submit the HSP will be considered non-responsive to this RFP as required by §2161.252, Government Code.*

*Questions regarding the HSP may be directed to:*

*Contact: Benjamin Alvarez  
Phone: 915-747-5456  
Email: baalvarez@utep.edu*

Contractor will not be permitted to change its HSP unless: (1) Contractor completes a new HSP in accordance with the terms of **APPENDIX THREE**, setting forth all modifications requested by Contractor, (2) Contractor provides the modified HSP to University, (3) University approves the modified HSP *in writing*, and (4) all agreements resulting from this RFP are amended in writing to conform to the modified HSP.

- 2.5.4 *At the same time Proposer submits its proposal (no later than the Submittal Deadline (ref. **Section 2.1**)), Proposer must submit the following HUB materials (**HUB Materials**):*
- (a) **One (1) complete original paper copy(ies) of Proposer's HSP**, and
  - (b) **One (1) complete electronic copy of Proposer's HSP in a single .pdf file on a flash drive.**

Proposer's HUB Materials must be submitted (as instructed in **Section 3.2**) under separate cover and in a separate envelope (**HSP Envelope**) with the top outside surface clearly indicating:

2.5.4.1 RFP No. and the Submittal Deadline (ref. **Section 2.1**) in the lower left hand corner,

2.5.4.2 Name and the return address of Proposer, and

2.5.4.3 Phrase "HUB Subcontracting Plan."

Any proposal submitted in response to this RFP that is not accompanied by a separate HSP Envelope meeting the above requirements may be rejected by University and returned to Proposer unopened as non-responsive due to material failure to comply with advertised specifications.

University will open Proposer's HSP Envelope prior to opening the proposal to confirm Proposer submitted the HSP. Proposer's failure to submit the HSP will result in University's rejection of the proposal as non-responsive due to material failure to comply with advertised specifications.

**NOTE:** The requirement that Proposer provide the HSP under this **Section 2.5.4** is separate from and does not affect Proposer's obligation to provide University with the number of copies of its proposal specified in **Section 3.1**.

**2.6 Pre-Proposal Conference**

University will hold a pre-proposal conference at 10:00 am, Mountain Standard Prevailing Savings Time on Monday, January 22, 2019, in Room 314 of Kelly Hall Building (ref. **APPENDIX FOUR Campus Map**). The pre-proposal conference will allow all Proposers an opportunity to ask University's representatives relevant questions and clarify provisions of this RFP.

**2.7 Split Awards:** It may be determined that receiving Services from various vendors is more appealing to the University. Therefore, University reserves the right to make multiple awards against this RFP.



## SECTION 3

### SUBMISSION OF PROPOSAL

#### 3.1 Number of Copies

Proposer must submit a total of twelve (12) complete and identical paper copies of its *entire* proposal, including one (1) *signed original* and eleven (11) identical copies. In addition, Proposer must submit one (1) electronic copy of its proposal in a *single file on a flash drive using an MS Office application (Word, Excel, Access) or Adobe PDF format.*

An original signature by an authorized officer of Proposer must appear on the Execution of Offer (ref. **Section 2 of APPENDIX ONE**) of the signed original proposal. The proposal bearing an original signature should contain the mark “original” on the front cover of the proposal.

Proposers must acknowledge the attributes for the documents requested in **Section 3.5** (Submittal Checklist) of this RFP in Sourcing Manager. Proposers may review solicitation FAQ’s and the Solicitation Manual at the Sourcing Manager Internet address at [www.sourcingmanager.utep.edu](http://www.sourcingmanager.utep.edu).

#### 3.2 Submission

Proposals must be received by University on or before the Submittal Deadline (ref. **Section 2.1** of this RFP) and delivered to:

3.2.1 Hard Copies (to include a CD ROM/USB Flash Drive) Proposals should be delivered to:

Mail/Courier Delivery:  
The University of Texas at El Paso  
Purchasing & General Services  
Kelly Hall, 3rd Floor  
Attn: James B. Trejo  
Procurement Analyst  
500 W. University Ave.  
El Paso, TX 79902

Hand Delivery:  
The University of Texas at El Paso  
Purchasing & General Services  
Kelly Hall, 3rd Floor  
Attn: James B. Trejo  
Procurement Analyst  
2101 Sun Bowl Drive  
El Paso, TX 79902

**AND**

3.2.2 Electronic submission and acknowledgement of the attributes for the documents requested in **Sections 3.4** (the “**Terms and Conditions**”) and **3.5** (the “**Submittal Checklist**”) of this RFP in Sourcing Manager at the Sourcing Manager Internet address at (<https://adminapps.utep.edu/sourcing/>).

**Submission requirements indicated in Section 3.2.1 and Section 3.2.2 of this RFP are required to be considered for this solicitation. Failure to comply with both hard copy and electronic submittal requirements will result in disqualification of submittal.**

#### 3.3 Proposal Validity Period

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

#### 3.4 Terms and Conditions

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

3.4.1.1 Specifications and Additional Questions (ref. **Section 5**);

3.4.1.2 Agreement (ref. **APPENDIX TWO**);

3.4.1.3 Proposal Requirements (ref. **APPENDIX ONE**);

3.4.1.4 Notice to Proposers (ref. **Section 2**).

### **3.5 Submittal Checklist**

Proposer is instructed to complete, sign, and return the following documents as a part of its proposal. If Proposer fails to return each of the following items with its proposal, then University may reject the proposal:

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

3.5.2 Signed and Completed Pricing and Delivery Schedule (ref. **Section 6**)

3.5.3 Responses to Proposer's General Questionnaire (ref. **Section 3** of **APPENDIX ONE**)

3.5.4 Signed and Completed Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**)

3.5.5 Responses to questions and requests for information in the Specifications and Additional Questions Section (ref. **Section 5**)

3.5.6 Signed and completed originals of the HUB Subcontracting Plan or other applicable documents (ref. **Section 2.5** and **APPENDIX THREE**).

## SECTION 4

### **GENERAL TERMS AND CONDITIONS**

The terms and conditions contained in the attached Agreement (ref. **APPENDIX TWO**) or, in the sole discretion of University, terms and conditions substantially similar to those contained in the Agreement, will constitute and govern any agreement that results from this RFP. If Proposer takes exception to any terms or conditions set forth in the Agreement, Proposer will submit a list of the exceptions as part of its proposal in accordance with **Section 5.3.1**. Proposer's exceptions will be reviewed by University and may result in disqualification of Proposer's proposal as non-responsive to this RFP. If Proposer's exceptions do not result in disqualification of Proposer's proposal, then University may consider Proposer's exceptions when University evaluates the Proposer's proposal.

## SECTION 5

### SPECIFICATIONS AND ADDITIONAL QUESTIONS

#### 5.1 General

Minimum requirements and specifications for Work, as well as certain requests for information to be provided by Proposer as part of its proposal, are set forth below. As indicated in **Section 2.3, Contractor** means the successful Proposer.

#### 5.2 Minimum Requirements and Specific Questions

In its proposal, each Proposer must identify how, if it is selected by University, Proposer will promote confidence that the University campus community is obtaining the best possible combination of quality, customer service and price from its performance of combined print shop and mail service management. Our preference to have one Contractor but the University is open to a split award, and that Contractor(s) will be completely responsible for the Services. Proposers are requested to submit a complete response to each of the items listed below. Responses requiring additional space should be brief and submitted as an attachment to your proposal package. Please reference each response by its item number indicated at the left.

Each Proposal must include responses to each of the following, Evidence must be provided so that the following items may be completely examined:

- 5.2.1 Information demonstrating Proposer's competence and experience with operating a print shop and mail room for an organization of similar size to the University.
- 5.2.2 Information demonstrating Proposer's ability to perform the scope of work set forth in Section 5.3 of this RFP in the time periods specified in this RFP, including Proposer's ability to provide all team members and financial resources necessary to perform such a scope of work.
- 5.2.3 Evidence that Proposer can obtain the amount of insurance and bonding that is required by this RFP, as more specifically set forth in Section 8 to **APPENDIX TWO**.
- 5.2.4 Evidence of Proposer's experience of (a) be a United States Postal Service authorized retail outlet (b) expertise in interactions with the United States Postal Service and (c) knowledge of and compliance with all applicable postal laws and regulations, including the following "Private Express Statutes and Regulations":
  - 5.2.4.1 18 U.S.C. 1693-1699
  - 5.2.4.2 39 U.S.C. 601-606
  - 5.2.4.3 39 C.F.R. Part 310
  - 5.2.4.4 39 C.F.R. Part 320
- 5.2.5 If Proposer's approach for operating the print shop and mail room as provided in this RFP require Proposer to provide mailing machines or other equipment, Proposer's proposal must include a complete description of all such equipment, Proposer's actual cost to provide that equipment, and Proposer's statement concerning whether Proposer will agree to make the warranties and representations set forth in the "Accessibility by Persons with Disabilities" language included in **APPENDIX FIVE** for any such equipment that is an electronic and information resource (ref. **Section 5.2.11**).
- 5.2.6 Identify the name and experience of the individual proposed to serve as Proposer's contract project manager.
- 5.2.7 Identify the name and experience of the individual proposed to serve as Proposer's on-site print shop and mail room supervisor.
- 5.2.8 Proposer's contract project manager and on-site print shop and mail room supervisor will be two of the "Key Personnel" that Proposer proposes to assign to perform work under any Agreement resulting from this RFP. Identify all other Key Personnel that Proposer proposes to perform the Services under such an Agreement, including the name, job title, work, and experience of such Key Personnel.
- 5.2.9 Identify all of the performance measures that Proposer uses to communicate the success of your print shop and mail room services to your customers.
- 5.2.10 In its proposal, Proposer must indicate whether it will consent to include in the Agreement the "Accessibility by Persons with Disabilities" language that is set forth in **APPENDIX FIVE**. If Proposer objects to the inclusion of the "Accessibility by Persons with Disabilities" language in the Agreement, Proposer must, as

- part of its proposal, specifically identify and describe in detail all of the reasons for Proposer's objection. NOTE THAT A GENERAL OBJECTION IS NOT AN ACCEPTABLE RESPONSE TO THIS QUESTION.
- 5.2.11 If Proposer takes exception to any terms or conditions set forth in the Agreement (ref. **APPENDIX TWO**), Proposer must submit a list of the exceptions.
  - 5.2.12 Description of Services and Delivery Schedule: A detailed description of the services must be provided. The description must be detailed enough for the selection committee to evaluate the proposal and its feasibility for success. The description must include an implementation time line. Contractor shall provide a timeline of events for implementation of the University Print Shops and Mail Services Operations. Timeline should include all major milestones to include but shall not be limited to: Site Preparation, Equipment order, Equipment Install, Employee Training, Site enhancements, Materials delivery and Official start date.
  - 5.2.13 Location of Services: Print Shop and mail services must be provided on-site. It is permissible to use off-site facilities for overflow and back-up requirements.
  - 5.2.14 Maintenance of Equipment: The contractor must define its approach to service and maintenance of all equipment put in place as a result of this RFP. The contractor must provide its guarantee of down-time for equipment and typical penalties for non-performance in this regard. The bidder must also define its back-up for overflow capabilities.
  - 5.2.15 Staff: Outline the staff levels, including job descriptions and position responsibilities for all staff. Describe plans for staff coverage. Address sick absence, no call/show, vacations, and leaves of absence. Describe to what level the on-site manager is empowered to make decisions related to both workflow and staff. Describe how appropriate staffing levels are determined. Specifically, the number of employees required to deliver superior service and maintain adequate coverage should be addressed. Describe the process for addressing performance and conduct complaints regarding employees.
  - 5.2.16 Quality Control and Quality Assurance: The contractor must include details of quality assurance and customer satisfaction programs. These details must include complaint/problem resolution processes, customer satisfaction ratings, quality control procedures, and commitment to continuous improvement. Contractors must be able to measure customer satisfaction of users. Specific examples are required.
  - 5.2.17 Benchmarking and Efficiency: The contractor must provide details of measurement tools utilized to determine the quality and efficiency of the operation. Samples of typical monthly reports should be supplied.
  - 5.2.18 Site Tracking: The contractor must have the ability to track all activities related to the services and the ability to generate reports which will monitor volumes, trends, and users. The system must be able to provide detailed electronic chargeback of services by user or department. Sample printouts of the tracking and reporting systems must be provided.
  - 5.2.19 The contractor must provide details of employees training and development plans as well as reward/recognition programs.
  - 5.2.20 Environmental Practices: The contractor must identify real and potential health hazards/risks associated with equipment and consumable products (toners, inks, etc.) that it is proposing to use in University's facilities. The contractor must also identify its approach for mitigating these hazards/risks.
  - 5.2.21 Implementation: The successful contractor must provide evidence that they are capable of successfully implementing their proposal without requiring University to assume any financial risk.
  - 5.2.22 Training/Marketing Strategy: The contractor must provide a clear and all-encompassing communication and marketing plan to introduce the University community to the improved services/functionality of the services.
  - 5.2.23 Provide details of your company's charge-back/credit policy for poor quality copies generated due to machine malfunction or operator error.
  - 5.2.24 What difficulties do you anticipate in serving University and how do you plan to manage these? What assistance will you require from University?
  - 5.2.25 Provide a plan as to how you will utilize the existing Print Shops and Mail equipment and space.
  - 5.2.26 Support Service
    - 5.2.26.1 Describe your company's service support program, how it is carried out, and how success is measured.
    - 5.2.26.2 How many dedicated on-site service technicians will your company provide daily from 8:00 a.m. to 5:00 p.m., Monday through Friday, and after hour services excluding University observed holidays? What will be your hours of operation on Saturday and Sunday and what will be the staff load for those days?
  - 5.2.27 Provide details and samples, if applicable, of any other reports that would be available to University if your company is awarded a contract.

### 5.3 Additional Questions Specific to this RFP

Proposer must submit the following information as part of Proposer's proposal:

- 5.3.1 In its proposal, Proposer must respond to each item listed in **APPENDIX SIX, Electronic and Information Resources (EIR) Environment Specifications**. **APPENDIX SIX** will establish specifications, representations, warranties and agreements related to the EIR that Proposer is offering to provide to University. Responses to **APPENDIX SIX** will be incorporated into the Agreement and will be binding on Contractor.
- 5.3.2 In its proposal, Proposer must respond to each item listed in **APPENDIX SEVEN, Security Characteristics and Functionality of Contractor's Information Resources**. **APPENDIX SEVEN** will establish specifications, representations, warranties and agreements related to the EIR that Proposer is offering to provide to University. Responses to **APPENDIX SEVEN** will be incorporated into the Agreement and will be binding on Contractor.

### 5.4 Scope of Work

Contractor will provide the following services to University:

The purpose of this solicitation is to obtain specific proposals for the selection of a contractor to provide combined or separate (split award) print shop and mail services.

- 5.4.1 Contractor shall provide all equipment supplies, signs, personnel, merchandise, and other items necessary to perform required services, including telephone, credit card machines and file server for Internet commerce. The University requires that contractor and its sub-contractor(s) provide dedicated security firewalls for all point-of-sale systems. In addition, the University requires that security scanning procedures as dictated by the Security Standards Council as it pertains to Payment Card Industry (PCI) (<https://www.pcisecuritystandards.org/>) be adhered to annually. A PCI compliance certificate must be provided to the University on an annual basis.
- 5.4.2 Contractor shall keep apprised of new technology that may be of interest to the University community and shall endeavor to offer those services in the University Print Shop and Mail Services Operations.
- 5.4.3 Contractor shall provide adequate staffing for efficient customer traffic flow during rush periods and minimize the time spent by customers waiting in line.
- 5.4.4 Contractor shall comply with ADA requirements and other applicable accessibility laws and regulations to meet the needs of disabled persons.
- 5.4.5 Contractor shall use its best efforts to be involved in the academic, cultural, and social environment of the University, and shall take advantage of opportunities to offer special merchandising and other assistance based upon the University's activities.
- 5.4.6 Contractor is prohibited from stocking food or drink products that conflict with the requirements in University's existing contracts. University has contracted for food service, beverage and vending machine service under separate contracts.
- 5.4.7 Contractor shall comply with all requirements of Subchapter C, Chapter 2252, of the Texas Government Code, as it may be amended from time to time, including without limitation the delivery to University of (i) a financial statement at the time of contracting prepared by a certified public accountant; (ii) annual payment statements derived from contractor's sales tax reports and certified by a certified public accountant licensed in Texas; and (iii) a performance bond issued by a surety authorized to do business in Texas, as a more particularly specified in the Agreement.
- 5.4.8 The University anticipates that the print shop and mail services provided by the selected Contractor will include the following:
- Collate, duplex, staple, bind and laminate documents, either performed by customers themselves or by Contractor staff
  - Making Copies (both B&W and color)

- Fax services
- Production of Transparencies
- Facilities to allow the printing of documents obtained from USB drives
- Sale of Stapling Sets
- Sale of Stitch Booklets
- Insert Tabs in documents
- Availability of 3 Hole Punch
- Scanning documents
- Creation of Mailing Labels
- Printing of Business Cards and Stationery
- Printing of Multicolor Brochures
- Printing of Invitations
- Printing of Newsletters
- Printing of Event Programs
- Printing of Posters
- Printing of Certificates
- Printing of Labels
- Sale of Pocket Folders
- Sale of Calendars
- Sale of Memos and Note Pads
- Freight shipping services
- Sale of Greeting cards
- Mailbox services
- Sale of Mailing supplies
- Sale of Metered mail and stamps
- Money transfer services
- Notary services
- Sale of Office supplies
- Sale of Packaging Services and packing supplies
- Parcel Shipping and receiving
- Production of Passport Photos
- Printing as requested
- Sale of Rubber Stamps

5.4.9 However, each Proposer must identify any services in addition to those set forth above that it proposes to provide, and explain why each additional service will add value to the students, faculty and staff of the University.

5.4.10 In its proposal, each Proposer must identify the operating plan that it proposes to implement to address the following:

- Enhanced copy and mail/postal services and increased personal sales to faculty, staff & students.
- Other services
- Reducing the costs incurred on external printing.
- Increasing the level of quality.
- Turnaround time on all jobs.
- Providing competitive pricing structure for copying and duplicating cost.
- Providing a convenient location for the reproduction of engineered drawings for University projects.

- Developing systems to track mailroom and print volume and sorting to help increase efficiency.

It is expected that the successful contractor will have their onsite employees wear uniforms and identification badges appropriate to the services being provided and be compliant at all times with the standards held by the University and the USPS.

University will provide site and shell space (storefront). The expected square footage of the facility will vary depending on which site is selected and agreed upon. Contractor is to include with their proposal a royalty consideration, and licensing fee for use of space.

The selected contractor will provide store construction (complete with mailboxes), equipment, and signage in compliance with University logos rules, policies, and regulations as more specifically described in the Agreement.. Any build out space must comply with all applicable laws, regulations, codes, and University policies and design guidelines (including, but not limited to, the Americans with Disabilities Act.) All plans for any such build out of space must be approved in advance and in writing by University.

University has implemented and operates a declining balance debit card system (the "Miner Gold Card") as a form of payment for purchases. The Successful Proposer will be required to accept the Miner Gold Card as a form of payment.

Contractor to provide all Card System compatible point-of-sale (POS) cash registers and appropriate accessories that are necessary for the performance of the Services and Contractor's other duties and obligations.

In addition to the Miner Gold Card, all proposed sites must accept cash, debit, and credit cards as methods of payment in addition to billed internal University departments.

All self-op copier machines must new or relatively recent model. Each machine must, in University's judgment compare favorably in appearance and functionality with the best machines available. Each machine installed by Contractor will be equipped with coin changers and dollar bill reader/changers and credit card machine readers. Contractor will submit an implementation plan/proposal for equipping machines with Miner Gold Card readers.

All machines will be installed and operated in conformity with all federal and state laws and regulations, local ordinances, the Rules and Regulations of the Board of Regents of The University of Texas System, and all institutional rules of The University of Texas at El Paso.

## **5.5 Use of University Facility**

- 5.5.1 Contractor is responsible for the telecommunication setups, hook-ups, installation, and payment on all services provided to the University Print shop and Mail Services Operations.
- 5.5.2 Contractor is responsible for all alterations, changes, or modifications to the assigned facility (including fixtures, partitions, displays, desks, and other personal property). All such alterations must have prior written approval by the University.
- 5.5.3 Improvements to the Print Shop and Mail Services Operations made by Contractor during the term of the Agreement shall require written approval by University and become the property of University upon expiration or earlier termination of the Agreement.
- 5.5.4 The location of the Print Shop and Mail Services Operations sites are subject to change by the University if renovations or spatial reconfigurations require relocation. In such an event, every effort will be made to provide a comparable space and location for the Print Shop and Mail Operations.
- 5.5.5 Contractor shall be responsible for the custodial service within the Print Shop and Mail Services Operations and shall maintain good, standard housekeeping practices relative to store front windows and other glass, sweeping, mopping of floors, dusting, trash disposal, and keeping areas free of obstacles.
- 5.5.6 Contractor shall submit Material Safety Data Sheets (MSDS) for any chemicals used or stored within the print shops and mail operations premises to the University's Director of Environmental Health and Safety.



- 5.5.7 Contractor shall be responsible for the repair or replacement cost of any damage to the Print Shop and Mail Operations and any improvements or equipment located therein, caused by the misuse or negligence on the part of the Contractor's employees, agents, or customers excluding ordinary wear and tear.
- 5.5.8 Contractor must report to University any damage to Print Shop and Mail Services Operations and any improvements or equipment located therein within twenty-four (24) hours of occurrence.
- 5.5.9 Contractor shall be responsible for pest control services in the interior of the Print Shop and Mail Services locations as determined by the University and shall post notices of scheduled services.

## **5.6 Equipment, Furniture, and Fixtures**

- 5.6.1 Contractor shall provide all equipment, furniture and fixtures required for the proper performance of Print Shop and Mail Services Operations including, but not limited to office furniture, office equipment, display cases, shelving, cash registers, credit card machines, computers, point of sale systems and equipment, merchandising units, copiers, and printers.
- 5.6.2 Contractor shall provide all necessary maintenance and repair for all moveable fixtures and equipment furnished by Contractor and for University property or equipment used by Contractor during the term of the contract.

## **5.7 Licensing and University Marks**

- 5.7.1 The Board of Regents of The University of Texas System owns all rights to the name, logos, and symbols of the University ("**University Marks**"). Any use of the University Marks by Contractor must have prior written approval of University and be pursuant to a license issued by the Collegiate Licensing company or any successor identified by the University. Contractor shall comply with current contracted and administrative arrangements with the Collegiate Licensing Company and The University of Texas Office of Licensing and Trademarks.

## **5.8 Management Responsibilities**

- 5.8.1 Contractor shall be completely responsible for the management and all related costs of all Print Shop and mail services as provided in the Agreement, including but not limited to all Print Shop and mail operating costs such as inventory, labor (including management and supervisory) fringe benefits, payroll taxes, insurance, telephone equipment and repairs, and custodial services.
- 5.8.2 Contractor's written policies and procedures shall be consistent with the University's policies and procedures.
- 5.8.3 Contractor shall designate a representative to meet periodically with University representatives to discuss improvements, changes, or problems with University Print Shop and Mail Services Operations
- 5.8.4 Contractor shall employ qualified staff, adequate in number, training and experience for the efficient management and operation of the University Print Shop and Mail Services Operations
- 5.8.5 Contractor shall ensure that all of its employees adhere to all campus regulations regarding personal behavior and demonstrate courtesy to all persons on the University campus.
- 5.8.6 Contractor shall be responsible for all personnel and employment matters concerning the University Print Shop and Mail Services Operations, including compliance with all applicable laws and regulations related to the employment of personnel.
- 5.8.7 Contractor must comply with all applicable laws, including Equal Opportunity laws regarding employment, training, job assignments, promotions, transfers, layoffs, terminations, and rates of pay. Contractor must not discriminate against any employee or applicant for employment due to race, color, creed, religion, national origin, sex, age, physical ability, veteran status or marital status.
- 5.8.8 Contractor's employment policies for University Print Shop and Mail Services Operations staff must meet the requirements of the Fair Labor Standard Act and all other federal or state laws and regulations.

Contractor shall make all material relating to personnel policies and procedures available for review by University upon request.

- 5.8.9 Contractor will act as prime source of information to University departments about all print shop and mail services.
- 5.8.10 Contractor's Project Manager and on-site print shop and mailroom supervisor are to meet quarterly with the University's Assistant Vice President for Business Affairs (or his or her designee) to review the accomplishment of established performance measures. Additionally, such a meeting shall be held whenever it is deemed necessary by the University's staff. A mutual effort should be made to resolve all problems identified during such a meeting.
- 5.8.11 The Contractor will be responsible for the actions of its entire workforce, including all Contractor employees and all subcontractors or agents of Contractor, as well as all other persons provided by or associated with Contractor (collectively, "Contractor Personnel"). Contractor shall take all reasonable precautions to assure that the Contractor Personnel maintain standards of conduct suitable and acceptable to the work environment and to the University. Harassment of any person, whether student, faculty, staff, or visitor is forbidden. Harassment includes any action such as jeering, whistling, calling-out, staring, snickering, making rude or questionable comments, or any inappropriate behavior as deemed by the University. University may require the Contractor to remove any Contractor Personnel from the University's campuses or properties, and Contractor will immediately comply with such a University requirement. The Contractor will cooperate with and assist the University in the investigation of any alleged inappropriate behavior.
- 5.8.12 Contractor Personnel who work directly at the print shop and mail room will dress in proper business attire. Articles of clothing (not limited to) such as sandals, shorts, t-shirts, jeans will not be permitted to be worn by Contractor Personnel. The University Assistant Vice President for Business Affairs (or his or her designee), Contractor's Project Manager and on-site mail room supervisor shall meet immediately to report and address any accidents involving University property or personnel.
- 5.8.13 Contractor Personnel will continually and willingly provide prompt, efficient service response. All Contractor Personnel offered by Contractor must be well-trained, courteous, and offer a pleasant demeanor and attitude at all times.

## **5.9 Security of Print Shop and Mail Services Operations**

- 5.9.1 Contractor shall cooperate with University police and other University officials in the provision of security for the University Print Shop and Mail Services Operations.
- 5.9.2 Contractor shall ensure that any equipment that stores digital information must provide a method to secure it. Methods to include but are not limited to are:
- Encryption
  - Erasure of stored digital data immediately after use
  - Surrender of storage media to UTEP

At the conclusion of the equipment's life cycle to include but not limited to, lease agreement conclusion, trade-in, or destruction of equipment, methods must be provided that will destroy/erase data stored on digital storage media in accordance with all applicable rules and regulations before removal from UTEP property.

- 5.9.3 Contractor shall provide security training and shall enforce security policies and procedures as they apply to its staff.
- 5.9.4 Contractor shall adhere to University Handbook of Operating Procedures. <http://admin.utep.edu/Default.aspx?tabid=30181>
- 5.9.5 Contractor shall control the distribution of keys to the University Print Shop and Mail Services Operations with the understanding that the University shall have a master set for emergency use. Should any of the Contractor's employees lose assigned keys, or jeopardize the security of the University Print Shop and Mail Services Operations or any other University facility in any other way, Contractor shall reimburse University for the associated costs required to re-key the facility.

- 5.9.6 Contractor shall ensure that any key or card access for entry into University Print Shop and Mail Services Operations or other University facilities is properly managed and agrees that University shall control all card access through University's Electronic Access and Key Shop.

## **5.10 Parking**

- 5.10.1 Contractor employees who wish to park vehicles on the University campus must obtain parking permits through the University's Parking and Transportation Services which is currently located in the Academic Services Building.
- 5.10.2 Each employee of Contractor will be responsible for any parking or traffic citations issued by University's Parking and Transportation Services concerning the employee's vehicle.

## **5.11 Advertising**

- 5.11.1 Contractor shall not engage in any form of advertising or promotional activity on the campus of the University unless the activity is permissible under the Agreement, authorized under the Rules and Regulations of the Board of Regents of The University of Texas System and the institutional rules of University, and approved in advance by the University. The Rules and Regulations of the Board of Regents and the Administrative Rules of The University of Texas System may be found at <http://www.utsystem.edu/bor>.

## **5.12 Reports**

### **5.12.1 Management Reports**

- 5.12.1.1 Contractor will maintain a record of its performance of the print shop and mail services and will provide monthly reports to the University's Assistant Vice President for Business Affairs (or his or her designee) that include all information that is mutually agreed upon by Contractor and the University.
- 5.12.1.2 Contractor shall deliver to University monthly and quarterly reports of operations in a form acceptable to the University on or before the last day of the month succeeding the end of each quarter. This quarterly report shall be based on the University's fiscal year, which runs from September 1 to August 31.
- 5.12.1.3 Contractor's quarterly report to University shall include the following information at a minimum: Gross sales by month; Exclusion from gross sales for the month reported; Net sales by month; Expenditures and cost of goods sold by month; Net margin by month; Cumulative contract year-to-date information for above categories
- 5.12.1.4 Contractor shall provide audited annual financial statements and an annual payment statement derived from sales tax reports prepared by a certified public accountant licensed in Texas.
- 5.12.2 **Reporting** - The Contractor's Project Manager or on-site print shop and mail room supervisor will inform the University's Assistant Vice President for Business Affairs (or his or her designee) in writing of any of the following that occur during the Term of the Agreement resulting from this RFP.
- 5.12.2.1 Contractor's violations of the standards of safety and health set by the University and the corrective actions taken by the Contractor in response to such violations.
- 5.12.2.2 Infractions by Contractor Personnel of driving laws incurred during work and personnel hours; such reports to be maintained by the Contractor.
- 5.12.2.3 Any arrests involving Contractor Personnel involved in the University's print shop and mail room operations.
- 5.12.2.4 Any complaints received involving the Contractor Personnel involved in the University's print shop and mail room operations.

5.12.2.5 Any safety hazards that cannot be readily corrected by the Contractor Personnel will be reported in writing to the University's Assistant Vice President for Business Affairs (or his or her designee).

**5.13 Utility/Notice Responsibilities**

- 5.13.1 Contractor shall pay the utility costs associated with the Print Shop and Mail Services Operations.
- 5.13.2 University shall provide maintenance or repairs to HVAC, electrical or plumbing issues for the print shop and mail facilities. Unless damage is caused by contractor or subcontractor.
- 5.13.3 University shall keep in good order, condition, and repair all common areas and the roof, walls, and exterior of the building in which the Print Shop and Mail Services Operations are located.
- 5.13.4 University shall provide telephone lines up to the Print Shop and Mail Services Operations premises based on the number of lines needed for operations, as determined by the contractor; however, Contractor shall be responsible for costs associated with telephone and telecommunication services required for operations under the Agreement.
- 5.13.5 University shall promptly notify Contractor of both estimated and actual student enrollment figures when the figures become available.

**5.14 Additional Information**

The following sets forth information concerning the University's existing print shop and mail service operations. However, the University does not represent, warrant, or guarantee under this RFP or under any resulting Agreement that a Contractor selected as a result of this RFP will perform any amount of mail, print shop, or other services, make any sales of products or services, or earn any revenues or other amounts under any Agreement with the University resulting from this RFP.

**5.14.1 Print Shop (Revised)**

5.14.1.1 The University Print Shop's gross annual revenue for the last five fiscal years is as follows:

September 1, 2013 through August 31, 2014: \$972,716  
September 1, 2014 through August 31, 2015: \$877,894  
September 1, 2015 through August 31, 2016: \$806,176  
September 1, 2016 through August 31, 2017: \$959,418  
September 1, 2017 through May 31, 2018: \$850,763

5.14.1.2 The University student enrollment figures for the last six years are indicated below:

2013	20,003
2014	23,079
2015	23,397
2016	23,922
2017	25,078

5.14.1.3 The University Print Shop serve the academic, administrative, and affiliated departments on campus with printing services ranging from simple black and white copies, to full color, optimum quality copies with top feature capabilities. The University Print Shop are operated on a 12-month basis, except certain holidays designated by University. The University Print Shop currently operate under the following schedule; however, during peak periods, the operating hours are extended to meet demand:

**Print Shop – Fall and Spring Semester Hours**

M-Th – 8:00am to 8:00pm  
Friday – 8:00am to 5:00pm  
Saturday – 10:00am to 3:00pm  
Sunday – CLOSED

5.14.1.4 UTEP has no preference to the product or manufacture as a deliverable within print shop and walk-up environment;

5.14.1.5 Scale floor plan drawings are available as part of the RFP (ref. **APPENDIX FOUR**);

5.14.1.6 Contractor will have opportunity to sell printed products at University events upon University approval to generate additional revenues and at contractor's cost

5.14.2 **Mail Services Operations** The Mail Services Operation, is a full service U.S. Postal Services (USPS) contract station, provides processing of incoming and outgoing mail at prices set by the USPS, in addition to servicing 509 USPS PO boxes for the University community. Provide internal mail delivery. Current mail volume of incoming mail for University is approximately 5,000 pieces per day. Outgoing mail is approximately 3,000 pieces per day.

USPS mail pickups are conducted Monday thru Friday.

Window hours are Monday thru Friday 9:00 am. to 4:00 pm.

5.14.2.1 The services that University's mail room operation currently provides are as follows:

- Sorting mail deliveries per day from the U.S. Postal Office, and inter campus mail.
- Performing two mail runs per day to approximately 250 departments, there is a main delivery to 115 delivery points in the morning schedule. However, the mail room personnel currently perform delivery/pick-up twice a day to the main departments sorting different mail deliveries per day for outgoing mail to the U.S. Postal Office and campus mail. Delivery/pick up are performed in the morning between 8:00 a.m. to 12:00 p.m. and in the afternoon between 1:00 p.m. and 2:30 p.m.
- Maintaining postage records daily to reflect purchase of postage and the use of postage by the University departments.
- Providing a monthly report to bill all departments for their postage.
- Performing bulk package delivery between departments.
- Performing miscellaneous runs to picking up items related to University business at contractor locations in El Paso.

5.14.2.2 UTEP currently has 511 standard personal mail boxes that are occupied at maximum capacity, contractors are allowed to add additional mail boxes within the space provided if Contractor chooses to;

5.14.2.3 Personal Mail Boxes (PMB's) sizes are: 5"H x 6"W x 15"D

5.14.2.4 Current rental box charges are \$70.00 per year

5.14.2.5 The boxes are owned by the University,

5.14.2.6 University vehicles are currently utilized to deliver internal mail, contractor will be required to provide own vehicles

5.14.2.7 Since current fleet is University property, Contractor must provide vehicles to deliver mail on and off Campus;

5.14.2.8 Overnight courier drop boxes are located on the east exit of the building with close proximity to the Mail Services Operations area;

5.14.2.9 Residence hall mail boxes are operated by USPS;

5.14.2.10 Scale floor plan drawings are available as part of the RFP (ref. **APPENDIX FOUR**);

### 5.14.3 **Business Hours**

Subject to holidays recognized by the University, closure for casualty or approved alterations to the Premises, or any other circumstance expressly permitted under the terms and provisions of the

Agreement. At a minimum, Lessee shall open on days that coincide with the University's academic calendar. Academic calendar is available at <http://academics.utep.edu/Default.aspx?alias=academics.utep.edu/registrar>). Additional hours of operation are acceptable as long as they fall within the normal operating hours of the Building. The University reserves the right to establish or change the minimum required hours of Lessee's operations in the Premises.

#### 5.14.4 **Sponsorship**

Describe the annual sponsorship payment that the Respondent will make available to University as additional consideration as defined in the *Internal Revenue Code and Treasury Regulations*. Sponsorship consideration may include scholarships and non-athletic sponsorship.

5.14.4.1 Respondent shall indicate their willingness to provide support for scholarships.

**SECTION 6**

**PRICING AND DELIVERY SCHEDULE**

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

**To:** University of Texas at El Paso

**RFP No.:** \_\_\_\_\_

Ladies and Gentlemen:

Having examined specifications and requirements of this RFP (including attachments), the undersigned proposes to furnish Work upon the pricing terms quoted below:

**6.1 Term of Agreement**

University anticipates that the term of the Agreement may be up to seven (7) years. University may elect to renew the Agreement for up to three (3) additional one (1) year terms.

**6.2 Royalty Sharing for Services Offered**

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

**6.3 License Fee for use of Space**

Fees to be paid to the University for use of Licensed Space: \$\_\_\_\_\_ per year.

**6.4 Sponsorship Payment(s)**

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

**6.5 WALK UP CUSTOMER SERVICES (NON-DEPARTMENTAL)**

**Black & White Copies**

**Unit Price**

**White Paper**

20 lb. white bond letter 8 ½ x 11 \_\_\_\_\_  
20 lb. white bond legal 8 ½ x 14 \_\_\_\_\_  
20 lb. white bond ledger 11 x 17 \_\_\_\_\_

**Colored Paper**

20 lb. white bond letter 8 ½ x 11 \_\_\_\_\_  
20 lb. white bond legal 8 ½ x 14 \_\_\_\_\_  
20 lb. white bond ledger 11 x 17 \_\_\_\_\_  
60 lb. pastel or brights letter 8 ½ x 11 \_\_\_\_\_  
60 lb. pastel or brights legal 8 ½ x 14 \_\_\_\_\_  
60 lb. pastel or brights ledger 11 x 17 \_\_\_\_\_

**Resume and Executive Papers**

Resume 8 ½ x 11 \_\_\_\_\_  
Resume legal 8 ½ x 14 \_\_\_\_\_  
Executive 8 ½ x 11 \_\_\_\_\_

**Specialty Papers**

Cardstock, 65-67 lb. (8 ½ x 11) \_\_\_\_\_  
 Resume or executive cardstock  
 (8 ½ x 11) \_\_\_\_\_  
 Labels \_\_\_\_\_  
 Transparencies (8 ½ x 11) \_\_\_\_\_  
 Tabs (cardstock in sets of 5) \_\_\_\_\_  
 Tabs (mylar coated in sets of t) \_\_\_\_\_

**Special Services**

2 sided copies (letter or legal) \_\_\_\_\_  
 2 sided copies (ledger) \_\_\_\_\_  
 Enlargements and reductions \_\_\_\_\_

**Binding**

Comb type or velo bind  
 (w/cardstock covers) \_\_\_\_\_  
 Coil (w/cardstock covers) \_\_\_\_\_  
 Book binding \_\_\_\_\_  
 Vinyl or mixed covers \_\_\_\_\_  
 Thickness adjustments \_\_\_\_\_  
 Debinding/rebinding \_\_\_\_\_

**Oversize Black & White Copies**

24 x 36 20 lb. bond \_\_\_\_\_  
 36 x 48 20 lb. bond \_\_\_\_\_  
 Large sizes, per square foot \_\_\_\_\_

**Lamination**

Pouch, letter, 7 mil. \_\_\_\_\_  
 Pouch, legal, 7 mil. \_\_\_\_\_  
 Pouch, ledger 7 mil. \_\_\_\_\_  
 Pouch, letter, laminated \_\_\_\_\_  
 Pouch, cards/tags \_\_\_\_\_  
 Roll lamination, per square foot  
 (up to 28" wide) \_\_\_\_\_  
 Roll lamination, per square foot  
 (28" to 58" wide) \_\_\_\_\_

**Finishing**

Collating (by machine) per page \_\_\_\_\_  
 Collating (by hand) per page or section \_\_\_\_\_  
 Folding (by machine) \_\_\_\_\_  
 Folding (by hand) \_\_\_\_\_  
 Stapling (by machine) per stable \_\_\_\_\_  
 Stapling/removing staples (by hand) \_\_\_\_\_  
 Drilling \_\_\_\_\_  
 Cutting \_\_\_\_\_  
 Padding \_\_\_\_\_  
 Booklets, not trimmed \_\_\_\_\_  
 Booklets, trimmed \_\_\_\_\_

**Color Copies**

28 lb. letter per side \_\_\_\_\_  
 28 lb. legal per side \_\_\_\_\_  
 28 lb. ledger per side \_\_\_\_\_  
 Cardstock, letter per side \_\_\_\_\_  
 80 lb. Gloss text, letter per side \_\_\_\_\_  
 80 lb. Gloss text, legal per side \_\_\_\_\_  
 80 lb. Gloss text, ledger per side \_\_\_\_\_  
 100 lb. Gloss cover, letter per side \_\_\_\_\_  
 100 lb. Gloss cover, legal per side \_\_\_\_\_



100 lb. Gloss cover, ledger per side	_____
Transparency, letter	_____
Reductions or enlargements	_____
Editing (special colorization, cropping, etc...)	_____

**Color Posters and Banners**

Heavy coated media, per square foot	_____
Photo gloss media, per square foot	_____

**Mounting & Lamination**

Dry Mounting, foam core, per square foot	_____
Dry Mounting w/lamination, per square foot	_____

**Other Services (describe)**

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**6.6 Records, Reporting, and Audits**

- 6.6.1 Contractor will keep fully computerized sales records on the University Print Shop and Mail Services Operations on premises at all times.
- 6.6.2 Contractor shall process all cash sales through cash registers, maintain cash register tapes and sales records locally, and make such tapes and records accessible to University upon request.
- 6.6.3 Contractor agrees to keep true, accurate and complete inventory and collection accounts and records of all sales made and expenses paid under this Agreement in accordance with standard accounting practices. In accounting for any and all monetary transactions as specified herein, Contractor agrees to use the highest methods and standards employed by the accounting industry. Upon demand by University, Contractor agrees to document its accounting methods and standards.
- 6.6.4 Contractor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision for audit in all contracts with its permitted subcontractors.

**6.7 Non-Competition**

**Contractor's Agreement Not to Compete.** In consideration for the rights granted to Contractor under the Agreement, Contractor, for itself and its wholly-owned subsidiaries, covenants, warrants, represents and agrees that it and its wholly-owned subsidiaries will not operate a print shop, mail service or copy or print type business in competition with the University Print Shop within the area extending two (2) miles from the boundaries of University's campus during the Term of this Agreement and for one (1) year following the termination or expiration of this Agreement

**6.8 Discounts**

Describe all discounts that may be available to University, including educational, federal, state and local discounts.

**6.9 Payment Terms**

University’s standard payment terms are “net 30 days” as mandated by the *Texas Prompt Payment Act* (ref. [Chapter 2251, Government Code](#)).

Indicate below the prompt payment discount that Proposer offers:

Prompt Payment Discount: \_\_\_\_\_% \_\_\_\_\_ days/net 30 days.

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

University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with [§151.309, Tax Code](#), and [Title 34 TAC §3.322](#). Pursuant to [34 TAC §3.322\(c\)\(4\)](#), University is not required to provide a tax exemption certificate to establish its tax exempt status.

Respectfully submitted,

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

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

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

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

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

**APPENDIX ONE**  
**PROPOSAL REQUIREMENTS**

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## SECTION 1

### GENERAL INFORMATION

#### 1.1 Purpose

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

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

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

#### 1.2 Inquiries and Interpretations

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

Proposers are required to acknowledge receipt of each Addendum as specified in this Section. The Proposer must acknowledge all Addenda by completing, signing and returning the Addenda Checklist (ref. **Section 4 of APPENDIX ONE**). The Addenda Checklist must be received by University prior to the Submittal Deadline and should accompany the Proposer's proposal.

Any interested party that receives this RFP by means other than directly from University is responsible for notifying University that it has received an RFP package, and should provide its name, address, telephone and facsimile (**FAX**) numbers, and email address, to University, so that if University issues Addenda to this RFP or provides written answers to questions, that information can be provided to that party.

*Proposers are also required to acknowledge the Addenda documents in Sourcing Manager located at <https://adminapps.utep.edu/sourcing/>.*

#### 1.3 Public Information

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

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

Upon execution of a final agreement, University will consider all information, documentation, and other materials requested to be submitted in response to this RFP, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the *Texas Public Information Act* (ref. [Chapter 552, Government Code](#)). Proposer will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under §§[552.101](#), [552.104](#), [552.110](#), [552.113](#), and [552.131](#), *Government Code*.

#### 1.4 Type of Agreement

Contractor, if any, will be required to enter into a contract with University in a form substantially similar to the Agreement between University and Contractor attached to this RFP as **APPENDIX TWO**, and otherwise acceptable to University in all respects (**Agreement**).

#### 1.5 Proposal Evaluation Process

University will select Contractor by using the competitive sealed proposal process described in this Section. Any proposals that are not submitted by the Submittal Deadline or that are not accompanied by required number of completed and signed originals of the HSP will be rejected by University as non-responsive due to material failure to comply with this RFP (ref. **Section 2.5.4**). Upon completion of the initial review and evaluation of proposals, University may invite one or more selected Proposers to participate in oral presentations. University will use commercially reasonable efforts to avoid public disclosure of the contents of a proposal prior to selection of Contractor.

University may make the selection of Contractor on the basis of the proposals initially submitted, without discussion, clarification or modification. In the alternative, University may make the selection of Contractor on the basis of negotiation with any of the Proposers. In conducting negotiations, University will use commercially reasonable efforts to avoid disclosing the contents of competing proposals.

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

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

University reserves the right to (a) enter into an agreement for all or any portion of the requirements and specifications set forth in this RFP with one or more Proposers, (b) reject any and all proposals and re-solicit proposals, or (c) reject any and all proposals and temporarily or permanently abandon this selection process, if deemed to be in the best interests of University. Proposer is hereby notified that University will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by University.

## 1.6 Proposer's Acceptance of RFP Terms

Proposer (1) accepts [a] Proposal Evaluation Process (ref. **Section 1.5 of APPENDIX ONE**), [b] Criteria for Selection (ref. **Section 2.3**), [c] Specifications and Additional Questions (ref. **Section 5**), [d] terms and conditions of the Agreement (ref. **APPENDIX TWO**), and [e] all other requirements and specifications set forth in this RFP; and (2) acknowledges that some subjective judgments must be made by University during this RFP process.

## 1.7 Solicitation for Proposal and Proposal Preparation Costs

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

## 1.8 Proposal Requirements and General Instructions

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

## 1.9 Preparation and Submittal Instructions

### 1.9.1 Specifications and Additional Questions

Proposals must include responses to the questions in Specifications and Additional Questions (ref. **Section 5**). Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Proposer should explain the reason when responding N/A or N/R.

### 1.9.2 Execution of Offer

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

Proposer must acknowledge the attributes for the documents requested in **Sections 3.4** (Terms and Conditions) and **3.5** (Submittal Checklist) of this RFP in Sourcing Manager located at <https://adminapps.utep.edu/sourcing/>.

### 1.9.3 Pricing and Delivery Schedule

Proposer must complete and return the Pricing and Delivery Schedule (ref. **Section 6**), as part of its proposal. In the Pricing and Delivery Schedule, the Proposer should describe in detail (a) the total fees for the entire scope of Work; and (b) the method by which the fees are calculated. The fees must be inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit.

University will not recognize or accept any charges or fees to perform Work that are not specifically stated in the Pricing and Delivery Schedule.

Proposer shall also enter pricing information in Sourcing Manager located at <https://adminapps.utep.edu/sourcing/>. The fees must be inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit

In the Pricing and Delivery Schedule, Proposer should describe each significant phase in the process of providing Work to University, and the time period within which Proposer proposes to be able to complete each such phase.

1.9.4 Proposer's General Questionnaire

Proposals must include responses to the questions in Proposer's General Questionnaire (ref. **Section 3** of **APPENDIX ONE**). Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Proposer should explain the reason when responding N/A or N/R.

1.9.5 Addenda Checklist

Proposer should acknowledge all Addenda to this RFP (if any) by completing, signing and returning the Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**) as part of its proposal. Any proposal received without a completed and signed Addenda Checklist may be rejected by University, in its sole discretion.

1.9.6 Submission

*Proposer should submit all proposal materials as instructed in **Section 3**. RFP No. (ref. **Title Page**) and Submittal Deadline (ref. **Section 2.1**) should be clearly shown (1) in the Subject line of any email transmitting the proposal, and (2) in the lower left-hand corner on the top surface of any envelope or package containing the proposal. In addition, the name and the return address of the Proposer should be clearly visible in any email or on any envelope or package.*

Proposers are required to acknowledge the attributes for the documents requested in **Sections 3.4** (Terms and Conditions) and **3.5** (Submittal Checklist), as well as supply pricing for this RFP in Sourcing Manager located at <https://adminapps.utep.edu/sourcing/>.

Proposer must also submit the HUB Subcontracting Plan (also called the HSP) as required by **Section 2.6**.

University will not under any circumstances consider a proposal that is received after the Submittal Deadline or which is not accompanied by the HSP as required by **Section 2.6**. University will not accept proposals submitted by telephone or FAX transmission.

Except as otherwise provided in this RFP, no proposal may be changed, amended, or modified after it has been submitted to University. However, a proposal may be withdrawn and resubmitted at any time prior to the Submittal Deadline. No proposal may be withdrawn after the Submittal Deadline without University's consent, which will be based on Proposer's written request explaining and documenting the reason for withdrawal, which is acceptable to University.

## SECTION 2

### EXECUTION OF OFFER

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

- 2.1 Representations and Warranties.** Proposer represents, warrants, certifies, acknowledges, and agrees as follows:
- 2.1.1 Proposer will furnish Work to University and comply with all terms, conditions, requirements and specifications set forth in this RFP and any resulting Agreement.
  - 2.1.2 This RFP is a solicitation for a proposal and is not a contract or an offer to contract. Submission of a proposal by Proposer in response to this RFP will not create a contract between University and Proposer. University has made no representation or warranty, written or oral, that one or more contracts with University will be awarded under this RFP. Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
  - 2.1.3 Proposer is a reputable company that is lawfully and regularly engaged in providing Work.
  - 2.1.4 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform Work.
  - 2.1.5 Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances relating to performance of Work.
  - 2.1.6 Proposer understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in the Agreement under which Proposer will be required to operate.
  - 2.1.7 Proposer will not delegate any of its duties or responsibilities under this RFP or the Agreement to any sub-contractor, except as expressly provided in the Agreement.
  - 2.1.8 Proposer will maintain any insurance coverage required by the Agreement during the entire term.
  - 2.1.9 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. University will rely on such statements, information and representations in selecting Contractor. If selected by University, Proposer will notify University immediately of any material change in any matters with regard to which Proposer has made a statement or representation or provided information.
  - 2.1.10 PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, UT SYSTEM, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTling ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF PROPOSER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROPOSER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.
  - 2.1.11 Pursuant to §§[2107.008](#) and [2252.903](#), *Government Code*, any payments owing to Proposer under the Agreement may be applied directly to any debt or delinquency that Proposer owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until such debt or delinquency is paid in full.
  - 2.1.12 Any terms, conditions, or documents attached to or referenced in Proposer's proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP, and (b) do not place any requirements on University that are not set forth in this RFP. Submission of a proposal is Proposer's good faith intent to enter into the Agreement with University as specified in this RFP and that Proposer's intent is not contingent upon University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.
  - 2.1.13 Pursuant to [Chapter 2270, Texas Government Code](#), Proposer certifies it (1) does not currently boycott Israel; and (2) will not boycott Israel during the term of any contract or agreement resulting from this RFP. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.
  - 2.1.14 Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Proposer certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.
- 2.2 No Benefit to Public Servants.** Proposer has not given or offered to give, nor does Proposer intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting Agreement, and Proposer may be removed from all proposer lists at University.
- 2.3 Tax Certification.** Proposer is not currently delinquent in the payment of any taxes due under [Chapter 171, Tax Code](#), or Proposer is exempt from the payment of those taxes, or Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at University's option, may result in termination of any resulting Agreement.
- 2.4 Antitrust Certification.** Neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, nor anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in [§15.01 et seq., Business and Commerce](#)

[Code](#), or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.

**2.5 Authority Certification.** The individual signing this document and the documents made a part of this RFP, is authorized to sign the documents on behalf of Proposer and to bind Proposer under any resulting Agreement.

**2.6 Child Support Certification.** Under [§231.006, Family Code](#), relating to child support, the individual or business entity named in Proposer's proposal is not ineligible to receive award of the Agreement, and any Agreements resulting from this RFP may be terminated if this certification is inaccurate.

**2.7 Relationship Certifications.**

- No relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Proposer that is a sole proprietorship, the officers or directors of any Proposer that is a corporation, the partners of any Proposer that is a partnership, the joint venturers of any Proposer that is a joint venture, or the members or managers of any Proposer that is a limited liability company, on one hand, and an employee of any member institution of UT System, on the other hand, other than the relationships which have been previously disclosed to University in writing.
- Proposer has not been an employee of any member institution of UT System within the immediate twelve (12) months prior to the Submittal Deadline.
- No person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in Proposer's proposal or any contract resulting from this RFP (ref. [§669.003, Government Code](#)).
- All disclosures by Proposer in connection with this certification will be subject to administrative review and approval before University enters into any Agreement resulting from this RFP with Proposer.

**2.8 Compliance with Equal Employment Opportunity Laws.** Proposer is in compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.

**2.9 Compliance with Safety Standards.** All products and services offered by Proposer to University in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law ([Public Law 91-596](#)) and the *Texas Hazard Communication Act*, [Chapter 502, Health and Safety Code](#), and all related regulations in effect or proposed as of the date of this RFP.

**2.10 Exceptions to Certifications.** Proposer will and has disclosed, as part of its proposal, any exceptions to the information stated in this [Execution of Offer](#). All information will be subject to administrative review and approval prior to the time University makes an award or enters into any Agreement with Proposer.

**2.11 Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act Certification.** If Proposer will sell or lease computer equipment to University under any Agreement resulting from this RFP then, pursuant to [§361.965\(c\), Health & Safety Code](#), Proposer is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in [Chapter 361, Subchapter Y, Health & Safety Code](#), and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in [30 TAC Chapter 328, §361.952\(2\), Health & Safety Code](#), states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term "computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.

**2.12 Conflict of Interest Certification.**

- Proposer is not a debarred vendor or the principal of a debarred vendor (i.e. owner, proprietor, sole or majority shareholder, director, president, managing partner, etc.) either at the state or federal level.
- Proposer's provision of services or other performance under any Agreement resulting from this RFP will not constitute an actual or potential conflict of interest.
- Proposer has disclosed any personnel who are related to any current or former employees of University.
- Proposer has not given, nor does Proposer intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to an officer or employee of University in connection with this RFP.

**2.14 Proposer should complete the following information:**

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

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

RFP No.: 724-1903-JBT

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



**Submitted and Certified By:**

---

(Proposer Institution's Name)

---

(Signature of Duly Authorized Representative)

---

(Printed Name/Title)

---

(Date Signed)

---

(Proposer's Street Address)

---

(City, State, Zip Code)

---

(Telephone Number)

---

(FAX Number)

SECTION 3

**PROPOSER'S GENERAL QUESTIONNAIRE**

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

Proposals must include responses to the questions contained in this Proposer's General Questionnaire. Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Proposer will explain the reason when responding N/A or N/R.

**3.1 Proposer Profile**

3.1.1 Legal name of Proposer company:

\_\_\_\_\_

Address of principal place of business:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Address of office that would be providing service under the Agreement:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Number of years in Business: \_\_\_\_\_

State of incorporation: \_\_\_\_\_

Number of Employees: \_\_\_\_\_

Annual Revenues Volume: \_\_\_\_\_

Name of Parent Corporation, if any \_\_\_\_\_

**NOTE: If Proposer is a subsidiary, University prefers to enter into a contract or agreement with the Parent Corporation or to receive assurances of performance from the Parent Corporation.**

3.1.2 State whether Proposer will provide a copy of its financial statements for the past two (2) years, if requested by University.

3.1.3 Proposer will provide a financial rating of the Proposer entity and any related documentation (such as a Dunn and Bradstreet analysis) that indicates the financial stability of Proposer.

3.1.4 Is Proposer currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, Proposer will explain the expected impact, both in organizational and directional terms.

3.1.5 Proposer will provide any details of all past or pending litigation or claims filed against Proposer that would affect its performance under the Agreement with University (if any).

3.1.6 Is Proposer currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, Proposer will specify the pertinent date(s), details, circumstances, and describe the current prospects for resolution.

3.1.7 Proposer will provide a customer reference list of no less than three (3) organizations with which Proposer currently has contracts and/or to which Proposer has previously provided services (within the past five (5) years) of a type and scope similar to those required by University's RFP. Proposer will include in its customer reference list the customer's company name, contact person, telephone number, project description, length of business relationship, and background of services provided by Proposer.

- 3.1.8 Does any relationship exist (whether by family kinship, business association, capital funding agreement, or any other such relationship) between Proposer and any employee of University? If yes, Proposer will explain.
- 3.1.9 Proposer will provide the name and Social Security Number for each person having at least 25% ownership interest in Proposer. This disclosure is mandatory pursuant to [§231.006, Family Code](#), and will be used for the purpose of determining whether an owner of Proposer with an ownership interest of at least 25% is more than 30 days delinquent in paying child support. Further disclosure of this information is governed by the *Texas Public Information Act* (ref. [Chapter 552, Government Code](#)), and other applicable law.

### **3.2 Approach to Work**

- 3.2.1 Proposer will provide a statement of the Proposer's service approach and will describe any unique benefits to University from doing business with Proposer. Proposer will briefly describe its approach for each of the required services identified in **Section 5.4** Scope of Work of this RFP.
- 3.2.2 Proposer will provide an estimate of the earliest starting date for services following execution of the Agreement.
- 3.2.3 Proposer will submit a work plan with key dates and milestones. The work plan should include:
  - 3.2.3.1 Identification of tasks to be performed;
  - 3.2.3.2 Time frames to perform the identified tasks;
  - 3.2.3.3 Project management methodology;
  - 3.2.3.4 Implementation strategy; and
  - 3.2.3.5 The expected time frame in which the services would be implemented.
- 3.2.4 Proposer will describe the types of reports or other written documents Proposer will provide (if any) and the frequency of reporting, if more frequent than required in this RFP. Proposer will include samples of reports and documents if appropriate.

### **3.3 General Requirements**

- 3.3.1 Proposer will provide summary resumes for its proposed key personnel who will be providing services under the Agreement with University, including their specific experiences with similar service projects, and number of years of employment with Proposer.
- 3.3.2 Proposer will describe any difficulties it anticipates in performing its duties under the Agreement with University and how Proposer plans to manage these difficulties. Proposer will describe the assistance it will require from University.

### **3.4 Service Support**

Proposer will describe its service support philosophy, how it is implemented, and how Proposer measures its success in maintaining this philosophy.

### **3.5 Quality Assurance**

Proposer will describe its quality assurance program, its quality requirements, and how they are measured.

### **3.6 Miscellaneous**

- 3.6.1 Proposer will provide a list of any additional services or benefits not otherwise identified in this RFP that Proposer would propose to provide to University. Additional services or benefits must be directly related to the goods and services solicited under this RFP.
- 3.6.2 Proposer will provide details describing any unique or special services or benefits offered or advantages to be gained by University from doing business with Proposer. Additional services or benefits must be directly related to the goods and services solicited under this RFP.
- 3.6.3 Does Proposer have a contingency plan or disaster recovery plan in the event of a disaster? If so, then Proposer will provide a copy of the plan.

**SECTION 4**  
**ADDENDA CHECKLIST**

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

**To:** University of Texas at El Paso

**RFP No.:** 724-1903-JBT

Ladies and Gentlemen:

The undersigned Proposer hereby acknowledges receipt of the following Addenda to the captioned RFP (*initial blanks for any Addenda issued*).

No. 1 \_\_\_\_\_ No. 2 \_\_\_\_\_ No. 3 \_\_\_\_\_ No. 4 \_\_\_\_\_ No. 5 \_\_\_\_\_

Respectfully submitted,

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

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

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

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

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

## APPENDIX TWO

### PRINTSHOP AND MAILROOM SERVICES AGREEMENT

#### THIS IS A SAMPLE AGREEMENT

The terms of this agreement are only meant as are reference  
Terms of the final agreement may change to reflect, among other things, changes in applicable law.  
Final agreement shall be binding upon signature of all parties.

This **Print Shop and Mailroom Services Agreement** (this "**Agreement**") is executed by and between **THE UNIVERSITY OF TEXAS AT EL PASO**, an agency and institution of higher education authorized under the laws and Constitution of the State of Texas ("**University**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Contractor**") to be effective \_\_\_\_\_, 20\_\_ (the "**Effective Date**").

University is interested in contracting with one or more experienced and qualified printing and mail service company to provide the **Services** in accordance with the **Operational Requirements** as more particularly described in **Schedule 1** attached and incorporated for all purposes.

Contractor has extensive experience in providing the Services (ref. **Schedule 1**) and is an experienced and duly certified company.

University wishes to obtain the Services from Contractor and Contractor desires to provide the Services to University.

For and in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

#### TERMS

##### Section 1.

##### Term

The initial term ("**Initial Term**") of this Agreement will begin on the Effective Date, and will expire on \_\_\_\_\_, 20\_\_, unless earlier terminated in accordance with the terms of this Agreement.

Upon expiration of the Initial Term, the parties may extend the term of this Agreement from year to year or for a period of years (each an "**Extension Term**") in accordance with **Section 9.6**. Failure to agree to extend the term of this Agreement at least one hundred twenty (120) days before the expiration date of the Initial Term or any Extension Term, will result in the termination of this Agreement as of the expiration date then in effect.

The term "**contract year**" will mean that period of time beginning on the Effective Date and ending \_\_\_\_\_, 20 and each twelve (12) month period thereafter, during the Initial Term or any Extension Term.

## Section 2.

### Preparation Activities Work Schedule

Contractor's activities (the "**Preparation Activities**") to be performed in preparation to provide the Services and the related schedule for performance of the Preparation Activities is set forth in **Schedule 2**, attached and incorporated for all purposes. It is understood that time is of the essence with regard to this Agreement and that Contractor will complete all Preparation Activities, commence delivery of the Services and perform the Services to the satisfaction of University in accordance with this Agreement. University will have no obligation to accept late performance or to waive timely performance by Contractor.

## Section 3.

### Contractor's Responsibilities

#### 3.1 Contractor's Representations and Warranties

- 3.1.1 Standards of Performance; Applicable Laws. Notwithstanding anything to the contrary contained in this Agreement, Contractor agrees and acknowledges that University is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to the operation and management of the Services (ref. **Schedule 1**). Contractor accepts the relationship of trust and confidence established between it and University by this Agreement. Contractor will use its best efforts, skill, judgment, and abilities to perform the Services and to further the interests of University in accordance with University's requirements and procedures, in accordance with the highest standards of Contractor's profession or business and in compliance with all applicable national, federal, state, and municipal, laws, regulations, codes, ordinances and orders, the *Rules and Regulations* (the "**Regents' Rules**") promulgated by the Board of Regents of The University of Texas System ("**Board**"), as well as with those of any other body or authority having jurisdiction (collectively, the "**Applicable Laws**"). Contractor also will obtain any and all approvals, licenses, filings, registrations and permits required by federal, state or local law for the performance of the Services or Contractor's other duties and obligations under the terms of this Agreement. Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the Services. Upon University's request, Contractor will submit to University satisfactory evidence of Contractor's compliance with this Section. Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, nor anyone acting for such firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor's response to University's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.
- 3.1.2 Sanitation, Health and Safety. Contractor will maintain clean, orderly, safe and sanitary conditions (satisfactory to University in all respects) service areas, and other locations more particularly identified in **Schedule 3** attached and incorporated for all purposes, or used by Contractor in the performance of the Services (collectively, the "**Space**").
- 3.1.3 Good Standing; Signature Authority. If Contractor is a corporation, then Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor. If Contractor is a partnership, limited partnership, or limited liability partnership, then Contractor has all necessary partnership power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations under this Agreement; and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 3.1.4 Limitation of University's Liability. EXCEPT FOR THE OBLIGATIONS OF UNIVERSITY SPECIFICALLY PROVIDED IN THIS AGREEMENT, UNIVERSITY WILL HAVE NO LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. IN ADDITION, NOTWITHSTANDING ANY OBLIGATION OR LIABILITY OF UNIVERSITY TO CONTRACTOR, NO PRESENT OR FUTURE PARTNER OR AFFILIATE OF UNIVERSITY OR ANY AGENT, OFFICER, DIRECTOR, EMPLOYEE, OR REGENT OF UNIVERSITY, THE UNIVERSITY OF TEXAS SYSTEM ("**SYSTEM**"), OR OF THE COMPONENTS COMPRISING THE SYSTEM, OR ANYONE

CLAIMING UNDER UNIVERSITY HAS OR WILL HAVE ANY PERSONAL LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.

- 3.1.5 Debts of Students. Pursuant to Rule 50303 of the Regents' Rules (ref. **Schedule 4**) neither System nor University will be responsible for debts incurred by or owed to Contractor by individual students or student organizations. Neither University nor System will assume the role of a collection agency for Contractor. Neither University nor System will adjudicate disputes between students and Contractor over the existence or the amount of debts.
- 3.1.6 Non-Exclusive Agreement; Reservation of Rights by University. UNIVERSITY RESERVES THE RIGHT TO OFFER FOR SALE THROUGH ANY OF ITS PRESENT OR FUTURE FACILITIES, PRODUCTS AND SERVICES THAT MAY BE COMPETITIVE OR SIMILAR IN NATURE TO PRODUCTS AND SERVICES OFFERED BY CONTRACTOR PURSUANT TO THIS AGREEMENT.
- 3.1.7 Customer Satisfaction. Contractor will implement and maintain a "customer satisfaction guaranteed" policy as more particularly set forth in **Schedule 5** attached and incorporated for all purposes. All Customer complaints and claims will be resolved at Contractor's expense in accordance with the complaint resolution procedures set forth in **Schedule 5**. Any Customer complaint or claim that Contractor is not able to resolve to the satisfaction of the Customer will be referred to University's \_\_\_\_\_ ("**University's Representative**") for resolution. Contractor will comply with all decisions by University's Representative regarding the Customer complaints and claims.

### 3.2 Services.

- 3.2.1 Contractor will provide the Services to University's students, faculty, staff and invitees (collectively, the "**Customers**") at the service locations {collectively, "**Service Locations**") more particularly described in **Schedule 3**.
- 3.2.2 Operating Schedule. The Services will be provided in accordance with the operating schedule (the "**Operating Schedule**") as established in the Operational Requirements in **Schedule 1**. All aspects of the Operating Schedule and any changes to the Operating Schedule will be subject to the prior written approval of University's Representative. Approval will not be unreasonably withheld.

## Section 4.

### Prices and Costs Arrangements

#### 4.1 Price for Printing and Mail Services.

- 4.1.1 Pricing

#### 4.2 Costs and Expenses.

Contractor will:

- 4.2.1 comply with all requirements of Subchapter C, Chapter 2252, *Texas Government Code*, as amended, including the provision of financial statements, payment statements derived from sales tax reports, and bonds;
- 4.2.2 provide all equipment, products and supplies necessary for the performance of the Services and Contractor's other duties and obligations under the terms of this Agreement;
- 4.2.3 provide all management and non-management personnel (including the payment of all salaries and fringe benefits due to the personnel) necessary for the performance of the Services and Contractor's other duties and obligations under the terms of this Agreement;
- 4.2.4 provide uniforms and name tags (satisfactory to University in all respects) for Contractor's personnel in accordance with **Section 6.2.10** of this Agreement;
- 4.2.5 provide all janitorial supplies, equipment, and services necessary for the maintenance and cleaning of inside surfaces, furnishings, equipment, front doors, glass wall partitions, restrooms, walls, ceilings, loading docks, floors and vents associated with the Space or related to the performance of the Services or Contractor's other duties and obligations under the terms of this Agreement.;

- 4.2.6 obtain any and all approvals, licenses, filings, registrations and permits required by federal, state or local law for the performance of the Services or Contractor's other duties and obligations under the terms of this Agreement;
- 4.2.7 pay all taxes on the Services as may be required by Applicable Laws;
- 4.2.8 pay all insurance and bond premiums required by the terms of this Agreement including **Sections 4.2.1 and 6.3**;
- 4.2.9 pay all costs related to vehicles necessary for the performance of the Services and Contractor's other duties and obligations under the terms of this Agreement;
- 4.2.10 pay all costs and charges related to telecommunication services provided to the Space by University;
- 4.2.11 provide all office supplies, and marketing materials necessary for the performance of the Services and Contractor's other duties and obligations under the terms of this Agreement;
- 4.2.12 provide all Card System compatible point-of-sale cash registers and appropriate accessories that are necessary for the performance of the Services and Contractor's other duties and obligations under the terms of this Agreement. A comprehensive inventory of University Owned Equipment is attached as **Schedule 7** and incorporated for all purposes;
- 4.2.13 maintain all University Owned Equipment in good working order;
- 4.2.14 repair or replace (at University's option) all University Owned Equipment and all other University equipment, furniture, plumbing fixtures, and electrical fixtures, lost or damaged by Contractor, its employees, representatives, agents, or subcontractors. University Owned Equipment that has exceeded its useful life will be replaced by University at University's expense.
- 4.2.15 provide for the removal and proper disposal of all garbage from the Space and related areas;
- 4.2.16 cause to be provided appropriate pest control services within the Space and adjacent areas. All pest control services must be (1) coordinated with University's pest control efforts, and (2) pre-approved in writing by University's Representative;
- 4.2.17 comply, and cause its employees, representatives, agents, and subcontractors to comply, with all applicable University rules and policies, including University's *Standards of Conduct Guide* posted on the Internet at <https://www.utep.edu/compliance/resources/index.html>, as well as University's rules and policies related to personal health, security, environmental quality, safety, fire prevention, noise, smoking, parking and access restrictions; and
- 4.2.18 pay any and all other costs associated with the performance of the Services and Contractor's other duties and obligations pursuant to the terms of this Agreement, not expressly required to be paid by University pursuant to **Section 7.2**.

## Section 5.

### Fiscal Arrangements

#### 5.1 Payment of Royalty.

- 5.1.1 Calculation. Contractor will pay University the Royalty on adjusted gross revenue generated by all as more particularly provided in **Schedule 8** attached and incorporated for all purposes. The term "**adjusted gross revenue**" will mean
- 5.1.2 Payments; Accounting Periods. Contractor will pay University all amounts owing under this Agreement within \_\_\_\_\_ (\_\_) days after the last day of each Accounting Period during the Initial Term or any Extension Term of this Agreement. *The term "Accounting Period," as used in this Agreement, will mean \_\_\_\_\_.*

#### 5.2 Payment for Services

Payments by University will be made in accordance with [Chapter 2251, Texas Government Code](#). Contractor will invoice University for the Services provided to University. University will, within twenty-one (21) days from the date it receives the invoice and applicable supporting documentation for payment, approve or disapprove the amount reflected in the invoice and if University approves the amount or any portion of the amount, University will pay to Contractor within thirty (30) days after the later of receipt of the invoice or complete performance of the Services, the amount so approved, provided Contractor is not in breach of or in default under this Agreement. If University disapproves any amount requested by Contractor, University will give Contractor specific reasons for its disapproval in writing.

University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the Services in accordance with [§151.309, Texas Tax Code](#), and [34 TAC §3.322](#).



[Section 51.012, Texas Education Code](#), authorizes University to make any payment through electronic funds transfer methods. Contractor agrees to receive payments from University through electronic funds transfer methods, including the automated clearing house system (also known as ACH). Prior to the first payment under this Agreement, University will confirm Contractor's banking information. Any changes to Contractor's banking information must be communicated to University in writing at least thirty (30) days in advance of the effective date of the change in accordance with **Section 9.15**.

### 5.3 Collection and Recording of Revenue.

5.3.1 Revenue Collection Procedures. All revenue will be collected as more particularly provided in **Schedule 13** attached and incorporated for all purposes.

5.3.2 Recording Receipts. All revenue received as a result of this Agreement will be recorded in Contractor's general ledger. Contractor will process all cash sales through cash registers, maintain cash register tapes and sales records locally, and make the tapes and records accessible to University within five (5) days after University's written request.

5.3.3 Card System Sales. Contractor will process all Card System sales through University's Card System.

5.3.4 Payment Card Industry Standards. University is required to validate compliance on a periodic basis with all applicable Payment Card Industry Data Security Standards (collectively, "**PCI DSS**"), including Payment Application Data Security Standards (collectively, "**PA DSS**"), promulgated by the Payment Card Industry Security Standards Council ("**PCI SSC**"). The compliance validation process requires University to undergo an assessment of (1) all system components used to process, store or transmit cardholder data, and any other components that reside on the same network segment as those system components, as well as (2) all related processes used to process, store or transmit cardholder data, (collectively, "**System Components in Scope**"). Some or all System Components in Scope have been outsourced to Contractor under this Agreement. Contractor will cause its agents and subcontractors to comply with all terms of this Section applicable to Contractor. Contractor will achieve and maintain compliance under the current versions of PCI DSS and PA DSS published on the PCI SSC website for service providers and payment applications. As evidence of compliance, Contractor will provide to University on or before the Effective Date and within ten (10) days after each anniversary of the Effective Date during the term of this Agreement, a copy of Contractor's annual attestation of compliance signed by a Qualified Security Assessor ("**QSA**") as more particularly described on the PCI SSC website.

If Contractor is unable to provide the required attestations of compliance, Contractor will permit University or University's QSA to assess all System Components in Scope that are hosted or managed by Contractor or by Contractor's agents or subcontractors. Contractor will create and maintain reasonably detailed, complete and accurate documentation describing the systems, processes, network segments, security controls, and dataflow used to receive, transmit, store and secure cardholder data. The documentation will conform to the most current version of PCI DSS. Contractor will, upon written request by University, make the documentation and the individuals responsible for implementing, maintaining and monitoring System Components in Scope available to (1) QSAs, forensic investigators, consultants and attorneys retained by University to facilitate the validation of University's PCI DSS compliance, and (2) University's information technology, information security, audit, compliance and other staff.

Contractor will retain the documentation for at least one (1) year after termination of this Agreement.

### 5.4 Reporting.

5.4.1 Periodic Statements. On the Effective Date, Contractor will submit to University two (2) copies of a financial statement prepared by a certified public accountant. Within thirty (30) days after the end of each Accounting Period during the Initial Term or any Extension Term, Contractor will submit to University two (2) copies of the following information covering the immediately preceding Accounting Period: (a) a statement of all revenues, including \_\_\_\_\_ revenue; (b) a statement of gross and net sales and disbursements; (c) a consolidated statement of total service operations covered by this Agreement, reported on an Accounting Period basis and year-to-date basis and (d) in accordance with [§2252.063, Texas Government Code](#), payment statements derived from sales tax reports (ref. **Section 4.3.1**).

- 5.4.2 Statement Based on Sales Tax Reports. In accordance with [§2252.063, Texas Government Code](#), Contractor will submit to University's Representative, no later than the 15<sup>th</sup> day after the end of each fiscal year, an annual payment statement derived from all of Contractor's sales tax reports for its operations in any Service Location during the preceding fiscal year. This annual payment statement must be certified by a certified public accountant licensed in the State of Texas (ref. **Section 4.3.1**). The term "fiscal year" will mean University's fiscal year, that commences September 1 and ends August 31.
- 5.4.3 Annual Budget. On or before \_\_\_\_\_ of each contract year of this Agreement, Contractor will prepare and submit for University's review and approval, two (2) copies of Contractor's proposed budget for the performance of the Services at all Service Locations, including detailed revenue projections by location and by revenue source, as well as costs and other information reasonably requested by University.
- 5.4.4 Form of Reports. All reports will be presented in forms satisfactory to University in all respects.

## 5.5 Inventory.

- 5.5.1 Inventory Record Keeping. Contractor will maintain, in formats acceptable to University, annual inventory, acquisition, and loss records for (a) all University Owned Equipment and (b) all Contractor Owned Equipment (ref. **Section 5.5.2**).
- 5.5.2 Contractor Owned Equipment. Contractor will provide University with an inventory listing of all equipment owned by Contractor and used on University's premises to perform the Services or Contractor's other duties and obligations under the terms of this Agreement (collectively, "**Contractor Owned Equipment**") to be used in the Space and will keep the list current. Any equipment located in the Space that is not on Contractor Owned Equipment list will be deemed to be University Owned Equipment and the sole property of University.
- 5.5.3 Annual Contractor Inventory. On each anniversary date of this Agreement and upon the effective date of the termination of this Agreement for any reason, a joint inventory of all Contractor Owned Equipment will be taken.

## 5.6 Renovation of Space.

Projects funded by Contractor will be, on a project-by-project basis, managed by Contractor and inspected and approved by University. Contractor will abide by provisions in **Schedule 6, "Contractor Improvements."** All designs must be reviewed and approved by University Facilities Management (FM) and University Environmental Health and Safety (EHS) as the Authority Having Jurisdiction. All construction and component installations will be inspected by University FM and EHS Management and a University-issued Certificate of Occupancy must be obtained before operation of the facility can commence.

## 5.7 Title.

Title to any property installed by Contractor (with the exception, in each case, of [any signage that bears](#) the name of Contractor or any of its [logos](#), service marks or trademarks or any [logos](#), service marks or trademarks of a third party) will automatically become the property of University. Contractor will have no right of ownership or any claim in the property. Further, Contractor will provide University with any documentation reasonably necessary to evidence University's ownership of the property. All documentation will be in form satisfactory to University in all respects.

## Section 6.

### Management Responsibilities

#### 6.1 Independent Contractor.

Contractor recognizes that it is engaged by University as an independent contractor and acknowledges that University will have no responsibility to provide to Contractor or its officers, employees, personnel, agents, partners, or subcontractors, vacation, insurance or other fringe benefits normally associated with employee status. Contractor will perform the Services and discharge all of its duties and obligations under this Agreement in its capacity as an independent contractor. Contractor, in accordance with its status as an independent contractor, will conduct itself consistent with that status, and that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of University. Contractor will not make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of University, including unemployment insurance benefits, social security coverage or retirement benefits. Contractor will make its own arrangements for any benefits it may desire. Contractor is responsible for all income taxes required by Applicable Laws. All persons performing the Services will be officers, employees, personnel, agents, partners, or subcontractors solely of Contractor and will not be deemed, for any purpose whatsoever, officers, employees, personnel, agents, or partners, acting for or on behalf of, University. No acts or representations, whether oral or written, made by Contractor or its officers, employees, personnel, agents, partners, or subcontractors, to third parties will be binding on University, unless expressly accepted by University in writing.

#### 6.2 Personnel.

- 6.2.1 Properly Trained Staff; Efficient Performance of Services: At all times, Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will maintain and have on duty at all Service Locations an adequately trained staff of employees or personnel sufficient for the efficient performance of the Services. Contractor will provide expert administrative, purchasing, and personnel supervision, for the performance of the Services.
- 6.2.2 Supervision. Contractor will provide adequate, competent supervision of its employees and personnel at each Service Location. Neither University's Representative nor any other representative of University will supervise Contractor's employees, representatives, agents, or subcontractors performing the Services; provided, however, University's Representative will be available to Contractor to answer questions and provide necessary information.
- 6.2.3 Licenses; Designated Representatives. All persons connected with Contractor directly in charge of the Services are duly registered and licensed under Applicable Laws, if so required by Applicable Laws. Contractor will assign to University a designated representative who will be responsible for the administration and coordination of the Services. Contractor will furnish efficient business administration and coordination and perform the Services in an expeditious and economical manner consistent with the interests of University.
- 6.2.4 Anti-discrimination Provision. Contractor will not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, handicap, national origin, or status as a veteran.
- 6.2.5 Employee Conduct. Contractor will require all of its employees and personnel to adhere to the Regents' Rules and University's policies and procedures. Contractor will perform the Services without interfering in any way with the activities of University's faculty, students, staff, visitors or invitees.
- 6.2.6 Labor Unions. University will not be a party to, or be bound by, any labor union contract affecting Contractor's employees or personnel. Any contract will be negotiated between Contractor and the labor union.
- 6.2.7 University's Rights to Refuse Entry and Eject. University has the rights to (a) require identification from any person on University's premises, (b) refuse entry to persons having no legitimate business on University's premises, and (c) eject any undesirable person refusing to leave peaceably on request. Contractor will cooperate with all authorized University representatives in the exercise of University's rights described in this Section.

6.2.8 Responsibility for Injury, Loss and Damage. Contractor will be responsible for any and all injury, loss and damage to persons or property caused by Contractor's employees, representatives, agents, or subcontractors. At University's option, Contractor will promptly repair, to the satisfaction of University, any damage Contractor, its employees, representatives, agents, or subcontractors, cause to University's property or University may repair the damage and Contractor will promptly reimburse University for the cost of the repair.

6.2.9 Limited Access; Space License. Contractor, its employees, representatives, agents, and subcontractors, will have the right to use and access only the Space to perform the Services and will have no right to use or access any other University facilities. University will permit Contractor to use the Space in accordance with the license contained in this Section. University licenses the Space in its current, "as is" condition to Contractor for use by Contractor and its employees, representatives, agents, and subcontractors in the performance of the Services and for no other purpose. This is a non-exclusive license to use the Space. University may enter the Space at any time for any reason. No unlawful activities will be permitted in the use of the Space. Contractor will comply with all Applicable Laws in connection with the use of the Space. Contractor will cause all of its employees, representatives, agents, and subcontractors to observe and comply with all Applicable Laws.

Contractor will not modify, alter or repair the Space or any other University facilities without the prior written approval of University and with project management of renovations by University.

Contractor will not harm the Space or make any use of the Space that is offensive as determined by University. Upon expiration or termination of this Agreement for any reason, Contractor will remove Contractor Owned Equipment and other effects, repair any damage caused by the removal, and peaceably deliver up the Space in clean condition and in good order, repair and condition, ordinary wear and tear excepted. Any personal property of Contractor not removed within two (2) days following the termination will be deemed abandoned by Contractor and University may dispose of the property in any manner it chooses, with no liability or reimbursement obligation to Contractor.

Contractor will not suffer any mechanic's lien to be filed against the Space or the adjoining facilities by reason of any work, labor, services, or materials performed at or furnished to the Space for Contractor. Nothing in this Agreement will be construed as the consent of University to subject University's estate in the Space or adjoining facilities to any lien.

The Space is sufficiently equipped for Contractor to provide the Services in accordance with the terms and conditions of this Agreement.

UNIVERSITY WILL NOT BE RESPONSIBLE FOR INTERRUPTIONS IN UTILITY SERVICE TO THE SPACE. HOWEVER, UNIVERSITY WILL EXERCISE REASONABLE DILIGENCE IN PURSUING THE RESTORATION OF INTERRUPTED UTILITY SERVICE.

UNIVERSITY WILL NOT BE LIABLE TO CONTRACTOR, OR CONTRACTOR'S EMPLOYEES, REPRESENTATIVES, AGENTS, SUBCONTRACTORS, GUESTS OR INVITEES (COLLECTIVELY, "**CONTRACTOR PARTIES**"), FOR ANY LOSS, EXPENSE OR DAMAGE EITHER TO PERSON OR PROPERTY SUSTAINED BY REASON OF ANY CONDITION OF THE SPACE, OR DUE TO ANY ACT OF ANY EMPLOYEE OR AGENT OF UNIVERSITY, OR THE ACT OF ANY OTHER PERSON WHATSOEVER. UNIVERSITY, ITS EMPLOYEES, REPRESENTATIVES AND AGENTS WILL NOT BE LIABLE FOR AND CONTRACTOR WAIVES ALL CLAIMS FOR DAMAGE TO PERSON OR PROPERTY SUSTAINED BY ANY CONTRACTOR PARTIES, RESULTING FROM ANY ACCIDENT OR OCCURRENCE IN OR UPON THE SPACE OR THE ADJOINING GROUNDS OR FACILITIES. CONTRACTOR WILL PAY ON DEMAND UNIVERSITY'S EXPENSES INCURRED IN ENFORCING ANY OBLIGATION OF CONTRACTOR UNDER THIS LICENSE.

6.2.10 Uniforms; Name Tags. While on duty, on or off University's premises, all of Contractor's non-supervisory personnel will wear uniforms satisfactory to University in all respects. While on duty, on or off University premises, Contractor's professional staff will wear name tags satisfactory to University in all respects.

6.2.11 **Responsibility for Individuals Performing Services; Criminal Background Checks.** Each individual who is assigned to perform the Services under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing the Services under this Agreement. Prior to commencing the Services, Contractor will (1) provide University with a list ("**List**") of all individuals who may be assigned to perform the Services on University's premises and (2) have an appropriate criminal background screening performed on all the individuals on the List. Contractor will determine on a case-by-case basis whether each individual assigned to perform the Services is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University's premises who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform the Services on University's premises.

Prior to commencing performance of the Services under this Agreement, Contractor will provide University a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will provide University an updated certification letter each time there is a change in the individuals on the List.

6.2.12 Undocumented Workers. The *Immigration and Nationality Act* ([8 United States Code 1324a](#)) ("**Immigration Act**") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the [Form I-9 Employment Eligibility Verification Form](#) ("**I-9 Form**") as the document to be used for employment eligibility verification ([8 Code of Federal Regulations 274a](#)). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, University may terminate this Agreement in accordance with **Section 8**. Contractor is in compliance with and will remain in compliance with the provisions of the Immigration Act.

**6.3 Insurance, Bond, Indemnification, and Liability.**

6.3.1 Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the [Texas Insurance Code](#), having an A.M. Best Rating of A:-VII or better, and in amounts not less than the following minimum limits of coverage:

6.3.1.1 Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

Employers Liability - Each Accident	\$1,000,000
Employers Liability - Each Employee	\$1,000,000
Employers Liability - Policy Limit	\$1,000,000

Workers' Compensation policy must include under Item 3.A. on the information page of the Workers' Compensation policy the state in which work is to be performed for University.

6.3.1.2 Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 300,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000

The required Commercial General Liability policy will be issued on a form that insures Contractor's and subcontractor's liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

- 6.3.1.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for Bodily Injury and Property Damage;
- 6.3.1.4 Umbrella/Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence and aggregate with a deductible of no more than \$10,000, and will be excess over and at least as broad as the underlying coverage as required under **Sections 6.3.1.1** Employer's Liability; **6.3.1.2** Commercial General Liability; **6.3.1.3** Business Auto Liability. Inception and expiration dates will be the same as the underlying policies. Drop down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.
- 6.3.1.5 Contractor's Employee Dishonesty Insurance will be endorsed with a Client's Property Endorsement (or equivalent) to protect the assets and property of University with limits of not less than \$500,000 per claim. If Contractor has property of University in its care, custody or control away from University's premises, Contractor will provide bailee coverage for the replacement cost of the property. Contractor's Employee Dishonesty policy will name University as Loss Payee.
- 6.3.1.6 Cyber Liability Insurance with limits of not less than \$10,000,000 for each wrongful act. This policy must cover:
  - Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of University data, whether by Contractor or any of subcontractor or cloud service provider used by Contractor;
  - Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management / public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
  - Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
  - Liability for technological products and services;
  - PCI fines, fees, penalties and assessments;
  - Cyber extortion payment and response costs;
  - First and Third Party Business Interruption Loss resulting from a network security failure;
  - Liability for technological products and services;
  - Costs of restoring, updating or replacing data; and
  - Liability losses connected to network security, privacy, and media liability.

If this policy is written on a claims-made basis, (a) the "retroactive date" must be prior to the commencement of work under this Agreement; and (b) if this policy is cancelled, terminated or non-renewed at any time during the Term, Contractor will purchase an "extended reporting period" for at least a period of two (2) years beyond the termination or expiration of the Term.

Contractor's policy will provide a carve-back to the "Insured versus Insured" exclusion for claims brought by or on behalf of additional insureds.

6.3.2 Contractor will deliver to University:

- 6.3.2.1 After the execution and delivery of this Agreement and prior to the performance of any work by Contractor, evidence of insurance on a Texas Department of Insurance (**TDI**) approved certificate form (the Acord form is a TDI-approved form) verifying the existence and actual limits of all required insurance policies; and, if the coverage period shown on the current certificate form ends during the Term, then prior to the end of the coverage period, a new certificate form verifying the continued existence of all required insurance policies.

- 6.3.2.1.1 **All insurance policies** (with the exception of workers' compensation, employer's liability and professional liability) will be endorsed and name the Board of Regents of The University of Texas System, The University of Texas System and University as Additional Insureds for liability caused in whole or in part by Contractor's acts or omissions with respect to its on-going and completed operations up to the actual liability limits of the required insurance policies maintained by Contractor. Commercial General Liability Additional Insured endorsement including ongoing and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.
- 6.3.2.1.2 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System, The University of Texas System and University. **All insurance policies** will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas, The University of Texas System and University. No policy will be canceled until after thirty (30) days' unconditional written notice to University. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to University thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this **Section 5**.
- 6.3.2.1.3 Contractor will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by University prior to the performance of any work by Contractor under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.
- 6.3.2.1.4 Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following University contact:

Name: Michael Lau  
Contract Administration Director

Address: The University of Texas at El Paso  
Kelly Hall 3<sup>rd</sup> Floor  
500 W. University Avenue  
El Paso, Texas 79968-0505

Fax Number: 915-747-5932  
Email Address: [mmlau@University.edu](mailto:mmlau@University.edu)

- 6.3.3 Contractor's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by University or the University of Texas System. Contractor's or subcontractor's insurance will be kept in force until all work has been fully performed and accepted by University in writing.
- 6.3.4 Performance Bond. In accordance with [§2252.064, Texas Government Code](#), Contractor will provide University with a performance bond for each contract year during the Initial Term and any Extension Term (ref. **Section 1**). The amount of the performance bond for the first contract year during the Initial Term will be in the amount of **\$500,000**. The performance bond will be issued by a surety company authorized to do business in the State of Texas and acceptable to University's Representative in all respects. The performance bond will be made payable to University and conditioned upon the prompt and faithful performance of the Services and all of Contractor's other duties and obligations under this Agreement.
- 6.3.5 Indemnification.

6.3.5.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WILL INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY AND SYSTEM, AND THEIR RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "**INDEMNITEES**") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "**CLAIMS**") BY ANY PERSON OR ENTITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING



FROM OR RELATED TO CONTRACTOR'S ACTIVITIES UNDER THIS CONTRACT, INCLUDING ANY ACTS OR OMISSIONS OF CONTRACTOR, OR ANY AFFILIATE, AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR THE SUBCONTRACTOR OF CONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS CONTRACT. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

6.3.5.2 IN ADDITION, CONTRACTOR WILL INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY CONTRACTOR, OR THE USE BY INDEMNITEES, AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UNIVERSITY WILL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UNIVERSITY WILL REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

## Section 7.

### University's Obligations

#### 7.1 General Obligations. University will:

- 7.1.1 University will not be responsible for interruptions in water, gas, electric, telecommunication or other utility services. However, University will exercise reasonable diligence in pursuing the restoration of interrupted utility services;
- 7.1.2 clean exterior walls and windows of the Space;
- 7.1.3 provide external maintenance on buildings where the Space is situated; and

#### 7.2 License Grants by the University

**Trademarks.** During the Term of this Agreement, the University will grant Contractor a limited, non-exclusive license to such University trademarks, as designated in writing by the University, solely for the specific and limited purposes specifically stated in this Agreement. **Schedule 9** includes the License and University trademarks that may be used per this Section. Such University trademarks are University of Texas System Marks subject to the University of Texas System Board of Regents' rules.

## Section 8.

### Termination

- 8.1 **Termination Without Cause.** This Agreement may be terminated by University *without cause* by giving Contractor not less than forty-five (45) days written notice of University's intention to terminate this Agreement as of a specified date. In the event this Agreement is terminated by University before the end of the then current contract year, the Royalty will be paid by Contractor to University (on a pro-rata basis through the effective date of termination) in accordance with **Section 5.1** of this Agreement.
- 8.2 **Termination for Default.** Except as provided in **Section 3.1.2**, in the event of a material failure by a party to this Agreement to perform in accordance with the terms of this Agreement ("**default**"), the other party may terminate this Agreement upon thirty (30) days' written notice of termination setting forth the nature of the default; provided, that, the default is through no fault of the terminating party. Termination will not be effective if the default is fully cured prior to the end of the thirty (30) day period. If Contractor fails to cure any default within thirty (30) days after receiving written notice of default, University will be entitled (but will not be obligated) to cure the default and will have the right, at University's option, to collect any and all reasonable expenses incurred in connection with the curative actions from Contractor or to set off the expenses against any amounts due to Contractor under this Agreement.

If Contractor (i) fails to pay any sums when due under this Agreement and such failure continues for five (5) business days after written demand by University; (ii) fails to perform when due any other of the terms, conditions or covenants of this Agreement to be observed and performed by Contractor and such failure continues for \_\_\_\_\_



(\_\_\_) business days after written demand by University; (iii) becomes bankrupt or insolvent or files any debtor proceedings, or takes or has taken a petition in bankruptcy or insolvency or for reorganization; (iv) makes application for the appointment of a receiver or trustee of all or a portion of Contractor's property; (v) makes an assignment for the benefit of creditors, or petitions for or enters into any similar arrangement; (vi) abandons the Licensed Space; or (vii) ceases normal business operations in the Licensed Space for more than \_\_\_ (\_\_\_) consecutive business days except as expressly permitted under this Agreement with respect to casualty, then Contractor shall be in default of this Agreement and University may thereafter, in addition to any other right or remedy provided at law or in equity for such default, (i) immediately terminate this Agreement upon written notice to Contractor; (ii) cure the default of Contractor and be reimbursed by Contractor upon demand for all reasonable costs of such cure incurred by University; and/or (iii) re-enter and take possession of the Licensed Space, remove all persons and property from the Licensed Space, and store such property in a public warehouse or elsewhere at the cost of, and for the account of Contractor, all without service of notice or resort to legal process and without being deemed guilty of trespass, or becoming liable for any loss or damage that may be occasioned thereby and without any liability to Contractor.

**8.3 No Release of Liability.** Termination of this Agreement under **Sections 3.1.2, 8.1 or 8.2** will not relieve Contractor or any of its employees, representatives, agents, or subcontractors from liability for any default or breach under the terms of this Agreement or any other act or omission.

**8.4 Transition Period.** If this Agreement expires or is terminated for any reason, then at University's option, Contractor will continue to perform the Services in accordance with the terms of this Agreement until University contracts with a new qualified and experienced vendor(s) to perform the Services or is able to perform the Services in-house; provided, that, Contractor will not be required to continue performing the Services for more than ( ) [Option: three (3)] months after expiration or termination of this Agreement. Contractor will cooperate with, and assist, University's efforts to transition the Services to another vendor(s) or to perform the Services in-house.

**8.5 Left blank intentionally**

**8.6 Continuing Obligations.** The expiration or termination of this Agreement will not relieve either party of any obligations under this Agreement that by their nature survive expiration or termination including Sections 3.1.3, 3.1.7, 3.1.8, 4.3, 5.1, 5.2, 5.4, 5.5.4, 5.5.5, 5.7.2, 6.2.8, 6.2.9, 6.2.12, 6.3, 7.1, 8, 9.1, 9.3, 9.5, 9.6, 9.8, 9.9, 9.10, 9.11, 9.12, 9.14, 9.15, 9.16, 9.17, 9.18, 9.19 and 9.24.

## Section 9.

### Miscellaneous

**9.1 Assignment and Subcontracting.** Except as specifically provided in **Schedule 15**, Historically Underutilized Business Subcontracting Plan, attached and incorporated for all purposes, Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on University; and (b) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Texas law, including [Chapter 2161, Texas Government Code](#), and 34 TAC §§[20.285\(g\)\(5\)](#), [20.585](#) and [20.586](#). The benefits and burdens of this Agreement are assignable by University.

**9.2 Historically Underutilized Business Subcontracting Plan.** Contractor will use good faith efforts to subcontract the Services in accordance with the Historically Underutilized Business Subcontracting Plan ("HSP") (ref. **Schedule 15**). Contractor will maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to University in the format required by the Statewide Procurement and Statewide Support Services Division of the Texas Comptroller of Public Accounts or successor entity (collectively, **SPSS**). Submission of compliance reports will be required as a condition for payments by University under this Agreement. If University determines that Contractor has failed to subcontract as set out in the HSP, University will notify Contractor of any deficiencies and give Contractor an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. If University determines that Contractor failed to implement the HSP in good faith, University, in addition to any other remedies, may report nonperformance to the SPSS in accordance with 34 TAC §§[20.285\(g\)\(5\)](#), [20.585](#) and [20.586](#). University may also revoke this Agreement for breach and make a claim against Contractor.

- 9.2.1 **Changes to the HSP.** If at any time during the term of this Agreement, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with [34 TAC §20.285](#); (b) the changes must be reviewed and approved by University; and (c) if University approves changes to the HSP, this Agreement must be amended in accordance with **Section 9.6** to replace the HSP with the revised subcontracting plan.
- 9.2.2 **Expansion of the Services.** If University expands the scope of the Services through a change order or any other amendment, University will determine if the additional Services contains probable subcontracting opportunities *not* identified in the initial solicitation for the Services. If University determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of [34 TAC §20.285](#) before (a) this Agreement may be amended to include the additional Services; or (b) Contractor may perform the additional Services. If Contractor subcontracts any of the additional subcontracting opportunities identified by University without prior authorization and without complying with [34 TAC §20.285](#), Contractor will be deemed to be in breach of this Agreement under **Section 8** and will be subject to any remedial actions provided by Texas law including [Chapter 2161, Texas Government Code](#) and [34 TAC §20.285](#). University may report nonperformance under this Agreement to SPSS in accordance with [34 TAC §§20.285\(g\)\(5\), 20.585](#) and [20.586](#).
- 9.3 Texas Family Code Child Support Certification.** Pursuant to [§231.006, Texas Family Code](#), Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 9.4 Tax Certification.** If Contractor is a taxable entity as defined by [Chapter 171, Texas Tax Code](#) (“Chapter 171”), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 9.5 Loss of Funding.** Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “**Legislature**”) and allocation of funds by the Board. If the Legislature fails to appropriate or allot the necessary funds, or if the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.
- 9.6 Entire Agreement; Modifications.** This Agreement supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by both University and Contractor.
- 9.7 Force Majeure.** Neither party will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character
- 9.8 Captions.** The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
- 9.9 Venue; Governing Law.** El Paso County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions, all rights and obligations of the parties, and all claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.
- 9.10 Waiver.** No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.
- 9.11 Confidentiality and Safeguarding of University Records; Press Releases; Public Information.** Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems (collectively, “University Records”). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws,

including the Gramm-Leach-Bliley Act ([Public Law No: 106-102](#)) and the Family Educational Rights and Privacy Act, [20 U.S.C. §1232g](#) ("FERPA"). If University Records are subject to FERPA, (1) University designates Contractor as a University official with a legitimate educational interest in University Records, and (2) Contractor acknowledges that its improper disclosure or redisclosure of personally identifiable information from University Records will result in Contractor's exclusion from eligibility to contract with University for at least five (5) years. Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to reasonable administrative, physical and technical standards (such as standards established by (i) the National Institute of Standards and Technology and (ii) the Center for Internet Security, as well as the Payment Card Industry Data Security Standards) that are no less rigorous than the standards by which Contractor protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all Applicable Laws, including FERPA and the Gramm-Leach Bliley Act, and the terms of this Agreement; and (4) comply with University's rules, policies, and procedures regarding access to and use of University's computer systems. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.

9.11.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to University within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide University with all information requested by University regarding the impermissible use or disclosure.

9.11.2 **Return of University Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of University will be (1) returned to University, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Contractor will provide University with written notice of Contractor's intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to University in writing the destruction of University Records.

9.11.3 **Disclosure.** If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this Section.

9.11.4 **Press Releases.** Except when defined as part of the Services, Contractor will not make any press releases, public statements, or advertisement referring to the Services or the engagement of Contractor as an independent contractor of University in connection with the Services, or release any information relative to the Services for publication, advertisement or any other purpose without the prior written approval of University.

9.11.5 **Public Information.** University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* ("TPIA"), [Chapter 552, Texas Government Code](#). In accordance with [§552.002](#) of TPIA and [§2252.907](#), *Texas Government Code*, and **at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public.**

9.11.6 **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.

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

**9.12 Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties to this Agreement and their respective permitted assigns and successors.

- 9.13 **Appointment.** University reserves the right from time to time to designate by notice to Contractor a representative to act partially or wholly for University in connection with the performance of University's obligations. Contractor will act only upon instructions from the representative unless otherwise specifically notified to the contrary.
  
- 9.14 **State Auditor's Office. Contractor understands acceptance of funds under this Agreement constitutes acceptance of authority of the Texas State Auditor's Office or any successor agency (Auditor), to conduct an audit or investigation in connection with those funds (ref. §§51.9335(c), 73.115(c) and 74.008(c), Texas Education Code). Contractor agrees to cooperate with Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.**
  
- 9.15 **Audit of Records.** At any time during the Initial Term or any Extension Term of this Agreement and for a period of four (4) years thereafter, University or a duly authorized audit representative of University, System, or the State of Texas, at its expense, will have the right to audit Contractor's records and books relevant to all services provided under this Agreement. In the event an audit reveals any errors or underpayments to University, Contractor will pay to University the full amount of the underpayments within thirty (30) days after being notified in writing of the audit findings.
  
- 9.16 **Notices.** Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

If to University:        The University of Texas at El Paso  
                                  Purchasing & General Services  
                                  500 West University Avenue, Kelly Hall, 3rd floor  
                                  El Paso, Texas 79905-0505  
                                  Fax: 915-747-5932  
                                  Email: dndehyos@utep.edu  
                                  Attention: Dr. Diane N. De Hoyos,  
                                  Assistant Vice President Purchasing & General Services

*with copy to:*        \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  Attention: \_\_\_\_\_

If to Contractor:        \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  Attention: \_\_\_\_\_

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

Notwithstanding any other requirements for notices given by a party under this Agreement, if Contractor intends to deliver written notice to University pursuant to [§2251.054, Texas Government Code](#), then Contractor will send that notice to University as follows:

If to University        \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  Attention: \_\_\_\_\_  
                                  Fax: \_\_\_\_\_  
                                  Email: \_\_\_\_\_

*with copy to:*        \_\_\_\_\_  
                                  \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

or other person or address as may be given in writing by University to Contractor in accordance with this Section.

**9.17 Severability.** In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included in this Agreement.

**9.18 Injunctive and Equitable Relief.** In the event of a breach or threatened breach of the restrictions and obligations set forth in this Section, University cannot be reasonably or adequately compensated in damages. Accordingly, a breach by Contractor of the provisions of this Section will cause University irreparable injury and damage. Therefore, University will be entitled to injunctive and other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Section.

**9.19 Breach of Contract Claims.**

To the extent that [Chapter 2260, Texas Government Code](#), as it may be amended from time to time ("**Chapter 2260**"), is applicable to this Agreement and is not preempted by other Applicable Laws, the dispute resolution process provided for in Chapter 2260 will be used, as further described in this Section, by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor.

9.19.1 Contractor's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in [subchapter B](#) of Chapter 2260. To initiate the process, Contractor will submit written notice, as required by [subchapter B](#) of Chapter 2260, to University in accordance with the notice provisions in this Agreement. Contractor's notice will specifically state that the provisions of [subchapter B](#) of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that University allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the damages. Compliance by Contractor with [subchapter B](#) of Chapter 2260 is a required prerequisite to Contractor's filing of a contested case proceeding under [subchapter C](#) of Chapter 2260. The Chief Business Officer of University, or another officer of University as may be designated from time to time by University by written notice to Contractor in accordance with the notice provisions in this Agreement, will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims.

9.19.2 If the parties are unable to resolve their disputes under **Section 9.18.1**, the contested case process provided in [subchapter C](#) of Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement by University.

9.19.3 Compliance with the contested case process provided in [subchapter C](#) of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under [Chapter 107 of the Texas Civil Practices and Remedies Code](#). Neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit. University has not waived its right to seek redress in the courts.

9.19.4 The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to [Chapter 2260](#), as currently effective, hereafter enacted or subsequently amended.

9.19.5 Except as provided in [Chapter 2251, Texas Government Code](#), neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, in whole or in part. Any periods set forth in this Agreement for notice and cure of defaults are not waived.



- 9.20 Payment of Debt or Delinquency to the State.** Pursuant to §§[2107.008](#) and [2252.903](#), *Texas Government Code*, any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until the debt or delinquency is paid in full.
- 9.21 Access by Individuals with Disabilities.** Contractor represents and warrants (“**EIR Accessibility Warranty**”) that the electronic and information resources and all associated information, documentation, and support that it provides to University under this Agreement (collectively, the “**EIRs**”) comply with the applicable requirements set forth in [Title 1, Chapter 213 of the Texas Administrative Code](#) and [Title 1, Chapter 206, Rule §206.70 of the Texas Administrative Code](#) (as authorized by [Chapter 2054, Subchapter M of the Texas Government Code](#).) To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants that it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Contractor fails or is unable to do so, then University may terminate this Agreement and Contractor will refund to University all amounts University has paid under this Agreement within thirty (30) days after the termination date.
- 9.22 Limitations.** THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING THOSE TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY’S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS’ FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE “LIMITATIONS”), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
- 9.23 OSHA Compliance.** To the extent applicable to the services to be performed under this Agreement, Contractor represents and warrants, that all articles and services furnished under this Agreement meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law ([Public Law 91-596](#)) and its regulations in effect or proposed as of the date of this Agreement.
- 9.24 Discrimination Prohibited.** UNIVERSITY AND CONTRACTOR WILL ABIDE BY THE REQUIREMENTS OF [41 CFR 60-1.4\(A\)](#), [60-300.5\(A\)](#) AND [60-741.5\(A\)](#) (COLLECTIVELY, THE “**REGULATIONS**”). THE REGULATIONS (1) PROHIBIT DISCRIMINATION AGAINST QUALIFIED INDIVIDUALS BASED ON THEIR STATUS AS PROTECTED VETERANS OR INDIVIDUALS WITH DISABILITIES, AND (2) PROHIBIT DISCRIMINATION AGAINST ALL INDIVIDUALS BASED ON THEIR RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN. MOREOVER, THE REGULATIONS REQUIRE THAT UNIVERSITY AND CONTRACTOR TAKE AFFIRMATIVE ACTION TO EMPLOY AND ADVANCE IN EMPLOYMENT, INDIVIDUALS WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, PROTECTED VETERAN STATUS OR DISABILITY.
- 9.25 Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University’s Conflicts of Interest Policy available at <https://admin.utep.edu/Default.aspx?tabid=73436> University’s Standards of Conduct Guide available at <https://admin.utep.edu/Default.aspx?alias=admin.utep.edu/hoop>, and applicable state ethics laws and rules available at <https://www.utsystem.edu/offices/systemwide-compliance/ethics>. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University’s Conflicts of Interest Policy, provisions described by University’s Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.
- 9.26 Contractor Certification regarding Boycotting Israel.** Pursuant to [Chapter 2270, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 9.27 Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**9.28 External Terms.** This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor's performance or provision of goods or services under this Agreement ("**External Terms**"). The External Terms are null and void and will have no effect under this Agreement, regardless of whether University or its employees, contractors, or agents express assent or agreement to the External Terms. The External Terms include any shrinkwrap, clickwrap, browsewrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that University or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Contractor.

**9.29 EIR Environment Specifications.** Exhibit \_\_\_\_\_, Environment Specifications, establishes specifications, representations, warranties and agreements related to the environment specifications of EIR that Contractor is providing to University under this Agreement. The specifications, representations, warranties and agreements in Exhibit \_\_\_\_\_, Environment Specifications, are binding on Contractor. Contractor agrees to perform Services in compliance with Exhibit \_\_\_\_\_, Environment Specifications.

**9.30 Security Characteristics and Functionality of Contractor's Information Resources.** Exhibit \_\_\_\_\_, Security Characteristics and Functionality of Contractor's Information Resources, establishes specifications, representations, warranties and agreements related to the products and services Contractor is providing to University under this Agreement. The specifications, representations, warranties and agreements in Exhibit \_\_\_\_\_, Security Characteristics and Functionality of Contractor's Information Resources, are binding on Contractor. Contractor agrees to perform Services in compliance with Exhibit \_\_\_\_\_, Security Characteristics and Functionality of Contractor's Information Resources.

University and Contractor have executed and delivered this Agreement effective as of the Effective Date.

**CONTRACTOR:**

**UNIVERSITY:**

\_\_\_\_\_

**The University of Texas of Texas at El Paso**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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

**ATTACH:**

- Schedule 1 – Services and Operational Requirements**
- Schedule 2 – Preparation Activities and Schedule**
- Schedule 3 – Service Locations and Other Space**
- Schedule 4 – Rule 50303 of the Regents' Rules, Debts of Students**
- Schedule 5 – Customer Satisfaction Policy/Complaint Resolution Procedures**
- Schedule 6 – Contractor Improvements**
- Schedule 7 – Intentionally left blank**
- Schedule 8 – Royalty Schedule**
- Schedule 9 – Licensed University Marks**

## SCHEDULE 1

### Services

Contractor will provide the following services (collectively, "Services") in accordance with the terms of this Agreement:

### **To be developed by Institution**

#### OPERATIONAL REQUIREMENTS

1. **BUSINESS HOURS FOR CAMPUS STORE.** The Contractor's business in the Licensed Space ("Campus Store") shall be open for business and the sale of Goods and Services for not less than the hours of:

\_\_\_\_ A.M. to \_\_\_\_ P.M., Mondays through Friday

\_\_\_\_ A.M. to \_\_\_\_ P.M., Saturdays

subject to University holidays, closure for casualty or approved alterations to the Licensed Space, or any other circumstance expressly permitted under the terms and provisions of the Agreement. Additional hours of operation are acceptable as long as they fall within the normal operating hours of the Building. University reserves the right to establish or change the service hours, plans or methods of Contractor's operations in the Licensed Space.

#### 2. **EQUIPMENT AND FURNISHINGS**

- 2.1 **Equipment and Supplies.** Except as otherwise expressly provided in this Agreement, Contractor shall at its sole cost provide all equipment, supplies, signs, personnel, merchandise, and other items necessary to operate the Campus Store for the Permitted Use.

- 2.1.1 **University Equipment.** In the event that University allows Contractor to use equipment or other personal property owned by University in the operation of the Campus Store, prior to Contractor's taking possession of the Licensed Premises University and Contractor shall prepare a written list of such equipment and personal property. Thereafter, Contractor will maintain, in formats acceptable to University, annual inventory, acquisition, and loss records for all University-owned equipment in the Campus Store. Any shortage or loss of University-owned Equipment will be documented by University. Contractor will replace any shortage or loss of University-owned Equipment with equipment satisfactory to University in all respects within thirty (30) days after receiving written notice of the shortage or loss from University.

- 2.2 **Furnishings.** Contractor's selection of furnishings, fixtures, and interior finishes for the Campus Store shall be subject to the prior written approval of University. All furnishings, fixtures, and interior finishes must comply with appropriate Building Construction Codes, including National Electrical Code, National Fire Protection Standards, etc., as applicable. Design, fixtures and improvements must also be in full compliance with the Americans with Disabilities Act and the Texas Architectural Barriers Act requirements.

- 2.3 **Telecommunications.** In the event that University allows Contractor the use of any University telephone numbers, website addresses, email addresses, or website content procured or developed in support of the Campus Store, University will retain ownership of the same.

#### 3. **CUSTOMER SERVICE.**

- 3.1 **Personnel.** Contractor will provide a minimum of \_\_\_\_ (\_\_\_\_) customer service agents to be present at the Licensed Space during all hours of operation. Contractor will also provide additional agents during peak times such as the beginning of each University semester. Contractor is responsible for ensuring that sufficient agents are provided during such peak times to meet the demand at the Licensed Space. Contractor will be responsible for ensuring that these agents are trained in and knowledgeable on all Licensed Space products and services.

- 3.2 **Customer Traffic Flow.** Contractor shall provide for efficient customer traffic flow in the Licensed Space and minimize the time spent by customers waiting in lines in order to optimize service.



**3.3 University Environment.** Contractor shall endeavor to keep apprised of the academic, cultural, and social environment of the University, and shall take advantage of commercially reasonable opportunities to offer special merchandising and other services to the Campus Community.

**3.4 Receiving and Delivering.** Contractor will provide all services required to perform customary mailing, receiving and delivery of packages necessary to operate its business in the Licensed Space. These services will include, without limitation, Contractor's delivery of any products or goods purchased by the University from Contractor in the Licensed Space to one or more designated buildings on the University's Campus.

**3.5 Placement of Orders.** *[Insert Contractor's proposed methods by which a customer can place an order.]*

**3.6 Returns.** *[Insert Contractor's the return policy and procedures]*

**4. NO OBSTRUCTION OF ADJACENT AREAS.** In its performance under this Agreement, neither Contractor nor its officers, employees, contractors, or agents shall obstruct or unreasonably restrict access to or use of any drive way, parking space, ramp, sidewalk, entry, doorway, exit, passage, hall, corridor, or stairway of the Building or any other Campus facility.

## **5. OPERATIONS AND MANAGEMENT RESPONSIBILITIES.**

**5.1 Management.** Contractor shall be completely responsible for the management of the Licensed Space and all related business operations pertaining thereto, subject to the terms and provisions of this Agreement.

**5.2 Meetings.** Contractor shall make its corporate management representatives reasonably available to University to discuss (i) operational issues pertaining to the Licensed Space; (ii) in-store inventory, (iii) the products and services offered by the Campus Store; and (iv) sales and financial reports. Such meetings will occur no less than once a month, unless otherwise mutually agreed. In addition, when requested by the University, Contractor's Management Team will meet with representatives of the University to discuss operational issues arising under this Agreement.

**5.3 Campus Store Manager.** Contractor must provide a manager for the Campus Store that has extensive experience in the management of a store selling the Goods and Services (such experience in serving a university community is preferred), is knowledgeable about Contractor's philosophy and operational procedures, is a good communicator, and has the ability to deal effectively with the Campus Community. Contractor will consult with University in the interviewing and hiring of the manager. Subsequent changes in assignment will be made by Contractor after prior consultation with the University. University reserves the right, upon thirty (30) days notice and demand to Contractor, to require that the Contractor replace the manager. University reserves the right to participate in the annual performance evaluation of the store manager.

**6. EMPLOYEE MATTERS.** All material relating to Contractor's personnel policies and procedures must be available for review by University upon request. Contractor shall provide such special reports (such as, by way of example, employee turnover rate, employee disciplinary actions, etc.) covering Contractor's operations under this Agreement as University may reasonably request.

**6.1 Employee Identification Accounts for University Required Training.** Within five business days after the effective date of the Agreement, Contractor will coordinate with the University to request, through appropriate University offices, high assurance electronic University identification accounts ("EIDs") and passwords for all Campus Store employees. Immediately after EIDs are issued, Contractor will notify the University Representative to schedule and complete appropriate training for Contractor's Campus Store employees. Training will include, but is not limited, to requirements related to the Family Education Rights and Privacy Act, 20 U.S.C. §1232g ("FERPA"). In addition, training may be required to grant Contractor's Campus Store employees access to certain University databases that are utilized to confirm educational discount eligibility.

## **7. ADVERTISING AND MARKETING.**

**7.1 Advertising on Campus.** Contractor shall not have a right to engage in any form of solicitation,

marketing, advertising or promotional activity on the Campus except with the prior written consent of University and then solely in compliance with the Rules and Regulations. Without limitation of the foregoing, except with the prior written approval of University in each instance, Contractor will not be entitled to (i) distribute advertising or marketing literature on the Campus or to display posters or post commercial messages on public bulletin boards on the Campus; or (ii) communicate any messages that advertise, promote, or market Contractor's operations in the Licensed Space by means of University's mail or email system serving the Campus. Notwithstanding the foregoing to the contrary, Contractor may, in accordance with the Rules and Regulations, at its sole expense set up a table at University's new student orientation sessions and residence hall move-in periods for the purposes of marketing its services and products in the Licensed Space to University's students, faculty, and staff ("Service Offering"), as further described below in Section 7.2.

7.2 **Service Offerings.** Prior to any Service Offering, Contractor must develop and provide to University for approval, a proposal setting forth the time, specific duration, location, nature, scope and manner of the Service Offering, as well as appropriate provisions to protect the privacy of University's students, faculty, and staff. Contractor must conduct all Service Offerings in accordance with Applicable Laws and Rules and Regulations and in a manner that:

- (i) does not disturb or interfere with the academic programs or administrative activities of University on the Campus or any program or activity that is conducted by or is authorized by University;
- (ii) does not interfere with entry to or exit from a building, structure, or facility or with the flow of pedestrians or vehicular traffic on sidewalks or streets or at places of ingress and egress to and from property, buildings, or facilities; and
- (iii) does not harass, or intimidate any person or persons.

A Service Offering will not include campus credit card marketing activities unless such activities have received prior written approval from University. In the event such approval is received, and the approved Service Offering includes campus credit card marketing activities, then Contractor must comply with all requirements of Subchapter L of the *Texas Business and Commerce Code* and ensure that a session on credit card and debt education, as well as protecting personal information from identity theft, is included in the Service Offering.

## 8. VIRTUAL CAMPUS STORE

8.1 **Contractor Website.** Contractor shall develop and maintain a University-specific website ("Virtual Campus Store") providing on-line services such as product order submission, reserve product-ordering, and information about the status, quantities, and promotions related to the products available at the Campus Store. The content, layout, and design of the Virtual Campus will be subject to the approval of University. University shall provide a link to the Virtual Campus Store on the University home page. All purchases made through the Virtual Campus Store will be credited as sales from the Licensed Space for purposes of Percentage Royalty calculations.

8.2 **Interaction with Customers.** The Virtual Campus Store will allow for (i) correspondence between Contractor and customers; and (ii) customers to purchase the products and services offered for sale by Contractor in the Licensed Space.

8.3 **Maintenance of Website.** Contractor will maintain an uptime average of 99% for the Virtual Campus Store website. Contractor shall ensure the Virtual Campus Store website is continuously updated to provide current and up-to-date information. University shall have final approval over all of content on the Virtual Campus Store website. Contractor will maintain personnel with technical training sufficient to efficiently administer and maintain the Virtual Campus Store.

## 9. FISCAL MATTERS

9.1 **Payments by Customers.** Contractor is solely responsible for collecting payment of all purchases of Goods and Services from the Campus Store. University will not assume the role of a collection agency for Contractor. University will not adjudicate disputes between Customers and Contractor over the existence or the amount of debts. Save and except to the extent that the University itself is a customer as a result of an official University purchasing transaction conducted under this Agreement, University

will not be deemed a party to or responsible for any contracts, transactions, or agreements between Contractor and any person purchasing Goods and Services at the Campus Store.

**9.1.1 Credit Cards.** With respect to sales of goods and services in the Licensed Space or through the Virtual Campus Store, Contractor will accept payment, at a minimum, through cash and American Express, Discover, MasterCard, and VISA charge cards. Contractor will pay all merchant charges associated with acceptance of charge cards.

**9.1.2. Debit Cards and Personal Checks.** Contractor will accept student, faculty, and staff debit cards and personal checks in reasonable amounts for cash and/or purchases, subject to appropriate and customary identification of the customers and verification of the checks.

**9.1.3 Financial Aid Authorizations.** University's Financial Aid charge authorizations for purchases in the Licensed Space shall be honored. University's \_\_\_\_\_ Card will track Financial Aid charges. Invoices shall be submitted by Contractor with an accounting of actual charges. Contractor will be provided a report of charges with payment for such charges within thirty (30) days. If Contractor detects a charge discrepancy, then Contractor and University's \_\_\_\_\_ Card representative will compare and reconcile charge differences

**9.1.4 \_\_\_\_\_ Cards.** Contractor will accept payment for purchases through the University's card system/platform ("Card System") known as the \_\_\_\_\_ System. This Card System includes a debit card program known as "\_\_\_\_\_" ("University Cards") for use by University's students, faculty, staff and guests for purchase of products at food service, bookstore, laundry, photocopy vending and other locations on the Campus on a declining balance basis. University shall be responsible for the purchase of the University Cards used in the Card System, installation of communication lines for the Card System, selling and establishing purchase value of the University Cards for use in the Card System, determining the vending categories under which the Card System can be used for purchases, and providing administrative and operational oversight of the Card System. The Licensed Space shall be equipped, at Contractor's expense, with credit card readers that interface with the University Cards and the Card System for acceptance of payments using such University Cards. University shall provide to Contractor a weekly report detailing the sales records of Card System transactions for the immediately preceding weekly period. Such report shall contain an account of the total amount of Goods and Services purchased in gross dollars from University Cards transactions during the such weekly period. Once each month, Contractor will invoice University for all sales using University Cards for the preceding month. All transactions involving University Cards must be posted in Card System. Contractor will be responsible for remittance of applicable sales tax attributable to Card System and University Cards transactions.

**9.1.5 Merchant Processor.** Contractor must use \_\_\_\_\_ for merchant processing services for credit transactions.

**9.2 Payments by State Customer.** In the event that University, University or any other Texas state agency or public institution of higher education (jointly and severally, "State Customers") procures any Goods or Services from Contractor at or through the Campus Store, Contractor will accept the following from such State Customers as payment for such "State Customer Transactions": (i) official State Customer purchase orders and procurement cards (including, but not limited to, the University's procurement card, which is currently a MasterCard); or (ii) for purchases made by the University, University departmental account charges utilizing a transactional method approved in writing by University's Disbursements Office.

**9.2.1 University Purchases.** University's standard payment terms for services are "Net 30 days," provided that University will be entitled to withhold \_\_\_\_\_ percent (\_\_\_\_\_% ) of the total payment due under the Agreement until after University's acceptance of the goods or services purchased. In no event will Contractor enter into cash transactions with any University departments for the sale of any hardware, software, goods, or service through the Licensed Space. Contractor shall submit timely billing for any charge sales incurred by University's departments.

**9.2.2 Sales Taxes.** State Customers will pay for all State Customer Transactions in accordance with the Texas Prompt Payment Act, currently codified in Chapter 2251, *Texas Government Code*. State Customers are exempt from certain state taxes under various exemption statutes.

University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the Goods and Services in accordance with Section 151.309, *Texas Tax Code*, and Title 34, *Texas Administrative Code* ("TAC") Section 3.322. Notwithstanding their exemption from certain state taxes, a State Customer shall be responsible for any taxes (except corporate income taxes, franchise taxes, and taxes on Contractor's personnel, including personal income tax and social security taxes) from which the State Customer is not exempt. Contractor will provide reasonable cooperation and assistance to State Customers in obtaining any tax exemptions to which the State Customers are entitled. Interest will be payable by State Customers on all overdue amounts as specified in Section 2251.026, *Texas Government Code*, as amended from time to time.

- 9.3 Point of Sale System.** Contractor shall obtain vendor certification and become established as a transaction integration agent with University's stored value card operator (if any), CBord, and maintain a Point of Sale system compatible with the University's Card System in order to facilitate proper recordkeeping of University's accounting books and records. Contractor, at its cost, will purchase, install, maintain and replace as necessary all hardware, software, and accessories (including the installation of any necessary communication or networking changes) that are necessary to implement and maintain the POS devices to interface with the Card System. Upon Contractor's written request, University will provide Contractor with specifications for CS Gold POS and/or card reading devices.
- 9.4 Accounting Period.** The accounting period used for this Agreement shall be quarterly, as based on the Fiscal Year, as further described in Section 1.3 of Schedule 12 to the Agreement.
- 9.5 Inspection and Audit.** University shall be informed by Contractor of any audit of Contractor by any governmental entity of its records and/or operations under the scope of this Agreement. University shall receive full reports of any such audits. All financial records and inventory records related to Contractor's performance of this Agreement shall be maintained in Contractor's offices.
- 9.6 Maintenance of Accounting Records.** Contractor shall maintain accurate, complete and separate books of accounts according to generally accepted accounting principles reflecting completely its operations under this Agreement, together with appropriate supporting data and documents. Contractor shall make such books of accounts, supporting data, and documents available to University for inspection, reproduction, and such records will be kept at a reasonable place, provided that if Contractor has a main or branch place of business in or near the city in which the Licensed Space is located, or in or near Travis County, Texas, then Contractor will make such financial records available for inspection there for a period of at least four (4) years after the termination of this Agreement. University shall give Contractor seven (7) days prior written notice of its request to examine books of accounts and supporting data.
- 9.7 Debt Collection.** Contractor understands and agrees that it will be solely responsible for collecting, securing and obtaining all payments for the goods and services that Contractor sells under this Agreement. University will not (i) assume the role of a collection agency for Contractor; or (ii) adjudicate disputes between customers and Contractor concerning the existence or the amount of any payments, costs, fees, debts, or other amounts that a customer may owe to Contractor. Contractor further understands and agrees that, except to the extent that University is the purchaser of the goods or services from Contractor as a State customer, University is not (i) a party to any contracts, transactions, or agreements between Contractor and any other persons; or (ii) responsible for any payments, costs, fees, debts, or any other amounts due or owed to Contractor by any customer or any other individual, group, organization, or entity, including but not limited to, students or student organizations.
- 10. USE OF UNIVERSITY'S COMPUTER NETWORK.** Subject to the prior written approval of the University's Chief Information Security Officer and other appropriate University personnel, Contractor may be permitted occasional limited use of University's computer network and information resources solely for Contractor's direct performance of the Services. In that event, Contractor will (i) comply with all of University's Information Resource Standards and University's Security and Acceptable Use Policies, all of which are located at <https://www.utep.edu/information-resources/iso/policies/index.html>; and (ii) execute and deliver to University the University's Information Resources Acceptable Use Policy Agreement Form located at <https://www.utep.edu/information-resources/iso/Files/docs/utep-policies-and-standards/Acceptable%20Use%20of%20Information%20Resources-Jun2014.pdf>. In conjunction with appropriate University personnel, Contractor will determine what access, if any, will be necessary to link Contractor to University's computer network for business communication. Notwithstanding anything to the contrary, however, Contractor will not connect any technology equipment or devices to University's computer

network or University's information resources system without the prior written consent of the University's Chief Information Security Office.

11. **RESTRICTION ON COMPETITION.** Contractor acknowledges that Contractor's monetary contribution to University, in the form of fees and charges payable by Contractor hereunder and Contractor's general contribution to the vitality of University's Campus (also important in University's determination to execute this Agreement with Contractor), will be substantially reduced if during the Term of this Agreement, either Contractor or any person, firm or corporation, directly or indirectly controlling, controlled by or under common control with Contractor shall directly or indirectly operate, manage, conduct or have any interest in any competing establishment within a two (2) mile radius of the boundaries of the University's Campus during the Term of this Agreement and for one (1) year following the termination or expiration of this Agreement. The term "competing" as used herein shall mean the offering for retail sale of \_\_\_\_\_, and warranty and technical support services pertaining to the same. This Section shall survive the expiration or sooner termination of this Agreement.

**SCHEDULE 2**

**Preparation Activities and Schedule**

**SCHEDULE 3**

**Service Locations and Other Space**

The Service Locations are as follows:

- 1.
- 2.
- 3.
- 4.
- 5.

Other space that will be used by Contractor to perform the Services includes:

- 1.
- 2.
- 3.

## **SCHEDULE 4**

### **Rule 50303 of the Regents' Rules, Debts of Students**

#### **1. Title**

Debts of Students

#### **2. Rule and Regulation**

Sec. 1 Student Responsibilities. The University of Texas System is not responsible for debts contracted by individual students or by student organizations. However, students and student organizations are expected to conduct themselves honorably in all commercial transactions. The U. T. System will not assume the role of a collection agency except for monies owed to the System, nor will the System adjudicate disputes between students and creditors over the existence or the amounts of debts.

Sec. 2 Penalties for Nonpayment. In the event of nonpayment to the U. T. System, one or more of the following actions may be taken: (a) a bar against readmission for the student; (b) withholding of the student's grades and official transcript; (c) withholding of a degree to which the student otherwise would be entitled.

#### **3. Definitions**

None

#### **4. Relevant Federal and State Statutes**

None

#### **5. Relevant System Policies, Procedures, and Forms**

None

#### **6. Who Should Know**

Administrators

Students

#### **7. System Administration Office(s) Responsible for Rule**

Office of Academic Affairs

Office of Health Affairs

#### **8. Dates Approved or Amended**

December 10, 2004

#### **9. Contact Information**

Questions or comments regarding this rule should be directed to:

- [bor@utsystem.edu](mailto:bor@utsystem.edu)



**SCHEDULE 5**

**Customer Satisfaction Policy/Complaint Resolution Procedures**

**SCHEDULE 6**

**CONTRACTOR IMPROVEMENTS**

1. **CONTRACTOR IMPROVEMENTS.** Contractor, at its sole cost and expense, agrees to construct the following Contractor Improvements in accordance with the terms of the Agreement, including this Schedule, and the requirements of all applicable law:

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2. **DEVELOPMENT OF PLANS AND SPECIFICATIONS.**

2.1 **Initial Plans and Specifications.** Within \_\_\_\_ (\_\_\_\_) days following the execution of this Agreement, Contractor shall submit to University in writing Contractor's initial proposed plans for the construction of the Contractor Improvements. Such submission shall include, at minimum, Contractor's proposed schematic plans, construction specifications, design development drawings, and materials and finish-outs for the Contractor Improvements (collectively, the "Initial Plans and Specifications"). The Initial Plans and Specifications must adhere to University's "Design Guidelines and Specifications," which are located at \_\_\_\_\_. To the extent necessary, Contractor's architect shall coordinate with University's architect or engineers to assure that the Initial Plans and Specifications are consistent with the structural elements of the Building. Within \_\_\_\_\_ (\_\_\_\_) days after such submission by Contractor, Contractor and University shall meet at a mutually convenient time and place to discuss the Initial Plans and Specifications. If requested by University, Contractor shall bring to the meeting Contractor's project architect and (as appropriate) other consultants with the knowledge and authority to respond to questions and inquiries from University.

2.2 **Revisions to Initial Plans and Specifications.** University shall advise Contractor in writing within \_\_\_\_ (\_\_\_\_) days following such meeting of all changes that University desires to the Initial Plans and Specifications. Contractor shall give full consideration to the University's requested changes. Without limitation of the foregoing, any construction, modification, or relocation of any structural feature or exterior feature of the Licensed Space or Building or any matter involving mechanical, electrical, roof, life and safety systems or issues will be subject to the absolute discretion of University. Within \_\_\_\_ (\_\_\_\_) days following receipt of the University's proposed changes to the Initial Plans and Specifications, Contractor shall submit to University Contractor's proposed revisions to the Initial Plans and Specifications. University shall advise Contractor in writing within \_\_\_\_ (\_\_\_\_) days following delivery of the proposed revisions of any further changes that University desires to the Initial Plans and Specifications.

2.3 **Final Plans and Specifications.** This exchange of plans and comments described in Section 2.2 will continue in like manner and time frame until University and Contractor have agreed upon the final plans and specifications for construction of the Contractor Improvements (the "Final Plans and Specifications"). The Final Plans and Specifications will include finish schedules for the layout, improvement and finish of the Contractor Improvements in the Licensed Space. The Final Plans and Specifications shall be prepared, stamped, and sealed by an architect and engineer licensed by the State of Texas, hired by Contractor and reasonably satisfactory to University, shall be in a form sufficient to comply with all applicable laws and regulations and to secure the approval of governmental authorities with jurisdiction over the approval thereof, and shall be otherwise reasonably satisfactory to University. If applicable, Contractor will submit the Final Plans and Specifications to the Texas Department of Licensing & Regulation for approval and inspections.

2.4 **Modification of Final Plans and Specifications.** Once the Final Plans and Specifications are agreed upon by University and Contractor, any subsequent material change or modification to the Final Plans and Specifications must be approved in writing by both parties.

3. **NATURE OF UNIVERSITY'S APPROVAL.** Under no circumstances is University's approval of the Initial Plans and Specifications or the Final Plans and Specifications to be considered or deemed University's warranty or approval of their correctness, of their compliance with applicable governmental requirements, or of the sufficiency or adequacy of such for Contractor's purposes.

**4. CONSTRUCTION OF IMPROVEMENTS.**

- 4.1 Completion of Construction.** Contractor shall complete construction of the Contractor Improvements no later than \_\_\_\_\_ (\_\_\_\_\_) days after University gives Contractor access to the Licensed Space. All Contractor Improvements must comply with all applicable laws and regulations (including, without limitation, the ADA and the Texas Architectural Barriers Act) and be inspected and approved by University and any other entity having jurisdiction over the Contractor Improvements prior to Contractor beginning operations in the Licensed Space. The Contractor Improvements shall remain in the Licensed Space until the expiration or earlier termination of the Term of this Agreement (as it may be extended) or until replaced by substitute improvements.
- 4.2 Performance of Construction.** Construction of the Contractor Improvements shall be performed by Contractor and its contractors, so long as Contractor's contractor is a reputable, experienced commercial contractor and has been approved in writing in advance by University. Construction shall begin as soon as possible after issuance of any necessary building permits.
- 4.3 Payment for Alterations.** Contractor shall timely pay all costs and expenses ("Construction Costs") for construction of the Contractor Improvements, including without limitation, architectural and engineering fees relating to the Licensed Space. Contractor shall comply fully with any contract or other agreement it has executed in connection with construction of the Contractor Improvements, to the end that there is no basis for a mechanic's or materialman's lien claim against the Licensed Space, the Building or the Campus.
- 4.4 Delay.** Contractor shall pay any and all costs and expenses it incurs in connection with any delay in the commencement or completion of the Contractor Improvements caused by (i) Contractor's failure to comply with the time frames set out in Section 2, above; (ii) Contractor's inability to obtain materials or finishes called for under the Final Plans and Specifications; (iii) delay arising from any change, additions or alterations to the Final Plans and Specifications (or the Contractor Improvements covered thereby) requested by Contractor; and/or (iv) any other delay requested or caused by Contractor or the employees, contractors and agents of Contractor.

**5. PERMITS.** To the extent required, Contractor is responsible for obtaining at its cost all necessary building and other permits for construction of the Contractor Improvements and Contractor's occupancy and use of the Licensed Space after completion of the Contractor Improvements (including, without limitation, any certificate of occupancy required by local municipal authorities).

**6. DEFAULT.** A default by Contractor under this Schedule is a default by Contractor under the Agreement and entitles University to any remedies under the Agreement (notwithstanding that the Term thereof might not have commenced).

**7. CONSTRUCTION INSURANCE.** Contractor and any contractor of Contractor performing work on the Contractor Improvements must have in force and effect at all times during such work the insurance required under the Agreement.

**8. Construction Safety**

**8.1 General.** It is the duty and responsibility of Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law No. 91-596, 29 U.S.C. § 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. Contractor shall prepare a safety plan specific to the Project and submit it to University and Facilities Management prior to commencing Work. In addition, Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and erect and maintain all necessary safeguards for such safety and protection.

**8.2 Notices.** Contractor shall provide notices as follows:  
Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.

- 8.2.1** Coordinate the exchange of material safety data sheets (MSDSs) or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDSs for all materials in use on site throughout the construction phase and make such file available to University and its agents as requested.
- 8.3** Emergencies. In any emergency affecting the safety of persons or property, Contractor shall act to minimize, mitigate, and prevent threatened damage, injury or loss.
- 8.3.1** Have authorized agents of Contractor respond immediately upon call at any time of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.
- 8.3.2** Give University prompt notice of all such events via report to University Police.
- 8.3.3** If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify University within seventy-two (72) hours of the emergency response event.
- 8.3.4** Should Contractor fail to respond, University is authorized to direct other forces to take action as necessary and University may deduct any cost of remedial action from funds otherwise due Contractor.
- 8.4** Injuries. In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify University Police and other parties as may be directed promptly, but no later than twenty-four (24) hours after Contractor learns that an event required medical care.
- 8.4.1** Record the location of the event and the circumstances surrounding it, by using photography or other means, and gather witness statements and other documentation which describes the event.
- 8.4.2** Supply University, via University Police, with an incident report no later than thirty-six (36) hours after the occurrence of the event. In the event of a catastrophic incident (one (1) fatality or three (3) workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one (1) week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide University with written notification within one week of such catastrophic event if legal counsel delays submission of full report.
- 8.5** Environmental Safety. Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, Contractor shall immediately stop work activities impacted by the discovery, secure the affected area, and notify University immediately.
- 8.5.1** Bind all Subcontractors to the same duty.
- 8.5.2** Upon receiving such notice, University will promptly engage qualified experts to make such investigations and conduct such tests as may be reasonably necessary to determine the existence or extent of any environmental hazard. Upon completion of this investigation, University will issue a written report to Contractor identifying the material(s) found and indicate any necessary steps to be taken to treat, handle, transport or dispose of the material.
- 8.5.3** University may hire third-party contractors to perform any or all such steps.
- 8.5.4** Should compliance with University instructions result in an increase in Contractor's cost of performance, or delay the Work, University will make an equitable adjustment to the Contract Sum and/or the time of completion, and modify the Contract in writing accordingly.

**8.6** Trenching Plan. When the project requires excavation which either exceeds a depth of four (4) feet, or results in any worker's upper body being positioned below grade level, Contractor is required to submit a trenching plan to University prior to commencing trenching operations unless an engineered plan is part of the Contract Documents. The plan is required to be prepared and sealed by a professional engineer registered in the State of Texas, and hired or employed by Contractor or Subcontractor to perform the work. Said engineer cannot be anyone who is otherwise either directly or indirectly engaged on this project.

**9.** Certification of No Asbestos Containing Material or Work

Contractor shall insure that Texas Department of State Health Services licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

**9.1** Contractor shall provide a notarized certification to University that all equipment and materials used in fulfillment of its Contract responsibilities are non-Asbestos Containing Building Materials (ACBM). This certification must be provided no later than Contractor's application for Final Payment.

**9.2** Contractor shall insure compliance with the following acts from all of his subcontractors and assigns:  
Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));

- National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, Subpart M—National Emission Standard for Asbestos;
- Texas Asbestos Health Protection Rules (TAHPR—Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection

**SCHEDULE 7**

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**SCHEDULE 8**

**ROYALTY SCHEDULE**

**ROYALTY CALCULATION**

1. **DEFINITIONS.** For purposes of this Agreement, the terms “Gross Revenue” and “Adjusted Gross Revenue” will have the meanings as defined below.

1.1 **Gross Revenue.** “Gross Revenue” means all income revenues, commissions and warranty payments resulting from the occupancy or use of the Licensed Space by Contractor during the Term, whether through Contractor or any person holding under Contractor in the Licensed Space, from whatever source derived and whether for cash, University Cards, credit or in kind. Gross Revenue shall include, without limitation, the entire amount of the sales price, whether for cash or otherwise, of all sales of hardware, software, goods, products and services whatsoever (including, without limitation, gift and merchandise certificates) of all business conducted on the Licensed Space (including without limitation, mail and telephone orders received at the Licensed Space and orders through the internet or University’s website pertaining to Contractor’s operations in the Licensed Space, whether or not such orders are delivered or filled out of the Licensed Space) during the Term, including, without limitation, (i) interest, finance charges, service charges; (ii) credit sales; (iii) proceeds from rent loss insurance; (iv) any commissions earned from resellers, affiliates, franchise owners, or parent companies; (v) deposits not returned to purchasers, even though such orders may be filled elsewhere; and (vi) sales to employees of Contractor. Each sale upon installment or credit shall be treated as a sale for the full price during the month in which such sale was made, irrespective of when Contractor receives payment from the customer. No deduction shall be allowed for uncollected or uncollectible credit accounts, receivables or returned checks. Contractor agrees to use its best efforts to maximize Gross Revenue, consistent, with competitive practices in the industry.

1.2 **Adjusted Gross Revenue.** Adjusted Gross Revenue means Gross Revenue less the following:

- (a) refunds;
- (b) discounts; and
- (c) all applicable sales taxes paid by Contractor to any governmental agency assessing or collecting such sales taxes. The amount of such taxes shall be shown on the books, records of account and documentation required to be maintained by Contractor under this Agreement.

1.3 **Fiscal Year.** “Fiscal Year” means the twelve-month period commencing upon September 1 and ending upon the immediately following August 31.

2. **PAYMENT OF ROYALTY.** For each Fiscal Year during the Term, Contractor agrees to pay to University, in the manner and on the terms and conditions set forth in this Schedule, the greater of (i) the Guaranteed Royalty, or (ii) the Percentage Royalty for that Fiscal Year. Contractor’s obligation to pay amounts incurred under this Section shall survive the expiration or sooner termination of this Agreement.

2.1 **Guaranteed Royalty.** The Guaranteed Royalty is \$\_\_\_\_\_ per Fiscal Year, which amount is payable in 12 equal monthly installments of \$\_\_\_\_\_ each during the Fiscal Year. The first monthly installment of Guaranteed Royalty is payable on or before \_\_\_\_\_ and subsequent monthly installments are payable in advance on or before the first day of each succeeding calendar month during Fiscal Year. The monthly installments of Guaranteed Royalty will be prorated on a per diem basis for any partial calendar month during the Fiscal Year.

2.2 **Percentage Royalty.** The Percentage Royalty for a particular Fiscal Year is the sum of the following amounts for that Fiscal Year:

- (a) \_\_\_ Percent (\_\_\_%) of all Adjusted Gross Revenue up to and including \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_\_) during that Fiscal Year; plus
- (b) \_\_\_\_\_ Percent (\_\_\_%) of all Adjusted Gross Revenue from \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_\_) up to and including \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_\_) during that Fiscal

Year; plus

- (c) \_\_\_\_\_ Percent (\_\_\_%) of all Adjusted Gross Revenue exceeding \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_\_) during that Fiscal Year.

**2.3 Third Parties.** Contractor must cause all other persons using the Licensed Space under or through Contractor to comply with the record keeping and reporting requirements of this **Schedule 8**, and for purposes of calculating Contractor's Gross Revenue and Adjusted Gross Revenue hereunder, sales and payments arising from the occupancy or use of the Licensed Space by such third parties shall be deemed part of Contractor's Gross Revenue and the Adjusted Gross Revenue.

### 3. ACCOUNTING FOR PERCENTAGE ROYALTY.

**3.1 Recording Revenue Receipts.** Contractor will utilize the \_\_\_\_\_ POS to conduct Contractor's day-to-day business operations in the Licensed Space . Contractor will use this POS System to capture every sales transaction pertaining to or arising from Contractor's use and occupancy of the Licensed Space. All cash registers must be equipped with (i) sales totalizer counters for all sales categories; and (ii) a sequential transaction counter. Counters must lock in, constantly accumulate, and must not allow resetting. The registers shall further contain tapes upon which sales details and the sequential transaction numbers are imprinted. Beginning and ending sales totalizer readings shall be made a matter of daily record or recorded by means approved by University. Contractor will submit a copy of the POS report for a calendar month to University no later than \_\_\_\_\_ (\_\_\_) days following the end of that calendar month. Each report must be signed by Contractor or its responsible agent under penalty of perjury. Upon University's request from time to time, Contractor will also provide University with (i) a revenue earnings report on a daily or weekly basis; and (ii) an individualized income statement for sales.

**Operations Reports.** Contractor will deliver to University a quarterly report of operations in a form acceptable to University on or before the last day of the month succeeding the end of each quarter. This quarterly report shall be based on University's fiscal year, which runs from September 1 to August 31. Contractor's quarterly report to University shall include the following information at a minimum:

- Gross sales by month;
- Exclusion from gross sales for the month reported;
- Net sales by month;
- Expenditures and cost of goods sold by month;
- Net margin by month; and
- Cumulative Fiscal Year-to-date information for all the above categories.

**3.1.1 Use of Other Devices.** Sales which are subject to the payment of Percentage Royalty may be recorded by a system other than cash registers, provided such system is approved in advance in writing by University.

**3.2 Monthly Sales Reports.** No later than \_\_\_\_\_ (\_\_\_) days following the end of each calendar month during the Term, Contractor will submit to University a sales report ("Sales Report"), in accordance with the following requirements and definitions.

**3.2.1 Revenue.** Each Sales Report shall state the Gross Revenue and Adjusted Gross Revenue for the calendar month in question and for the Fiscal Year to date. Any adjustments to Sales Reports that are required as a result of review and/or audit shall be identified and reflected on the next month's Sales Report. A Sales Report shall include information on requested items that were out of stock at the time of the request.

**3.2.2 Taxes and Other Adjustments.** Each Sales Report shall contain an itemization and identification of (i) credit or refunds allowed; (ii) discounts; and (iii) sales taxes realized during the calendar month.

**3.3 Meetings.** Upon request of University, Contractor shall meet with University and review each Sales Report, explain deviations, discuss problems, and mutually agree on courses of action to improve the reports and accounting required under this **Schedule 8**.



**3.4 Financial Reconciliation.** Not later than \_\_\_\_\_ (\_\_\_\_) days after the end of a Fiscal Year, Contractor shall deliver to University Contractor's written accounting of (i) the Gross Revenue and Adjusted Gross Revenue generated by operations in the Licensed Space during the Fiscal Year, and (ii) the Percentage Royalty for the Fiscal Year. If the Guaranteed Royalty for the Fiscal Year is less than the Percentage Royalty for that Fiscal Year, then Contractor must pay to University the amount by which the Percentage Royalty exceeds the Guaranteed Royalty not later than \_\_\_\_\_ (\_\_\_\_) days following the expiration of the Fiscal Year in question. If the Percentage Royalty is less than the Guaranteed Royalty, no refund will be made to Contractor of any part of the Guaranteed Royalty.

**3.5 Royalty At Termination.** In the event this Agreement is terminated prior to the end of the Term for any reason other than an Event of Default by Contractor prior to the end of the Term, Royalty will be paid by Contractor to University only through the effective date of termination. If this Agreement is terminated for any reason prior to its expiration date, Contractor shall pay University the Royalty through the effective date of the termination of this Agreement no later than thirty (30) days after the effective date of the termination.

**4. OTHER FEES.** *[insert applicable description]*

## SCHEDULE 9

### UNIVERSITY MARKS AND LOGOS SUBJECT TO LICENSE

#### OFFICIAL UTEP LOGOS

##### THE CLASSIC LOGO

The classic logo is the primary identifier for The University of Texas at El Paso and creates an easily recognizable and memorable image to enhance the University's visibility.

Using the approved classic logo for publications, signs, clothing and other purposes develops a strong identity that connects the University to all of our constituencies, from students and faculty to alumni and donors. When produced in color, the classic logo should always appear in UTEP's signature colors: UTEP Orange, UTEP Blue and UTEP Silver (see page 21 for color use).



##### THE FLAT LOGO

The flat logo can be used in place of the classic. This mark gives the brand versatility as well as legibility across all platforms and mediums. Flat marks may be used for one-color applications.



##### THE BOX MARK

The box mark is intended for use in cases where added space and color is necessary to properly brand the University. This mark already contains the required clear space necessary for proper breathing room. The box mark commonly will be used on posters, fliers and digital signage where busy images are used.



##### CREATING YOUR OWN LOGO

In order to ensure consistency in branding, all colleges, departments, programs and other entities within the University should refrain from creating their own logo. For questions related to branding, colleges, departments or programs on individual projects, please contact the Office of University Communications by emailing [brand@utep.edu](mailto:brand@utep.edu).

##### FLAT VARIATIONS

If you choose to use the flat logo, limit to the following color applications. **DO NOT** use any other colors than the approved UTEP colors.



##### BOX MARK VARIATIONS

If you choose to use the box mark, you may select from these samples. **DO NOT** use any other colors than the approved UTEP colors.



#### THE MINER PICK

##### THE CLASSIC PICK

The Miner pick serves as a spirit mark and always should remain on its own. **DO NOT** combine it with any other graphic, logo or text.

The Miner pick is easily recognizable to UTEP students, faculty, employees and friends, and as such, should primarily be used when communicating with internal audiences familiar with the University. When produced in color, the Miner pick always should appear in UTEP's signature colors: UTEP Orange, UTEP Blue and UTEP Silver (see page 21 for color use).

As with the UTEP logos, refrain from manipulating or altering the Miner pick. **DO NOT** alter its colors or proportions in any way.

Please allow the Office of University Communications to review your use of the pick on your designs. The Miner pick logo is the property of the University and its use is limited to University employees, offices and departments for official purposes only.



##### FLAT VARIATIONS

If you choose to use the flat pick, limit them to the following color applications. **DO NOT** use any other colors than the approved UTEP colors.



##### THE FLAT PICK

The flat pick can be used in place of the classic pick. This mark gives the brand versatility as well as legibility across all platforms and mediums. Flat marks may be used for one-color applications.

**DO NOT** combine it with any other graphic, logo or text.



FOR ASSISTANCE  
Email: [brand@utep.edu](mailto:brand@utep.edu)

## ATHLETIC LOGOS

The Paydirt Pete logo is the primary identifier for UTEP Athletics. Do not use the athletic logos with academic, business, official or legal communications. For those applications, use the classic or flat UTEP logo (see page 9).

When reproduced in color, the Paydirt Pete logo should always appear in The University of Texas at El Paso's signature colors: UTEP Orange, UTEP Blue and UTEP Silver (see page 27).

### Refrain from:

- Using other colors, with the exception of black and white or grayscale for use on faxes, memos and in newspapers, and white for reverses on dark backgrounds.
- Manipulating or altering the Paydirt Pete logo in any way.

The Paydirt Pete logo is the property of the University and its use is limited to University employees, offices and departments for official purposes only.

**NOTE: UTEP Athletic logos may not be used to promote UTEP club or intramural sports. For those applications, use the classic or flat UTEP logo or the Miner Pick (see pages 9 and 13).**

### PRIMARY



### SECONDARY

The secondary athletics logo is a complementary mark to represent UTEP Athletics. The secondary logo is intended as a decorative or retail product image for use in contexts in which the name of the University already has been established. It should NEVER be used as the primary identifier of UTEP Athletics. The secondary logos should be used in strict adherence with the graphic identity guidelines mentioned here.



### WORDMARK

The athletics wordmark may be used to represent UTEP Athletics when the primary and secondary marks are not practical (although use of the primary mark is preferred). This includes applications where vertical space is limited.

All athletic program uniforms and team gear will display the athletic primary logo, secondary logo and/or athletic wordmark.



### FOR ASSISTANCE:

UTEP Athletics  
Brumbelow Building  
201 Clary Road  
95-747-6822

Use good judgment to ensure legibility. A mark that is too small doesn't serve any communicative function. The recommended minimum size for printing on all material is 0.5" in width. Keep clear space in mind when using the athletics logos. Do not clutter the logos with additional logos, graphics or text.

## APPENDIX THREE

### HUB SUBCONTRACTING PLAN

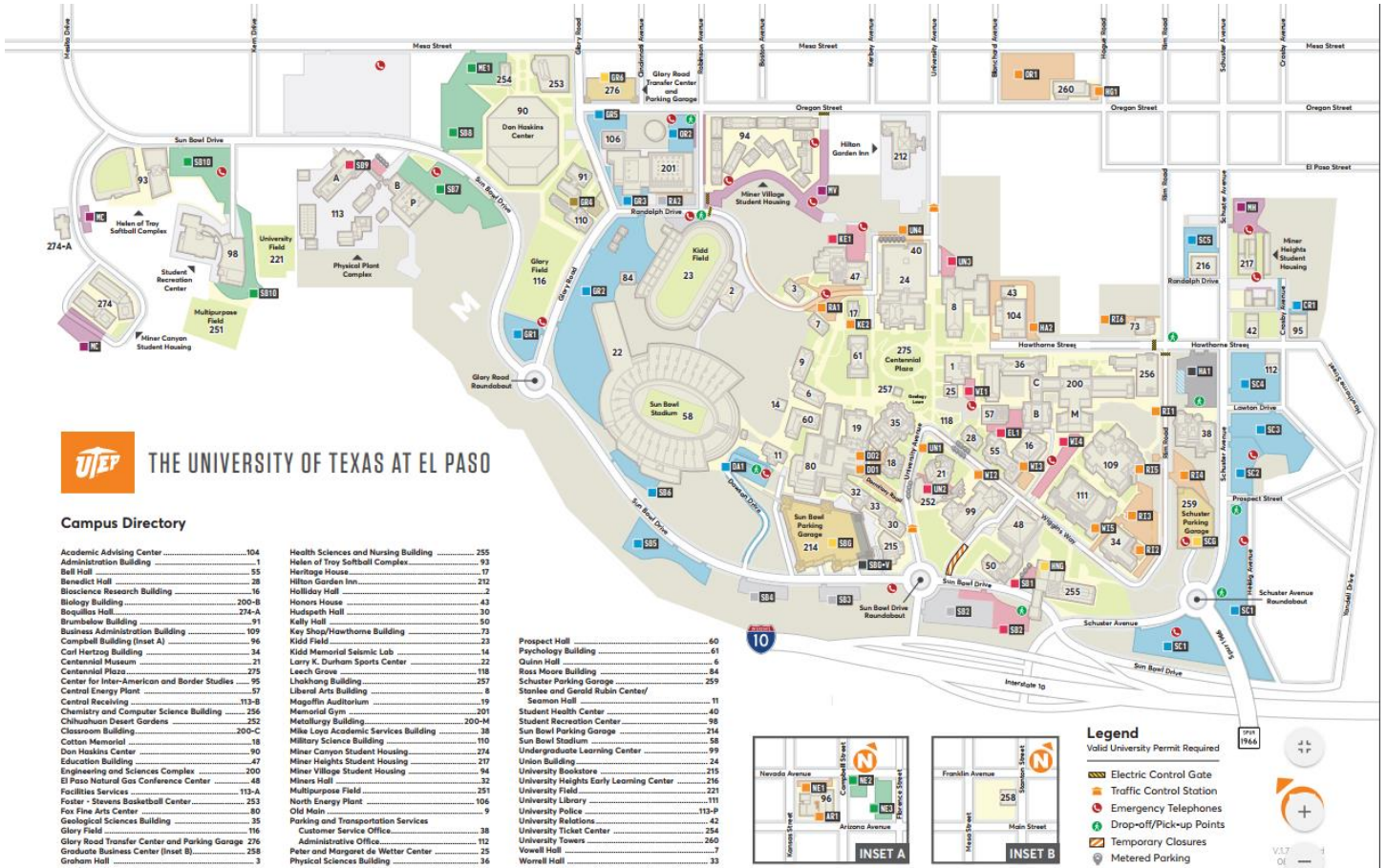
HUB SUBCONTRACTING PLAN Proposer must submit a completed HUB Subcontracting Plan with its proposal in accordance with **Section 2.5** of the RFP.

The HUB Subcontracting Plan is provided in Sourcing Manager, University's electronic procurement system, at <https://adminapps.utep.edu/sourcing/>.

For more information about Sourcing Manager, Proposer may review FAQ's and the Solicitation Manual at [www.sourcingmanager.utep.edu](http://www.sourcingmanager.utep.edu).

# APPENDIX FOUR

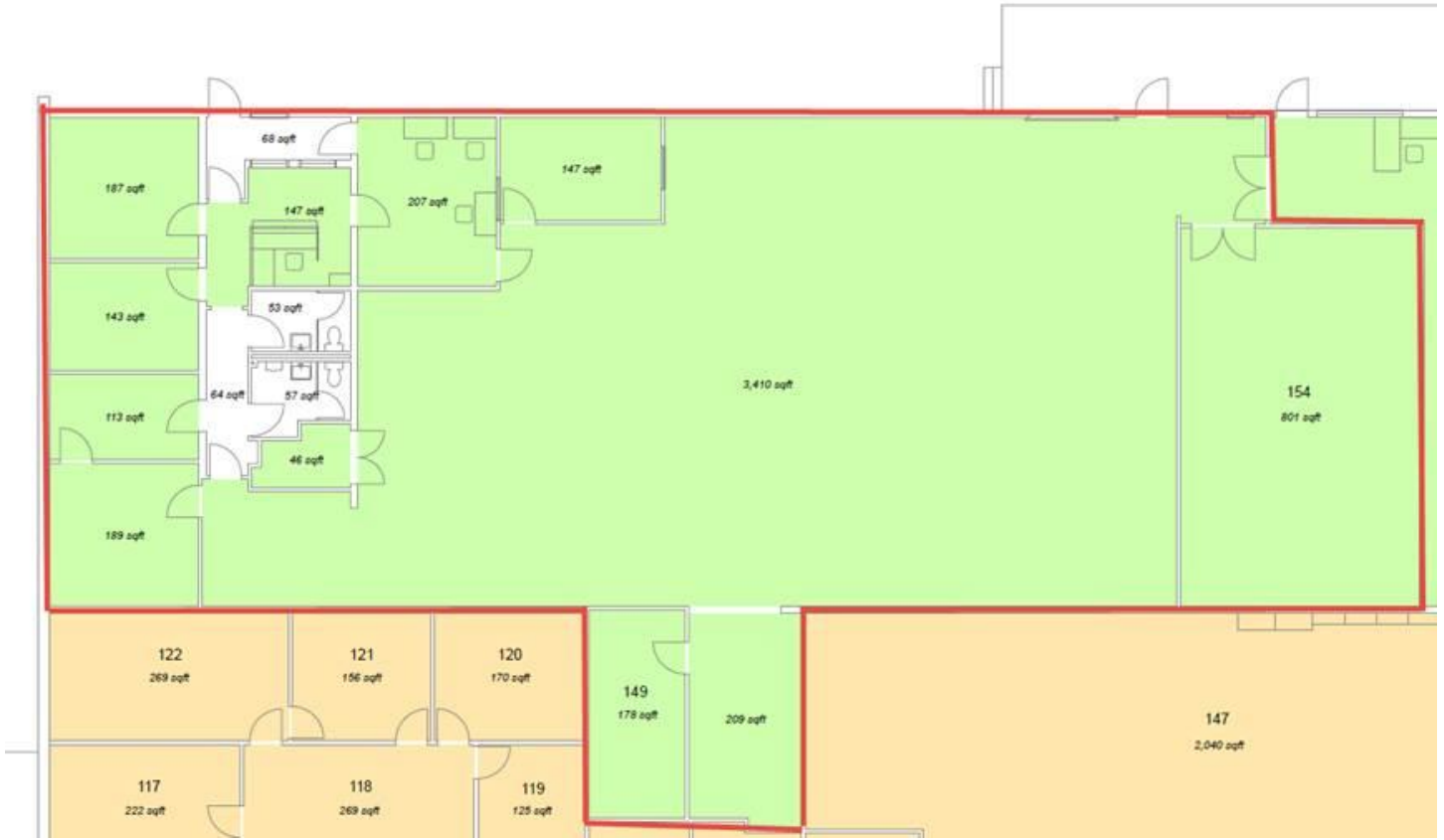
## CAMPUS MAP AND FLOOR PLANS



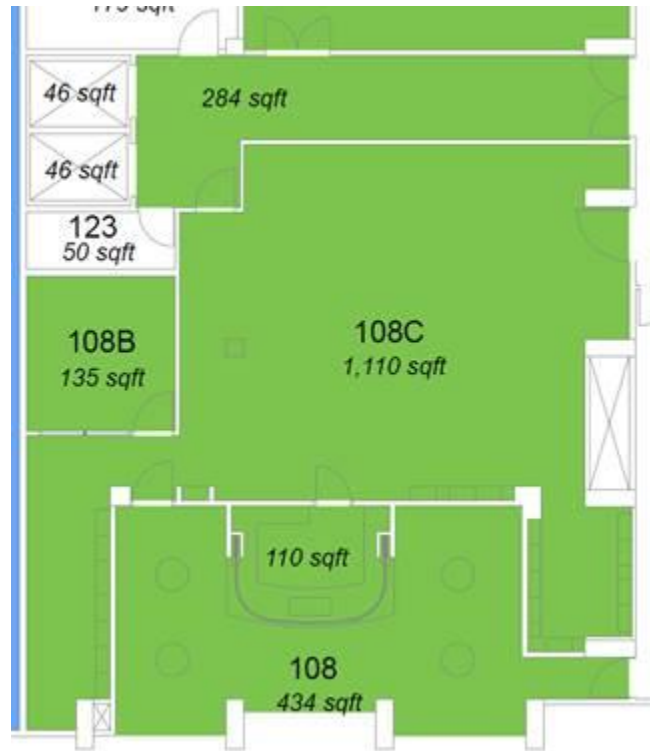
### Campus Directory

Academic Advising Center ..... 104	Health Sciences and Nursing Building ..... 255
Administration Building ..... 1	Helen of Troy Softball Complex ..... 93
Ball Hall ..... 55	Heritage House ..... 17
Benedict Hall ..... 28	Hilton Garden Inn ..... 212
BioScience Research Building ..... 16	Holiday Hall ..... 2
Biology Building ..... 200-B	Honors House ..... 43
Boquillas Hall ..... 274-A	Hudspeth Hall ..... 30
Bramblewood Building ..... 16	Kelly Hall ..... 50
Business Administration Building ..... 109	Key Shop/Hawthorne Building ..... 73
Campbell Building (Inset A) ..... 96	Kidd Field ..... 23
Carl Hertzog Building ..... 34	Larry K. Durham Sports Center ..... 72
Centennial Plaza ..... 275	Leach Grove ..... 118
Center for Inter-American and Border Studies ..... 95	Lhokhang Building ..... 257
Central Energy Plant ..... 57	Liberal Arts Building ..... 8
Central Receiving ..... 113-B	Maguffin Auditorium ..... 19
Chemistry and Computer Science Building ..... 256	Memorial Gym ..... 201
Chihuahuan Desert Gardens ..... 252	Metallurgy Building ..... 200-M
Classroom Building ..... 200-C	Mike Loy Academic Services Building ..... 38
Cotton Memorial ..... 18	Military Science Building ..... 110
Dan Hawkins Center ..... 90	Miner Canyon Student Housing ..... 274
Education Building ..... 47	Miner Heights Student Housing ..... 217
Engineering and Sciences Complex ..... 200	Miner Village Student Housing ..... 94
El Paso Natural Gas Conference Center ..... 48	Miners Hall ..... 32
Facilities Services ..... 113-A	Multipurpose Field ..... 251
Foster - Stevens Basketball Center ..... 253	North Energy Plant ..... 106
Fox Fine Arts Center ..... 80	Old Main ..... 9
Geological Sciences Building ..... 35	Parking and Transportation Services ..... 9
Glory Field ..... 116	Customer Service Office ..... 38
Glory Road Transfer Center and Parking Garage 276	Administrative Office ..... 112
Graduate Business Center (Inset B) ..... 258	Peter and Margaret de Wetter Center ..... 25
Graham Hall ..... 3	Physical Sciences Building ..... 36
	Prospect Hall ..... 60
	Psychology Building ..... 61
	Quinn Hall ..... 6
	Ross Moore Building ..... 84
	Schuster Parking Garage ..... 259
	Stanlee and Gerald Rubin Center/Seaman Hall ..... 11
	Student Health Center ..... 40
	Student Recreation Center ..... 98
	Sun Bowl Parking Garage ..... 214
	Sun Bowl Stadium ..... 58
	Undergraduate Learning Center ..... 99
	Union Building ..... 24
	University Bookstore ..... 215
	University Heights Early Learning Center ..... 216
	University Field ..... 221
	University Library ..... 111
	University Police ..... 113-9
	University Ticket Center ..... 42
	University Towers ..... 260
	Vowell Hall ..... 7
	Worrell Hall ..... 33

Print Shop  
Carl Hertzog Building



Mail Room  
Union Building



## APPENDIX FIVE

### ACCESS BY INDIVIDUALS WITH DISABILITIES

Contractor represents and warrants (**EIR Accessibility Warranty**) the electronic and information resources and all associated information, documentation, and support Contractor provides to University under this Agreement (**EIRs**) comply with applicable requirements set forth in [1 TAC Chapter 213](#), and [1 TAC §206.70](#) (ref. [Subchapter M, Chapter 2054, Government Code](#).) To the extent Contractor becomes aware that EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants it will, at no cost to University, either (1) perform all necessary remediation to make EIRs satisfy the EIR Accessibility Warranty or (2) replace EIRs with new EIRs that satisfy the EIR Accessibility Warranty. If Contractor fails or is unable to do so, University may terminate this Agreement and, within thirty (30) days after termination, Contractor will refund to University all amounts University paid under this Agreement.



## APPENDIX SIX

### ELECTRONIC AND INFORMATION RESOURCES ENVIRONMENT SPECIFICATIONS

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

University is primarily a Microsoft products environment.

#### Basic Specifications

1. If the EIR will be hosted by University, please describe the overall environment requirements for the EIR (size the requirements to support the number of concurrent users, the number of licenses and the input/output generated by the application as requested in the application requirements).
  - A. Hardware: If Proposer will provide hardware, does the hardware have multiple hard drives utilizing a redundant RAID configuration for fault tolerance? Are redundant servers included as well?
  - B. Operating System and Version:
  - C. Web Server: Is a web server required? If so, what web application is required (Apache or IIS)? What version? Are add-ins required?
  - D. Application Server:
  - E. Database:
  - F. Other Requirements: Are any other hardware or software components required?
  - G. Assumptions: List any assumptions made as part of the identification of these environment requirements.
  - H. Storage: What are the space/storage requirements of this implementation?
  - I. Users: What is the maximum number of users this configuration will support?
  - J. Clustering: How does the EIR handle clustering over multiple servers?
  - K. Virtual Server Environment: Can the EIR be run in a virtual server environment?
2. If the EIR will be hosted by Proposer, describe in detail what the hosted solution includes, and address, specifically, the following issues:
  - A. Describe the audit standards of the physical security of the facility; and
  - B. Indicate whether Proposer is willing to allow an audit by University or its representative.
3. If the user and administrative interfaces for the EIR are web-based, do the interfaces support Firefox on Mac as well as Windows and Safari on the Macintosh?
4. If the EIR requires special client software, what are the environment requirements for that client software?
5. Manpower Requirements: Who will operate and maintain the EIR? Will additional University full time employees (FTEs) be required? Will special training on the EIR be required by Proposer's technical staff? What is the estimated cost of required training.
6. Upgrades and Patches: Describe Proposer's strategy regarding EIR upgrades and patches for both the server and, if applicable, the client software. Included Proposer's typical release schedule, recommended processes, estimated outage and plans for next version/major upgrade.

#### Security

1. Has the EIR been tested for application security vulnerabilities? For example, has the EIR been evaluated against the Open Web Application Security Project (**OWASP**) Top 10 list that includes flaws like cross site scripting and SQL injection? If so, please provide the scan results and specify the tool used. University will not take final delivery of the EIR if University determines there are serious vulnerabilities within the EIR.
2. Which party, Proposer or University, will be responsible for maintaining critical EIR application security updates?
3. If the EIR is hosted, indicate whether Proposer's will permit University to conduct a penetration test on University's instance of the EIR.
4. If confidential data, including HIPAA or FERPA data, is stored in the EIR, will the data be encrypted at rest and in transmittal?

### Integration

1. Is the EIR authentication Security Assertion Markup Language (**SAML**) compliant? Has Proposer ever implemented the EIR with Shibboleth authentication? If not, does the EIR integrate with Active Directory? Does the EIR support TLS connections to this directory service?
2. Does the EIR rely on Active Directory for group management and authorization or does the EIR maintain a local authorization/group database?
3. What logging capabilities does the EIR have? If this is a hosted EIR solution, will University have access to implement logging with University's standard logging and monitoring tools, RSA's Envision?
4. Does the EIR have an application programming interface (**API**) that enables us to incorporate it with other applications run by the University? If so, is the API .Net based? Web Services-based? Other?
5. Will University have access to the EIR source code? If so, will the EIR license permit University to make modifications to the source code? Will University's modifications be protected in future upgrades?
6. Will Proposer place the EIR source code in escrow with an escrow agent so that if Proposer is no longer in business or Proposer has discontinued support, the EIR source code will be available to University.

### Accessibility Information

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

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

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

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

## APPENDIX SEVEN

### SECURITY CHARACTERISTICS AND FUNCTIONALITY OF CONTRACTOR'S INFORMATION RESOURCES

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

**"Information Resources"** means any and all computer printouts, online display devices, mass storage media, and all computer-related activities involving any device capable of receiving email, browsing Web sites, or otherwise capable of receiving, storing, managing, or transmitting Data including, but not limited to, mainframes, servers, Network Infrastructure, personal computers, notebook computers, hand-held computers, personal digital assistant (PDA), pagers, distributed processing systems, network attached and computer controlled medical and laboratory equipment (i.e. embedded technology), telecommunication resources, network environments, telephones, fax machines, printers and service bureaus. Additionally, it is the procedures, equipment, facilities, software, and Data that are designed, built, operated, and maintained to create, collect, record, process, store, retrieve, display, and transmit information.

**"University Records"** means records or record systems that Proposer (1) creates, (2) receives from or on behalf of University, or (3) has access, and which may contain confidential information (including credit card information, social security numbers, and private health information (**PHI**) subject to Health Insurance Portability and Accountability Act (**HIPAA**) of 1996 (Public Law 104-191), or education records subject to the Family Educational Rights and Privacy Act (**FERPA**).

#### General Protection of University Records

1. Describe the security features incorporated into Information Resources (ref. **Section 5.3.4**) to be provided or used by Proposer pursuant to this RFP.
2. List all products, including imbedded products that are a part of Information Resources and the corresponding owner of each product.
3. Describe any assumptions made by Proposer in its proposal regarding information security outside those already listed in the proposal.

*Complete the following additional questions if the Information Resources will be hosted by Proposer:*

4. Describe the monitoring procedures and tools used for monitoring the integrity and availability of all products interacting with Information Resources, including procedures and tools used to, detect security incidents and to ensure timely remediation.
5. Describe the physical access controls used to limit access to Proposer's data center and network components.
6. What procedures and best practices does Proposer follow to harden all systems that would interact with Information Resources, including any systems that would hold or process University Records, or from which University Records may be accessed?
7. What technical security measures does the Proposer take to detect and prevent unintentional, accidental and intentional corruption or loss of University Records?
8. Will the Proposer agree to a vulnerability scan by University of the web portal application that would interact with Information Resources, including any systems that would hold or process University Records, or from which University Records may be accessed? If Proposer objects, explain basis for the objection to a vulnerability scan.
9. Describe processes Proposer will use to provide University assurance that the web portal and all systems that would hold or process University Records can provide adequate security of University Records.
10. Does Proposer have a data backup and recovery plan supported by policies and procedures, in place for Information Resources? If yes, briefly describe the plan, including scope and frequency of backups, and how often the plan is updated. If no, describe what alternative methodology Proposer uses to ensure the restoration and availability of University Records.
11. Does Proposer encrypt backups of University Records? If yes, describe the methods used by Proposer to encrypt backup data. If no, what alternative safeguards does Proposer use to protect backups against unauthorized access?
12. Describe the security features incorporated into Information Resources to safeguard University Records containing confidential information.

*Complete the following additional question if Information Resources will create, receive, or access University Records containing PHI subject to HIPAA:*

13. Does Proposer monitor the safeguards required by the HIPAA Security Rule (45 C.F.R. §164 subpts. A, E (2002)) and Proposer's own information security practices, to ensure continued compliance? If yes, provide a copy of or link to the Proposer's HIPAA Privacy & Security policies and describe the Proposer's monitoring activities and the frequency of those activities with regard to PHI.

#### **Access Control**

1. How will users gain access (i.e., log in) to Information Resources?
2. Do Information Resources provide the capability to use local credentials (i.e., federated authentication) for user authentication and login? If yes, describe how Information Resources provide that capability.
3. Do Information Resources allow for multiple security levels of access based on affiliation (e.g., staff, faculty, and student) and roles (e.g., system administrators, analysts, and information consumers), and organizational unit (e.g., college, school, or department)? If yes, describe how Information Resources provide for multiple security levels of access.
4. Do Information Resources provide the capability to limit user activity based on user affiliation, role, and/or organizational unit (i.e., who can create records, delete records, create and save reports, run reports only, etc.)? If yes, describe how Information Resources provide that capability. If no, describe what alternative functionality is provided to ensure that users have need-to-know based access to Information Resources.
5. Do Information Resources manage administrator access permissions at the virtual system level? If yes, describe how this is done.
6. Describe Proposer's password policy including password strength, password generation procedures, password storage specifications, and frequency of password changes. If passwords are not used for authentication or if multi-factor authentication is used to Information Resources, describe what alternative or additional controls are used to manage user access.

*Complete the following additional questions if Information Resources will be hosted by Proposer:*

7. What administrative safeguards and best practices does Proposer have in place to vet Proposer's and third-parties' staff members that would have access to the environment hosting University Records to ensure need-to-know-based access?
8. What procedures and best practices does Proposer have in place to ensure that user credentials are updated and terminated as required by changes in role and employment status?
9. Describe Proposer's password policy including password strength, password generation procedures, and frequency of password changes. If passwords are not used for authentication or if multi-factor authentication is used to Information Resources, describe what alternative or additional controls are used to manage user access.

#### **Use of Data**

*Complete the following additional questions if Information Resources will be hosted by Proposer:*

1. What administrative safeguards and best practices does Proposer have in place to vet Proposer's and third-parties' staff members that have access to the environment hosting all systems that would hold or process University Records, or from which University Records may be accessed, to ensure that University Records will not be accessed or used in an unauthorized manner?
2. What safeguards does Proposer have in place to segregate University Records from system data and other customer data and/or as applicable, to separate specific University data, such as HIPAA and FERPA protected data, from University Records that are not subject to such protection, to prevent accidental and unauthorized access to University Records ?
3. What safeguards does Proposer have in place to prevent the unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access, or disclosure of University Records?
4. What procedures and safeguards does Proposer have in place for sanitizing and disposing of University Records according to prescribed retention schedules or following the conclusion of a project or termination of a contract to render University Records unrecoverable and prevent accidental and unauthorized access to University Records? Describe the degree to which sanitizing and disposal processes addresses University data that may be contained within backup systems. If University data contained in backup systems is not fully sanitized, describe processes in place that would prevent subsequent restoration of backed-up University data.

#### **Data Transmission**

1. Do Information Resources encrypt all University Records in transit and at rest? If yes, describe how Information Resources provide that security. If no, what alternative methods are used to safeguard University Records in transit and at rest?

*Complete the following additional questions if Information Resources will be hosted by Proposer:*

2. How does data flow between University and Information Resources? If connecting via a private circuit, describe what security features are incorporated into the private circuit. If connecting via a public network (e.g., the Internet), describe the way Proposer will safeguard University Records.
3. Do Information Resources secure data transmission between University and Proposer? If yes, describe how Proposer provides that security. If no, what alternative safeguards are used to protect University Records in transit?

#### **Notification of Security Incidents**

*Complete the following additional questions if Information Resources will be hosted by Proposer:*

1. Describe Proposer's procedures to isolate or disable all systems that interact with Information Resources in the event a security breach is identified, including any systems that would hold or process University Records, or from which University Records may be accessed.
2. What procedures, methodology, and timetables does Proposer have in place to detect information security breaches and notify University and other customers? Include Proposer's definition of security breach.
3. Describe the procedures and methodology Proposer has in place to detect information security breaches, including unauthorized access by Proposer's and subcontractor's own employees and agents and provide required notifications in a manner that meets the requirements of the state breach notification law.

#### **Compliance with Applicable Legal & Regulatory Requirements**

*Complete the following additional questions if Information Resources will be hosted by Proposer:*

1. Describe the procedures and methodology Proposer has in place to retain, preserve, backup, delete, and search data in a manner that meets the requirements of state and federal electronic discovery rules, including how and in what format University Records are kept and what tools are available to University to access University Records.
2. Describe the safeguards Proposer has in place to ensure that systems (including any systems that would hold or process University Records, or from which University Records may be accessed) that interact with Information Resources reside within the United States of America. If no such controls, describe Proposer's processes for ensuring that data is protected in compliance with all applicable US federal and state requirements, including export control.
3. List and describe any regulatory or legal actions taken against Proposer for security or privacy violations or security breaches or incidents, including the final outcome.