

# **REQUEST FOR PROPOSAL**

**by**

**The University of Texas at El Paso**

**for**

**Selection of a Vendor to Provide  
Athletic Apparel**

**RFP No. 724-2209-JBT**

**Submittal Deadline: July 27, 2022**

Issued: July 5, 2022

# REQUEST FOR PROPOSAL

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## SECTION 1

### INTRODUCTION

#### 1.1 Description of University

Founded in 1914, The University of Texas at El Paso (UTEP or University) is a vibrant top tier public research university of more than 25,000 students enrolled in 170 undergraduate and graduate degree programs. Set against the backdrop of the Franklin Mountains in the Chihuahuan Desert, UTEP is located at the heart of the U.S.-Mexico border in one of the largest binational communities in the world. UTEP maintains one of the lowest out-of-pocket costs of any doctoral research university in the U.S., underscoring its commitment to make education accessible to all. Rigorous program and research opportunities help prepare students to make significant contributions to their professions, their communities and the world. UTEP is designated as an R1 university (top tier doctoral university with very high research activity), one of only 130 in the country.

#### 1.2 Background and Special Circumstances

Through this Request for Proposal (“RFP”), the University is seeking qualified and experienced companies to provide Athletic Apparel in accordance with the terms, conditions and requirements set forth in this RFP.

Proposers may review frequently asked questions (FAQs) at the Miner Mall Sourcing Manager Internet address, [www.sourcingmanager.utep.edu](http://www.sourcingmanager.utep.edu).

1.2.1 UTEP’s 17 division I sports programs have combined to win 21 national championships and 88 conference titles. UTEP’s sport lineup is the following: men’s basketball, women’s basketball, men’s cross country, women’s cross country, football, men’s golf, women’s golf, women’s rifle, women’s soccer, women’s softball, women’s tennis, men’s track & field indoor and outdoor, women’s track & field indoor and outdoor, beach volleyball (coming fall 2023) and women’s volleyball.

##### 1.2.1.1 Program Highlights;

Men’s Basketball: 20-win season in 2021-22, 1966 NCAA champions, 17 NCAA tournament appearances and 32 postseason tournament appearances.

Women’s Basketball: four postseason tournament appearances and three conference titles

Football: seven-win season & New Mexico bowl in 2021 and 15 bowl games

1.2.2 UTEP’s fiscal year (“FY”) begins September 1st and ends August 31st.

The following table contains estimates of the number of student athletes and coaches/support staff for UTEP in FY 2022

Sports	Student-Athletes	Staff
Men’s Cross Country	11	1
Women’s Cross Country	9	1
Football	120	22
Men’s Basketball	18	12
Women’s Basketball	14	7
Men’s Golf	9	1
Women’s Golf	9	1
Rifle	7	1
Soccer	24	4
Softball	21	4
Tennis	9	2
Men’s Indoor Track & Field	28	8

<b>Women's Indoor Track &amp; Field</b>	24	8
<b>Men's Outdoor Track &amp; Field</b>	29	8
<b>Women's Outdoor Track &amp; Field</b>	24	8
<b>Beach Volleyball</b>	16	2
<b>Volleyball</b>	21	4
<b>Administrative Staff</b>		43
<b>Totals</b>	393	137

### 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 number RFP 747-2209-JBT ("RFP") from qualified collegiate apparel providers ("Proposers") to provide the following (which are alternately referred to in this RFP as the "Work", the "Goods", and/or the "Services"):

- (i) Serve as the exclusive provider of athletic apparel and related products for the University's Department of Intercollegiate Athletics Team Programs; and
- (ii) Provide consideration to the University in exchange for certain exclusivity rights provided by University to the successful Proposer; all as more particularly described in Section 5 and Section 6 of this RFP.

### 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.

### 1.5 Existing Agreements

The University has separate contracts ("Third Party Contracts") granting various rights to third parties to sell and/or market services and goods on the Campus. The third parties and rights summarized below;

- 1.5.1 Athletics Sponsorship. Exclusive contract with Van Wagner & Entertainment, LLC for marketing and sponsorship signage and activities at its athletic venues.
- 1.5.2 Beverage Sales. Exclusive beverage vending and sponsorship agreement with Bottling Group LLC.

## 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 Monday, July 27, 2022. (Submittal Deadline)**.

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

Interested parties may direct questions about this RFP to:

The University of Texas at El Paso  
Purchasing & General Services  
Kelly Hall 3rd Floor  
500 W. University Ave.  
El Paso, TX 79968-0505  
Attn: James Trejo  
E-mail: [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, July 19, 2022, 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 Extent to which the Work, Goods, and Services meet the University's needs; 30%
- 2.3.2.2 Reputation of the Proposer and of the Proposer's Work, Goods, and Services 20%
- 2.3.2.3 Quality of the Proposer's Work, Goods, and Services; 20%
- 2.3.2.4 Total long-term cost to the University of acquiring the Proposer's Work, Goods, and Services; 10%
- 2.3.2.5 Cost of Work, Goods and Services; 10%
- 2.3.2.6 Proposer's past relationship with the University; 5%
- 2.3.2.7 Proposer's exceptions to the terms and conditions set forth in **Section 4**. 5%

The final value assigned to each Proposer's proposal shall be the sum of the average of values assigned by the University's evaluators with regard to each evaluation category.

University may give consideration to additional information if University deems such information relevant.

Please note that the University's existing athletic apparel contractor, has right of first refusal under its contract with the University binding until February 27, 2023 as established below. By submitting a proposal in response to this RFP, Proposer consents to the University's use of that proposal as necessary to address such rights of first refusal any time prior to the February 27, 2023 deadline, notwithstanding any other provision of this RFP or Proposer's proposal. For more information, see **Section 1.5** of **Appendix One**.

### RIGHT OF FIRST REFUSAL

The current vendor shall have the right of first refusal for Product Supply/Sponsorship, as follows: If UNIVERSITY receives any bona fide third party offer at any time on or after the Exclusive Negotiating End Date with respect to any Product Supply/Endorsements, UNIVERSITY shall submit to the current vendor in writing the specific terms of such bona fide third party offer in the form of a true and complete copy which shall be on the offeror's letterhead or other identifiable stationery or imprint readily authenticatable by the current vendor as having originated with such third-party offeror. The current vendor shall have fifteen (15) business days from the date of its receipt of such true copy of the third party offer to notify UNIVERSITY in writing if it will enter into a new contract with UNIVERSITY on terms no less favorable to UNIVERSITY than the material, measurable and matchable terms of such third party offer. If the current vendor so notifies UNIVERSITY within such 15-day period, UNIVERSITY shall enter into a contract with the current vendor on the terms of the current vendor's offer. If the current vendor fails or declines to match or better the material, measurable and matchable terms of such third party offer within such 15-day period, UNIVERSITY may thereafter consummate an agreement with such third party on the terms of the offer made to UNIVERSITY. Prior to the Exclusive Negotiating End Date, UNIVERSITY shall not solicit, consider or present to the current vendor, and the current vendor shall not be obligated to respond to, any third party offer for any Product Supply/Sponsorship.

## 2.4 Key Events Schedule

Date RFP Issued	July 5, 2022
Pre-Proposal Conference (ref. <b>Section 2.6</b> )	July 12, 2022, at 10:00 A.M. Mountain Standard Prevailing Time
Question Deadline (ref. <b>Section 2.2</b> )	July 19, 2022, at 2:00 P.M. Mountain Standard Prevailing Time
Submittal Deadline (ref. <b>Section 2.1</b> )	July 27, 2022, at 3:00 P.M. 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  
Director, Purchasing & General Services  
HUB Coordinator  
Email: [baalvarez@utep.edu](mailto: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**):

**One (1) complete electronic copy of Proposer’s HSP in a single .pdf file**

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 Tuesday, July 12, 2022**, in Room 301 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.

For those vendors that are not able to attend the Pre-Proposal Conference meeting, the University will provide the following options;

Conference call bridge:

Phone number: **1-888-330-1716**      **Access Code:**      **3023787**

Microsoft Teams Meeting, please copy link below and paste to browser for meeting access:

Join on your computer or mobile app

Click here to join the meeting

[https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F\\_%23%2FI%2Fmeetup-join%2F19%3Ameeting\\_ZDA0Njl5ODMtNGFiNi00NTlwLTlhZmYtMDY0ZmYwNzZkNmYw%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%2522857c21d2-1a16-43a4-90cf-d57f3fab9d2f%2522%252c%2522Oid%2522%253a%2522b1992fed-3fe0-43eb-8d5c-539432869a77%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=7686420a-bdff-4083-9ee8-d710c17a95e6&directDI=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true](https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2FI%2Fmeetup-join%2F19%3Ameeting_ZDA0Njl5ODMtNGFiNi00NTlwLTlhZmYtMDY0ZmYwNzZkNmYw%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%2522857c21d2-1a16-43a4-90cf-d57f3fab9d2f%2522%252c%2522Oid%2522%253a%2522b1992fed-3fe0-43eb-8d5c-539432869a77%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=7686420a-bdff-4083-9ee8-d710c17a95e6&directDI=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true)

Or call in (audio only)  
+1 915-320-4743,936472245# United States, El Paso  
Phone Conference ID: 936 472 245#  
Find a local number | Reset PIN



## SECTION 3

### SUBMISSION OF PROPOSAL

#### 3.1 Number of Copies

Proposer must submit (a) *one (1) complete electronic signed copy of its entire proposal in a single .pdf file. An original signature by an authorized officer of Proposer must appear on the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**)* of the submitted electronic copy of the proposal.

The copy of the Proposer's 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 at the Sourcing Manager Internet address at [www.sourcingmanager.utep.edu](http://www.sourcingmanager.utep.edu).

#### 3.2 Submission

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

3.2.1 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 of this RFP is required to be considered for this solicitation. Failure to comply with the 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-Ninety (190) 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 the 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**

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

- 5.2.1 Contractor must demonstrate experience and competence in performing the Services for an athletics department at another institution of higher education that is at least equal to the size and scope of the Athletics Department.
- 5.2.2 All Athletic Products supplied by Proposer must be a nationally recognized brand name.
- 5.2.3 All Athletic Products supplied by Proposer must be of a quality that prevails among similar businesses engaged in providing similar products in major NCAA athletic departments in the United States.

#### **5.3 Additional Questions Specific to this RFP**

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

- 5.3.1 If Proposer takes exception to any terms or conditions set forth in **APPENDIX TWO**), Proposer must submit a list of the exceptions.
- 5.3.2 Proposer must provide an itemized list, description, and price of all Athletic Products that the Proposer will supply to the University.
- 5.3.3 Proposer must provide a description of Proposer's web-based online ordering system [ref. Section 5.4.3.3] and sample screenshots of the system. Proposer's web-based online ordering system should include a separate network for the Athletic Department and University Employees ordering, timely fulfillment, delivery, and support for web-based merchandising sales.
- 5.3.4 Proposer must indicate any minimum purchase requirements in terms of dollars (retail value), promotional merchandise and other requirements of University.
- 5.3.5 Proposer must include any exceptions to the minimum purchase requirements that may apply.
- 5.3.6 Proposer must include web links or screenshots of Proposer's online ordering system for other higher education institutions.
- 5.3.7 By signing the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**), Proposer agrees to comply with Certificate of Interested Parties laws (ref. [§2252.908, Government Code](#)) and [1 TAC §§46.1 through 46.5](#)) as implemented by the Texas Ethics Commission (**TEC**), including, among other things, providing TEC and University with information required on the form promulgated by TEC and set forth in **APPENDIX EIGHT**. *Proposer may learn more about these disclosure requirements, including applicable exceptions and use of the TEC electronic filing system, by reviewing [§2252.908, Government Code](#), and information on the TEC website at [https://www.ethics.state.tx.us/resources/FAQs/FAQ\\_Form1295.php](https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php). **The Certificate of Interested Parties must only be submitted by Contractor upon delivery to University of a signed Agreement.***
- 5.3.8 In its proposal, Proposer must indicate whether it will consent to include in the Agreement the "Access by Individuals with Disabilities" language that is set forth in **APPENDIX FIVE, Access by Individuals with Disabilities**. If Proposer objects to the inclusion of the "Access by Individuals with Disabilities" language in the Agreement, Proposer must, as part of its proposal, specifically identify and describe in detail all of the

reasons for Proposer's objection. NOTE: A GENERAL OBJECTION IS NOT AN ACCEPTABLE RESPONSE TO THIS QUESTION.

- 5.3.9 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.
  
- 5.3.10 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

In its proposal, Proposer must identify how it offers to provide the following Work, Goods, and Services to University if it is the successful Proposer selected as the Contractor as a result of this RFP.

The minimum requirements and the scope of the Work, Goods, and Services, as well as certain requests for information to be provided by Proposer as part of its proposal, are set forth below. For purposes of this RFP, the successful Proposer is sometimes referred to as "Contractor."

### Overview of Business Scope

5.4.1 The Contractor will provide (i) certain Athletic Products for use by the Athletic Department's Team Programs and (ii) consideration to the University in exchange for certain exclusivity rights and certain sponsorship licensing rights provided by University to Contractor, all as more particularly described in this RFP.

"Team Programs" means, collectively, Football, Men's and Women's Basketball, Men's and Women's Cross-Country, Men's and Women's Golf, Women's Tennis, Men's and Women's Track & Field, Women's Soccer, Softball, Volleyball and Beach Volleyball (each individually, a "Team Program").

"Athletic Product" means the following categories of athletic footwear, apparel, equipment goods, and related products:

- (i) Competition & Training Footwear
- (ii) Shorts, T-Shirts, Socks, Compression Shorts, Wristbands, Head Gear
- (iii) Team Uniforms
- (iv) Cold Weather/Rain Gear
- (v) Baggage (Backpacks, Roller Boards, Duffels) and
- (vi) Gloves (glove for all weather, warming, etc. (excludes gloves for softball/baseball for catching balls))

### 5.4.2 Minimum Proposer Requirements

Contractor must have demonstrated experience with performing the business scope and services described in this RFP for a university department of intercollegiate athletics at least equal to the size and scope of the Athletic Department.

### 5.4.3 Athletic Product Requirements

5.4.3.1 Quality; Brand Name. All Athletic Product supplied by Contractor must be a nationally recognized brand name, and be produced in accordance with the highest standards of Contractor's profession and/or business. All Athletic Product supplied by Contractor will be of the quality that prevails among similar businesses engaged in providing similar services in major NCAA athletic departments in the United States under the same or similar circumstances.

In its response to the Questionnaire (ref. Section 3 of APPENDIX ONE), Proposer should provide a list of the Athletic Products that Proposer is capable of supplying to University.

5.4.3.2 New Product Line. Contractor will provide University with prior notice of any new Athletic Products in development by Contractor ("Emergent Athletic Products"). Immediately upon the commercial availability of the Emergent Athletic Products, Contractor will ensure that University is provided the capability to secure the Emergent Athletic Products under the terms of the Agreement.

5.4.3.3 Ordering System and Schedule. Contractor will maintain an order and delivery system that provides an efficient method for the Athletic Department to order and receive Contractor Products in a manner that meets the reasonable scheduling requirements of the Athletic Department. All Contractor Products will be delivered by Contractor to University FOB Destination.

Contractor will maintain a website that provides the Athletic Department the ability to efficiently purchase Contractor Products through the use of purchase orders and credit cards, or an alternate order and invoicing system reasonably acceptable to University in all respects. Contractor's website ordering system will include a complete network for ordering, timely fulfillment, delivery, and support for web-based merchandising sales.

Proposer will describe in its response to the Questionnaire a description of its ordering and delivery operations and its web-based ordering system.

5.4.3.4 Additional Proposed Athletic Product. In its response to this RFP, Proposer may propose additional categories of Athletic Product for University's consideration.

If Proposer is offering additional categories of Athletic Product, Proposer will describe in its response to the Questionnaire its proposed additional categories.

5.4.3.5 Lack of Availability. If successful Proposer is unable to provide Athletic Product in a time or manner reasonably required by fulfill the requirements of the Athletic Department, University retains the right to secure the specific unavailable Athletic Product from any available source.

#### 5.4.4 Certain Exclusivity; Sponsorship and Licensing Benefits

University will provide the successful Proposer certain exclusivity rights and certain sponsorships licensing rights as more particularly described below.

5.4.4.1 Exclusive use of Athletic Product. Subject to the terms of the Agreement (ref. Appendix Two), beginning on a mutually agreed to date upon contract execution, and throughout the remaining Term, the coaches, staff and players in each Team Program will exclusively use or wear Athletic Products whenever the Team Program is (i) playing an intercollegiate game or conducting official practice sessions, (ii) conducting official Team Program operations while being filmed by motion picture or videotape when University knows or should reasonably have known, that the film or video is meant for public distribution, (iii) posing for official Team Program photographs, (iv) conducting or participating in Team Program-sanctioned camps or clinics, or (v) is otherwise engaged in official Team Program activities where such attire is reasonably appropriate, (collectively "Official Team Program Events"). University further agrees that it will prohibit players, coaches or staff from covering or altering the Contractor logo in any way during Official Team Program Events. University, at its sole discretion, will make all decisions regarding medical reasons for athletes and coaches to use alternate products.

5.4.4.2 Sponsorship and Licensing Rights. University will provide Contractor with certain sponsorship rights and licensing rights as more particularly described in the Agreement (ref. Appendix Two).

#### 5.4.5 Additional Specific Requirements

Additional specific qualifications, stipulations, and specifications required for completion of the Services are as set forth in the attached Agreement (ref. Appendix Two).

#### 5.4.6 Consideration to University

In exchange for such exclusivity sponsorship rights, University anticipates certain consideration to be provided by the successful Proposer to University as more particularly described in Section 6 of this RFP, "Business and Financial Consideration Schedule."

**SECTION 6**

**BUSINESS AND FINANCIAL CONSIDERATION SCHEDULE**

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

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

**RFP No.:** 724-2209-JBT

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 five (5) years with the initial term of the Agreement proposed to begin on September 1, 2022, and proposed to expire on August 31, 2027. University may elect to renew the Agreement for up to three (3) additional one (1) year terms.

**6.2 Consideration to University.** For purposes of the following, "Contract Year" is defined in Section 1 of Appendix Two.

**6.2.1 In-Kind Consideration of Contractor Products at No Cost**

**6.2.1.1 Promotional No-Cost Products.** In its proposal, Proposer must identify the total dollar amount of its Products ("Promotional Merchandise") that Proposer offers to permit the University to order at no cost during each Contract Year as set forth below:

Promotional Merchandise Allotment per Contract Year: \$\_\_\_\_\_ Suggested Retail Price

**6.2.1.2 Product Specific Allotments.** . In its proposal, Proposer must identify University Product Specific Allotments it proposes to provide to the University as well as the times and the amounts that it proposes to provide such University Product Specific Allotments as specified below. The contractor shall provide a list of products and the allotments associated with each product such as but not limited to 100 men's basketball shoes.

\$\_\_\_\_\_

**6.2.2 Financial Consideration**

**6.2.2.1 Implementation Bonus.** In its proposal, Proposer must identify the proposed implementation Bonus that it offers to pay to University ("**Implementation Bonus**") at the time and in the amount specified below.

Implementation Bonus: \$\_\_\_\_\_ will be paid at the following time:\_\_\_\_\_

**6.2.2.2 Exclusivity & Sponsorship Fees**

In its proposal, Proposer must identify the exclusivity and sponsorship fees ("**Exclusivity & Sponsorship Fees**") that it offers to pay to the University at the time and in the amount specified below:

Exclusivity and Sponsorship Fees: \$\_\_\_\_\_ will be paid at the following time:\_\_\_\_\_



**6.2.3 Merchandise Pricing**

In its proposal Proposer must identify the discount(s) off of list price that it offers to provide to the University for all purchases of merchandise made by the University under any agreement resulting from this RFP (“**Merchandise Pricing**”) as specified below:

Merchandise Pricing Percent Discount: \_\_\_\_\_%

**6.2.4 Team Program Accomplishment Incentives**

In its proposal Proposer must provide a description of the Athletic Team Program Accomplishment Incentives such as but not limited to football bowl game invitation, it offers to the University and the dollar value of such Incentives:

\$ \_\_\_\_\_

**6.2.5 Additional Consideration**

In its proposal Proposer must define any other additional merchandising, incentives, and/or considerations that it offers to the University in exchange for the rights it would obtain under any agreement between University and Contractor resulting from this RFP.

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

**6.2.6 Implementation Timeline**

In its proposal Proposer must identify the schedule of events and timeline that it offers in order to establish and start performance of the Athletic Apparel Services solicited by the University under this RFP.

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

**6.3 Proposer Payment Terms**

The Proposer promises to pay to the University of Texas at El Paso per section 6- Payment Terms of Appendix Two (Agreement). All payments must be made no later than 30 days after (1) the end of each quarter-year (three month) period during the term of any contract or agreement resulting from this RFP and (2) the date such a contract or agreement terminates or expires.

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 required to acknowledge the Addenda documents in Sourcing Manager at the Sourcing Manager Internet address 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 the final 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. Except as otherwise provided in the right of first refusal set forth below, University will use commercially reasonable efforts to avoid public disclosure of the contents of a proposal prior to the final selection of the Contractor.

University may identify the best proposal submitted by a Proposer in response to this RFP (the "best proposal") on the basis of the proposals initially submitted, without discussion, clarification or modification. In the alternative, University may identify the best proposal on the basis of negotiation with any of the Proposers. Except as otherwise provided in the right of first refusal set forth below, 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 identification of the best proposal; 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 the University's identification of the best proposal, 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 identify the best proposal based only on the most attractive economic terms if another proposal is not the most advantageous to University overall, as determined by University.

Right of First Refusal. All Proposers are on notice that effective until February 27, 2023 (1), the University's existing athletic apparel contractor, has the rights of first refusal under its existing contract with the University as set forth below and (2) as a result any identification by the University of a best proposal will not result in, guarantee, or provide the Proposer submitting that proposal any rights to a contract or agreement between University and the Proposer resulting from this RFP. By submitting a proposal in response to this RFP, Proposer consents to the University's use of that proposal as necessary to address such rights of first refusal, notwithstanding any other provision of this RFP or Proposer's proposal. If the University identifies a best proposal, the University will process that proposal as the [bona fide third party offer set forth below](#).

#### ***RIGHT OF FIRST REFUSAL.***

*The current vendor shall have the right of first refusal for Product Supply/Sponsorship, as follows: If UNIVERSITY receives any bona fide third party offer at any time on or after the Exclusive Negotiating End Date with respect to any Product Supply/Endorsements, UNIVERSITY shall submit to the current vendor in writing the specific terms of such bona fide third party offer in the form of a true and complete copy which shall be on the offeror's letterhead or other identifiable stationery or imprint readily authenticatable by the current vendor as having originated with such third-party offeror. The current vendor shall have fifteen (15) business days from the date of its receipt of such true copy of the third party offer to notify UNIVERSITY in writing if it will enter into a new contract with UNIVERSITY on terms no less favorable to UNIVERSITY than the material, measurable and matchable terms of such third party offer. If the current vendor so notifies UNIVERSITY within such 15-day period, UNIVERSITY shall enter into a contract with the current vendor on the terms of the current vendor's offer. If the current vendor fails or declines to match or better the material, measurable and matchable terms of such third party offer within such 15-day period, UNIVERSITY may thereafter consummate an agreement with such third party on the terms of the offer made to UNIVERSITY. Prior to the Exclusive Negotiating End Date, UNIVERSITY shall not solicit, consider or present to the current vendor, and the current vendor shall not be obligated to respond to, any third party offer for any Product Supply/Sponsorship.*

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, Goods, or Services 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. . Proposers shall acknowledge 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/>).

### 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. . Proposers shall acknowledge 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/>). 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.

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. Proposers shall acknowledge 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/>).*

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 2271, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
  - 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.
  - 2.1.15 Pursuant to Chapter 2274, *Texas Government Code* (enacted by [SB 19, 87<sup>th</sup> Texas Legislature, Regular Session \(2021\)](#)), Proposer verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of any contract or agreement resulting from this RFP against a firearm entity or firearm trade association. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this verification is inaccurate.
  - 2.1.16 Pursuant to Chapter 2274, *Texas Government Code* (enacted by [SB 13, 87<sup>th</sup> Texas Legislature, Regular Session \(2021\)](#)), Proposer verifies (1) it does not boycott energy companies and (2) it will not boycott energy companies 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 verification is inaccurate.
  - 2.1.17 Pursuant to Section 161.0085, *Texas Health and Safety Code* (enacted by [SB 968, 87<sup>th</sup> Texas Legislature, Regular Session \(2021\)](#)), Proposer certifies that it does not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-

transmission recovery on entry to, to gain access to, or to receive service from Proposer's business. 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.
- 2.13 Proposer Compliance and Certification Relating to Cloud Computing Services.** The Texas Department of Information Resources (**DIR**) has established and implemented a state risk and authorization management program providing a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services (**CCSs**) that process (including storing or transmitting) the data of Texas state agencies (**TX-RAMP**). The requirements of TX-RAMP include [Section 2054.0593 of the Texas Government Code, Title 1, Rule 202.77 of the Texas Administrative Code](#), and DIR's TX-RAMP Manual.

Proposer represents and warrants that throughout the term of any Agreement resulting from this RFP it will comply with the requirements of TX-RAMP and that all CCSs subject to TX-RAMP will comply with the requirements of and be certified under TX-RAMP. The CCSs subject to TX-

RAMP include those provided by Proposer either through such an Agreement or in furtherance of such an Agreement, including CCSs provided through Proposer's subcontractors or third-party providers. A CCS used in furtherance of an Agreement includes a CCS that Proposer or its subcontractors or third-party providers use to process (including storing or transmitting) University data, even if the University itself does not access or use that CCS.

Proposer's subcontractors or third-party providers responsible solely for servicing or supporting a CCS provided by Proposer or another Proposer subcontractor or third-party provider shall not be required to provide evidence of TX-RAMP certification; instead, Proposer will be responsible for providing such evidence. The list of current TX-RAMP certified CCSs and DIR's TX-RAMP Manual are set forth at <https://dir.texas.gov/txramp>.

Proposer understands and agrees that the University may not enter into or renew a contract with Proposer to purchase CCSs that are subject to TX-RAMP unless Proposer demonstrates compliance with TX-RAMP requirements. Proposer acknowledges that any Agreement resulting from this RFP may be terminated and payment withheld if Proposer does not comply with TX-RAMP or this Section.

**214 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.: 724-2209-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 Work, 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 Work, 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:** The University of Texas at El Paso

**RFP No.:** 724-2209-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

### SAMPLE AGREEMENT

#### ATHLETIC PRODUCT AND SPONSORSHIP AGREEMENT

This Intercollegiate Athletic Product and Sponsorship Agreement (“**Agreement**”) is effective as of \_\_\_\_\_, 20\_\_ (the "**Effective Date**"), and is made and entered into by and between \_\_\_\_\_, a \_\_\_\_\_ ("**Contractor**"), and THE UNIVERSITY OF TEXAS AT EL PASO, a state agency and institution of higher education of the State of Texas ("University").

#### AGREEMENTS

In consideration of the mutual promises, covenants and agreements expressed herein and for other good and valuable consideration, the receipt and adequacy of which the parties acknowledge Contractor and University agree as follows:

##### 1. Contract Term

The initial term (“**Initial Term**”) of this Agreement will begin on the Effective Date and will expire August 31, 2027, unless sooner terminated pursuant to the term of this Agreement. Upon expiration of the Initial Term, this Agreement may be extended by mutual written agreement of the parties for up to three (3) additional renewal periods, with each renewal period being a twelve (12) month term (each an "**Extension Term**"). “**Contract Term**” means the Initial Term and any Extension Term.

Provided, however, the Contract Term of this Agreement will run co-terminus with the term of the License (ref. **Section 2.3**), and will automatically terminate upon the expiration or earlier termination of the License.

The term "**Contract Year**" means that period of time beginning on the Effective Date and ending August 31, 2023, and each following twelve (12) month period during the Contract Term.

##### 2. Supplier Recognition and Grant of Rights

**2.1 Subject to Laws, Regulations and Rules.** This Agreement and all rights granted under this Agreement are subject to (i) all applicable federal, state, and municipal, laws, regulations, codes, ordinances and orders (collectively, the “**Applicable Laws**”), (ii) all existing contractual arrangements and obligations of University; (iii) the constitution, bylaws, rules, policies and procedures of the National Collegiate Athletic Association (“**NCAA**”), University’s intercollegiate athletic conference (currently Conference USA), and any other athletic organization with jurisdiction (collectively, “**Athletic Organization Rules**”); and (iv) all University Rules. “**University Rules**” means (i) the *Rules and Regulations* of the Board of Regents of The University of Texas System found at <http://www.utsystem.edu/bor/rules/>, including Rule 80103 (Solicitation) and Rule 80111 (Smoke Free Facilities); (ii) the policies of The University of Texas System found at <https://www.utsystem.edu/sites/policy-library>, including UTS102 (Drug & Alcohol Policy), UTS103 (Unrelated Business Income Tax), UTS122 (Guidelines for Website Solicitations), and UTS164 (Drug Free University); (iii) the institutional rules and regulations and policies of University found at <https://www.utep.edu/vpba/hoop/>.

**2.2 Contractor Recognition.** Subject to **Section 2.4.2**, University will provide to Contractor recognition as set forth on **EXHIBIT A**, Contractor Recognition, attached and incorporated for all purposes, so long as such recognition complies with the terms of this **Section 2** and satisfies the qualified sponsorship requirements under the then current United States Treasury Regulations. Contractor acknowledges that the issue of tax liability as a result of entering into this Agreement is an important concern to University. All sponsorship recognition provided under this Agreement is collectively referred to herein as **“Sponsorship Recognition.”** All Sponsorship Recognition materials provided under this Agreement are collectively referred to as **“Sponsorship Recognition Material.”**

**2.3 Licensed Marks.** University will grant Contractor a license to use University’s name and certain trademarks (**“University Marks”**) in accordance with **EXHIBIT D**, Trademark License Agreement, attached and incorporated for all purposes (**“License”**). The terms of the License are incorporated into this Agreement by reference. The terms of this Agreement are subject to the terms of the License. If there is a conflict between the terms of this Agreement and the terms of the License, the License will control.

**2.4 Limitations and Reservations.**

**2.4.1 Rights Reserved.** Any rights not expressly granted by University in this Agreement are specifically deemed withheld and reserved for University.

**2.4.2. No Endorsements or Calls to Action.** Notwithstanding any other term or condition of this Agreement to the contrary, no Sponsorship Recognition, Sponsorship Recognition Material or recognition of Contractor of any other any kind, may state or imply that University endorses a particular company, organization or any other entity, including Contractor, or any other entity’s goods or services, including Contractor’s goods or services.

Contractor will not have the right to display a message in Sponsorship Recognition Material that contains a comparative or qualitative description of Contractor's goods or services, price information about Contractor's goods or services, or any other message that is a call to action related to Contractor's goods or services.

**3. Contractor Products**

**3.1 Contractor Products.** During the Contract Term, Contractor will provide University with the ability to purchase Contractor Products from Contractor for use by Team Programs managed by the University’s Department of Intercollegiate Athletics (**“Athletic Department”**) at prices that reflect the following discounts off of Contractor’s suggested retail price:

**[Note: Section to be completed based on discount chart from Contractor’s Proposal.]**

“Team Programs” means, collectively, Football, Men’s and Women’s Basketball, Men’s and Women’s Cross-Country, Men’s and Women’s Golf, Women’s Tennis, Men’s and Women’s Track & Field, Women’s Soccer, Softball, Volleyball and Beach Volleyball (each individually, a “Team Program”).

**“Contractor Products”** means \_\_\_\_\_.

**3.2 Newly Commercialized Sports Products.** If Contractor begins producing athletic products for commercial sale that are not currently included in the definition of Contractor Products, and University maintains a Team Program that utilizes those athletic products, then University and

Contractor will negotiate in good faith to incorporate the newly commercialized athletic products into the definition of Contractor Products under this Agreement. Any incorporation of newly commercialized athletic products into the definition of Contractor Products will require mutual written agreement between University and Contractor.

**3.3 Purchases Submitted to Contractor.** Except as specified below, University will purchase Contractor Products directly from Contractor.

---

**3.4 Initial Purchase Availability of Contractor Products.** Contractor will ensure that Contractor Products are available for University's purchase under the terms of this Agreement by \_\_\_\_\_, **2022**.

**3.5 Order and Delivery System.** Contractor will maintain an order and delivery system that provides an efficient method for the Athletic Department to order and receive Contractor Products in a manner that meets the reasonable scheduling requirements of the Athletic Department.

Contractor will maintain a website that provides the Athletic Department the ability to efficiently purchase Contractor Products through the use of purchase orders and credit cards, or an alternate order and invoicing system reasonably acceptable to University in all respects. Contractor's website ordering system will include a complete network for ordering, timely fulfillment, delivery, and support for web-based merchandising sales.

All Contractor Products will be delivered by Contractor to University FOB Destination.

**3.6 Emergent Contractor Products.** Contractor will provide University with prior notice of any new Contractor Products in development by Contractor ("**Emergent Athletic Products**"). Immediately upon the commercial availability of the Emergent Contractor Products, Contractor will ensure that University is provided the capability to secure the Emergent Athletic Products under the terms of this Agreement.

**3.7 Limitation on Resale.** During the Contract Term, University agrees that University will not sell any Contractor Products purchased pursuant to this Agreement, except that University may sell such Contractor Products to: (1) affiliates of the University, including on-campus retail outlets that provide services or sales to the University's teams, athletic facilities, faculty, students, and visitors, and (2) vendors of the University that provide services to the University's teams or athletic facilities but only to the extent related to the service.

Notwithstanding the foregoing, the University may sell new, used or discarded equipment in accordance with University surplus disbursement and athletic department annual excess inventory sales.

**3.8 General Quality Standards.** All Contractor Product will be of the highest quality and standards that prevail among businesses engaged in providing services to NCAA athletic departments similar to Athletic Department in a manner similar to those that Contractor is providing under this Agreement.

#### **4. Limited Exclusive Use and Limitations**

**Beginning September 1, 2022**, and throughout the remaining Contract Term, the coaches, staff and players in each Team Program will exclusively use or wear Contractor Products whenever the Team

Program is (i) playing an intercollegiate game or conducting official practice sessions, (ii) conducting official Team Program operations while being filmed by motion picture or video tape when University knows, or should reasonably have known, that the film or video is meant for public distribution, (iii) posing for official Team Program photographs, (iv) conducting or participating in Team Program-sanctioned camps or clinics, or (v) is otherwise engaged in official Team Program activities where such attire is reasonably appropriate, (collectively "**Official Team Program Events**"). University further agrees that it will prohibit players, coaches or staff from covering or altering the Contractor logo in any way during Official Team Program Events. University, at its sole discretion, will make all decisions regarding medical reasons for athletes and coaches to use alternate products other than .

**5. In-Kind Consideration of Contractor Products at No Cost**

**5.1 Promotional No-Cost Products.** During each Contract Year, Contractor will provide University with the ability to order Contractor Products ("**Promotional Merchandise**") at no cost up to the retail value listed below:

Promotional Merchandise Allotment                      \$ \_\_\_\_\_ Suggested Retail Price

**[Note: Section to be completed based on Contractor Proposal.]**

**5.2 Product Specific Allotments**

**[Note: This Section to be completed based on Contractor Proposal.]**

**6. Financial Consideration**

**6.1 Implementation Bonus.** Contractor will pay to University an implementation bonus ("**Implementation Bonus**") at the time and in the amount specified below.

**[Note: This Section to be completed based on Contractor Proposal.]**

**6.2 Exclusivity & Sponsorship Fees**

Contractor will pay to University certain exclusivity and sponsorship fees ("**Exclusivity & Sponsorship Fees**") at the time and in the amount specified below.

**[Note: Section to be completed based on Contractor Proposal.]**

**6.3 Merchandise Pricing**

Contractor will provide to University the following discount off of list price for all purchased pricing ("**Merchandise Pricing**") in the amount specified below:

Merchandise Pricing Percent Discount: \_\_\_\_\_%

**[Note: Section to be completed based on Contractor Proposal.]**

**6.4 Additional Consideration**

Proposers shall define any other additional merchandising, incentives, and/or considerations to be offered to University in exchange for the rights offered to Contractor herein.

**[Note: Section to be completed based on Contractor Proposal.]**

## 6.5 Exclusivity & Sponsorship Fees

[Note: Section to be completed based on Contractor Proposal.]

## 7. Team Program Accomplishment Incentives

[Note: Section to be completed based on Contractor Proposal.]

## 8. Rights of Termination

- 8.1 Termination with Cause.** Either party may terminate this Agreement, effective upon delivery of a termination notice, without prejudice to any other legal or equitable rights to which such terminating party may be entitled, if (i) the other party fails to perform a material duty or obligation under this Agreement, and that failure is not (a) cured to the satisfaction of the non-defaulting party within thirty (30) days following written notice of the failure to the defaulting party, or (b) to the extent not reasonably curable within the thirty (30) day time period, attempted to be cured within the thirty (30) day period and, thereafter, pursued diligently until cured to the satisfaction of the non-defaulting party within a reasonable time period; or (ii) any of the representations or warranties made by the other party to this Agreement prove to be untrue or inaccurate in any material respect.
- 8.2 University's Rights to Terminate.** University may immediately terminate this Agreement upon written notice to Contractor, if University determines that continued affiliation with Contractor is inconsistent with University's mission or philosophy and/or adversely impacts the reputation of University.
- 8.3 Continuing Obligations.** Expiration or termination of this Agreement for any reason will not relieve either party from its obligation to (i) perform up to the effective date of expiration or termination, or (ii) perform such obligations as may survive expiration or termination.

## 9. University/Contractor Relationship

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent contractor and is not an employer, employee, partner, joint venturer, or agent of University. Contractor will not bind nor attempt to bind University to any agreement or contract.

## 10. Warranties

- 10.1 University.** University warrants and represents that it is not a party to any agreement, contract or understanding, whether oral or written, that would prevent, limit or hinder the performance of any of its obligations under this Agreement.
- 10.2 Contractor.** Contractor warrants and represents that it is not a party to any agreement, contract or understanding, whether oral or written, that would prevent, limit, or hinder the performance of any of its obligations under this Agreement.



## **11. Confidentiality and Safeguarding of University Records; Press Releases and 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**”). However, it is expressly agreed that University will not provide to Contractor, and Contractor will never seek to access, any University Records that contain personally identifiable information regarding any individual that is not publicly available under Applicable Laws, including “directory information” of any student who has opted to prohibit the release of their “directory information” as that term is defined under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (“**FERPA**”) and its implementing regulations. 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 the National Institute of Standards and Technology and 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 and the terms of this Agreement; and (4) comply with University Rules regarding access to and use of University’s computer systems, including UTS 165 at <http://www.utsystem.edu/bor/procedures/policy/policies/uts165.html>. 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.

- 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.
- 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.
- 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 11**.
- 11.4 Press Releases.** Except when defined as part of the Work, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of University in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of University.
- 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 Section 552.002 of TPIA and Section 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.

**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.

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

## **12. Insurance; Damages**

**12.1 Insurance.** If Contractor's employees, agents, suppliers or subcontractors will be present on University's property, Contractor will maintain and cause its agents, suppliers and subcontractors (if any) to maintain the following insurance coverages for at least the specified limits:

<b><u>Coverages</u></b>	<b><u>Limits</u></b>
Workers' Compensation	Statutory Limits
Employer's Liability	\$1,000,000 per accident and employee
Commercial General Liability (including contractual liability)	\$1,000,000 per occurrence
Personal & Advertising Injury	\$1,000,000 per occurrence
Product/Completed Ops	\$1,000,000 aggregate
Business Auto Liability	\$1,000,000 combined single limit
General Aggregate	\$2,000,000 per policy limit

All policies (except Workers' Compensation) will name University, the Board, and their officers and employees as Additional Insured. A Waiver of Subrogation in favor of University and the Board and thirty (30) day notice of cancellation is required on all policies. Certificates of insurance verifying the foregoing requirements will be provided to University prior to the Effective Date of this Agreement. Contractor will endorse all policies to require insurance carriers to notify University of cancellation, termination, material change, or non-renewal relating to any insurance policy required herein.

**12.2 Damage or Injury.** Contractor will be solely responsible for any damage or injury to University's facilities, property (tangible or intangible), or personnel that results from acts or omissions of Contractor or Contractor's employees, agents, suppliers or subcontractors.

### **13. Indemnity**

**13.1 General Indemnity.** TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY AND THE UNIVERSITY OF TEXAS 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, ARISING OUT OF, CAUSED BY, OR RESULTING FROM, IN WHOLE OR IN PART, ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR, ANYONE DIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. 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.

**13.2 Intellectual Property Indemnity.** CONTRACTOR WILL AND DOES HEREBY AGREE TO 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 THIS AGREEMENT, 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 AGREES TO REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

### **14. Miscellaneous**

This Agreement, including its exhibits, attachments, schedules and addenda, constitutes the entire understanding between the parties which cannot be amended or modified except by an agreement in writing, signed by each of the parties. All previous understandings or agreements between the parties will have no further force and effect. Every provision of this Agreement is severable. If any term or provision of this Agreement is held to be illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this Agreement or any other provision. This Agreement will be governed by and construed in accordance with the laws of the State of Texas. The parties agree and consent to the exclusive jurisdiction and venue of the courts located in Hidalgo County, Texas.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the Effective Date.

**Contractor**

**University**

\_\_\_\_\_

**THE UNIVERSITY OF TEXAS AT EL PASO**

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

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

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

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

**Attached:**  
**EXHIBIT A**  
**ATTACHMENT 1**

Contractor Recognition  
Contractor Logo

**EXHIBIT B**  
**ATTACHMENT 1**

Addendum to Intercollegiate Athletic Products Agreement  
Contractor HSP

**EXHIBIT C**

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**EXHIBIT D**  
**SCHEDULE 1**

Trademark License Agreement  
Trademarks

**EXHIBIT A**  
**CONTRACTOR RECOGNITION**

**[Note: This Exhibit A is a sample of the types of recognition that University may offer to Contractor. This Exhibit A will only include the types of recognition to which University and Contractor mutually agree through the RFP process and may include the following types of recognition.]**

Subject to the terms and conditions of this Agreement, University will provide Contractor with the following recognition during each Contract Year of this Agreement:

**1. Specific Recognition**

**1.1 Official Sponsor Designation**

Contractor may incorporate the designation “an Official Sponsor of the UTEP Department of Intercollegiate Athletics” in banners, announcements, logos, products and other material used in connection with this Agreement.

**1.2 Public Address Announcements**

University will recognize Contractor as “an Official Sponsor of the UTEP Department of Intercollegiate Athletics” through the following public address announcements:

- \_\_\_\_ (\_\_\_\_) announcements at each home Football game;
- \_\_\_\_ (\_\_\_\_) announcements home Volleyball match;
- \_\_\_\_ (\_\_\_\_) announcements at each home Basketball game

**1.3 Radio and Internet Broadcast Announcements**

University will recognize Contractor as an “Official Sponsor of the UTEP Department of Intercollegiate Athletics” in certain radio and Internet broadcast announcements as more particularly described below.

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

**1.4 Contractor Logo in Print Materials**

Contractor Logo will be printed in the game day program produced by the Athletic Department for each home game/match for the Team Programs listed below. Contractor Logo means the logo set forth in Attachment 1 to this Exhibit A.

\_\_\_\_\_.

**1.5 Stadium Signage**

\_\_\_\_\_.

**1.6 Direct Mail Inserts/Email Blasts**

\_\_\_\_\_.

**1.7 Link to Contractor’s Website**

## 2. Guidelines

### 2.1 **Approval of Sponsorship Recognition Material**

All Sponsorship Recognition Material is subject to approval by University, which will not be unreasonably withheld. All Sponsorship Recognition Material must comply with Applicable Laws, Athletic Organization Rules and University Rules. All Sponsorship Recognition Material must be submitted to:

The University of Texas at El Paso  
Attention: Director of Athletics  
500 West University  
Brumbelow Building  
El Paso, TX 79968-0579  
Fax: 915-747-5162  
Email: jsenter@utep.edu

for written approval *prior to production and use*. The parties will cooperate with each other in order to assure compliance with this Section. Requests for written approval of Sponsorship Recognition Material will be in writing, accompanied by the material to be approved, and transmitted by facsimile, express mail, overnight carrier, or regular mail depending upon the expected response time. University will use reasonable efforts to respond to requests within ten (10) days after the date the request is received by University in accordance with this Section. Failure to obtain prior written approval required by this Section will be a material breach of this Agreement and will entitle University to terminate this Agreement.

2.1.1 Approval of Use of University Marks. Upon execution by Contractor and the Board of Regents of The University of Texas System (“**Board**”) of the Trademark License Agreement, attached as **EXHIBIT D** and incorporated for all purposes, Contractor may use the designated University trademarks (“**University Marks**”) subject to prior written approval as specified in the Trademark License.

### 2.2 **Inability to Broadcast or Publish.**

If University, due to public emergency or necessity, legal restrictions, labor disputes, strikes, boycotts, secondary boycotts, acts of God, (whether or not such acts of God have occurred frequently or habitually or are of a common or seasonal occurrence in the general locality of such broadcasting or publishing), or for any reason, including mechanical breakdowns beyond the control and without the fault of University, is unable to broadcast or publish Sponsorship Recognition Materials at the time specified, University will not be liable to Contractor except to the extent of allowing a pro rata reduction in the Sponsorship Payment or reasonably suitable alternate broadcast or publication arrangements.

### 2.3 **Sponsorship Recognition Material Preparation.**

2.3.1 University Obligations. University will provide broadcast time or publication space for Sponsorship Recognition Material prepared by Contractor or Contractor’s agent. Production of Sponsorship Recognition Material, supplying talent, and other services will be arranged, coordinated and paid for by Contractor and are not covered by this Agreement. University’s obligation under this Section to provide broadcast time or publication space for Sponsorship Recognition Material is conditioned upon Contractor providing University the necessary Sponsorship Recognition Material and any related services, all of which must have been approved pursuant to **Section 2.1** of this Exhibit and submitted to University no later than fourteen (14) days prior to broadcast or publication (the “**Material Due Date**”).

2.3.2 Right to Substitute Sponsorship Recognition Material for Broadcast. If University does not receive the Sponsorship Recognition Material for broadcast, previously approved as required

by **Section 2.1** of this Exhibit, by the Material Due Date, University will notify the following Company representative verbally: \_\_\_\_\_, (\_\_\_\_\_) \_\_\_\_\_, with written confirmation delivered in accordance with **Section 10** of **EXHIBIT B**. If Contractor fails to provide University with the approved Sponsorship Recognition Material at least twenty-four (24) hours after the Material Due Date, University will not be obligated to broadcast the Sponsorship Recognition Material. University's failure to broadcast the Sponsorship Recognition Material as a result of Contractor's failure to meet the Material Due Date will in no way relieve Contractor of any of its obligations and duties under this Agreement, including the obligation to pay the Sponsorship Payment in full.

2.3.3 Failure to Deliver Sponsorship Recognition Material for Print Publications. If University does not receive the Sponsorship Recognition Material for print publications, previously approved as required by **Section 2.1** of this Exhibit, by the Material Due Date or if copy corrections are submitted after that date, University will not be obligated to publish the Sponsorship Recognition Material. University's failure to publish the Sponsorship Recognition Material as a result of Contractor's failure to meet the Material Due Date will in no way relieve Contractor of any of its obligations and duties under this Agreement, including the obligation to pay the Sponsorship Payment in full.

2.3.4 Revisions to Sponsorship Recognition Material. Any revision to or rewrites of Sponsorship Recognition Material will be at the sole cost of Contractor.

2.3.5 Positions/Timing of Sponsorship Recognition Material. The specific placement or timing of Sponsorship Recognition Material in broadcasts or print publications is not guaranteed unless expressly specified in this Exhibit.

2.3.6 Handling of Sponsorship Recognition Material. University will exercise normal precautions, but will assume no liability for losses or damages to Sponsorship Recognition Material or other property furnished by Contractor in connection with this Agreement.

2.3.7 Releases and Clearances. Contractor represents and warrants that for all Sponsorship Recognition Material, Contractor has procured any and all necessary exclusive rights, clearances and permissions for Contractor's production and University's broadcast and publication of the Sponsorship Recognition Material as contemplated in this Agreement, including any and all rights, clearances and/or permissions necessary to use all locations, names, likenesses, identities, trademarks and service marks.

**ATTACHEMENT 1 TO EXHIBIT A**

**CONTRACTOR LOGO**



**EXHIBIT B**  
**ADDENDUM**  
**TO**  
**INTERCOLLEGIATE ATHLETIC PRODUCT AGREEMENT**

The following terms and conditions are incorporated into and form a part of that certain Intercollegiate Athletic Product and Sponsorship Agreement (the "**Agreement**") between [REDACTED] ("**Contractor**") and **The University of Texas at El Paso** ("**University**"), to which such terms and conditions are attached for all purposes.

1. **Tax Certification.** If Contractor is a taxable entity as defined by Chapter 171, *Texas Tax Code*, then Contractor certifies that it is not currently delinquent in the payment of any taxes due under such Chapter, 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.
2. **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under the 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 such debt or delinquency is paid in full.
3. **Texas Family Code Child Support Certification.** Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.
4. **Breach of Contract Claims.** To the extent that Chapter 2260, *Texas Government Code*, is applicable to the Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief business officer of University will examine Contractor claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties specifically agree that (i) neither the execution of the Agreement by University nor any other conduct, action or inaction of any representative of University relating to the Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit; and (ii) University has not waived its right to seek redress in the courts.
5. **Loss of Funding.** Performance by University under the Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "**Legislature**") and/or allocation of funds by the Board of Regents of The University of Texas System (the "**Board**"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate the Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.
6. **State Auditor's Office.** Contractor understands that acceptance of funds under the 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 Sections 51.9335(c), 73.115(c) and 74.008(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 in all contracts with permitted subcontractors.
7. **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://www.utep.edu/compliance/conflicts-of-interest/index.html>, University's Standards of Conduct Guide available at <https://www.utep.edu/compliance/> and applicable state ethics laws and rules available at [www.utsystem.edu/ogc/ethics](http://www.utsystem.edu/ogc/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 of Regents has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

- 8. **Board of Regents Approval:** The Agreement is not effective for values exceeding One Million Dollars (\$1,000,000) in the aggregate until approved by the Board of Regents of The University of Texas System.
- 9. **Access by Individuals with Disabilities:** Contractor represents and warrants (the "EIR Warranty") that any electronic and information resources and any associated information, documentation, and support that Contractor provides to University under the Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapters 206 and 213 of the Texas Administrative Code ("TAC"). To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR 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 Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Warranty.
- 9. **HUB Subcontracting Plan.** Contractor will use good faith efforts to subcontract the Work, Goods, and Services provided under this Agreement in accordance with Contractor' Historically Underutilized Business Subcontracting Plan (the "Contractor HSP") attached as **ATTACHMENT 1** to this **EXHIBIT B** and incorporated for all purposes. Except as specifically provided in the Contractor HSP, Contractor will not subcontract any of its duties or obligations under the Agreement, in whole or in part. The Agreement is subject to 34 TAC Section 20.285. Contractor will comply with all of its duties and obligations under 34 TAC Section 20.285. In addition to other rights and remedies, University may exercise all rights and remedies authorized by 34 TAC Section 20.285.
- 10. **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 the 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 mailed, 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 and General Services  
Kelly Hall 3rd Floor  
500 W. University Ave.  
El Paso, TX 79968-0505  
Attention: Dr. Diane N. De Hoyos  
Fax: 915-747-5932  
Email: [dndehoyos@utep.edu](mailto:dndehoyos@utep.edu)

with copy to:       The University of Texas at El Paso  
UTEP Athletics  
500 W. University Ave.  
El Paso, TX 79968-0505  
Attention: Jim Senter  
Fax: 915-747-5162  
Email: [jsenter@utep.edu](mailto:jsenter@utep.edu)

If to Contractor:     \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_  
Fax: \_\_\_\_\_

or such other person or address as may be given in writing by either party to the other in accordance with the aforesaid. Any notice sent pursuant to Section 2251.054, *Texas Government Code*, will reference Section 2251.054 in the notice.

11. **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, UNIVERSITY PROVIDES ANY AND ALL SERVICES TO SPONSOR UNDER THIS AGREEMENT "AS IS", WITHOUT WARRANTIES, GUARANTEES, CERTIFICATIONS, OR REPRESENTATIONS OF ANY KIND. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (1) UNIVERSITY EXPRESSLY AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE, (2) UNIVERSITY'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNTS PAID BY SPONSOR TO UNIVERSITY DURING THE IMMEDIATELY PRECEDING CONTIGUOUS TWELVE (12) MONTH PERIOD DURING THE TERM OF THIS AGREEMENT, AND (3) UNIVERSITY WILL NOT BE RESPONSIBLE OR LIABLE TO SPONSOR OR TO ANY PERSON OR ENTITY CLAIMING THROUGH SPONSOR FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST OR ANTICIPATED PROFITS, REVENUES, OR SAVINGS, EVEN IF UNIVERSITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
12. **External Terms.** This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor's 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.
13. **Representations and Warranties by Contractor.** Contractor represents and warrants Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization; it is duly authorized and in good standing to conduct business in the State of Texas; it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
14. **Payments.** So long as Contractor has provided University with its current and accurate Federal Tax Identification Number in writing, University will pay Contractor for goods and services in accordance with [Chapter 2251, Texas Government Code](#). University (a state agency) is exempt from Texas Sales & Use Tax on goods and services in accordance with [§151.309, Texas Tax Code](#), and [Title 34 Texas Administrative Code \(TAC\) §3.322](#).
15. **Payments by Electronic Funds Transfer.** [§51.012, Texas Education Code](#), authorizes University to make payments through electronic funds transfer methods. Contractor agrees to accept payments from University through those methods, including the automated clearing house system (ACH). Contractor agrees to provide Contractor's banking information to University in writing on Contractor letterhead signed by an authorized representative of Contractor. Prior to the first payment, University will confirm Contractor's banking information. Changes to Contractor'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 Contractor.
16. **Contractor Certification regarding Boycotting Israel.** Pursuant to [Chapter 2271, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
17. **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.

18. **Contractor Verification Regarding Discrimination Against Firearm Entities or Trade Associations.** Pursuant to [Chapter 2274, Texas Government Code](#) (enacted by [SB 19, 87<sup>th</sup> Texas Legislature, Regular Session \(2021\)](#)), Contractor verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
19. **Contractor Verification Regarding Boycotting Energy Companies.** Pursuant to [Chapter 2274, Texas Government Code](#) (enacted by [SB 13, 87<sup>th</sup> Texas Legislature, Regular Session \(2021\)](#)), Contractor verifies (1) it does not boycott energy companies and (2) it will not boycott energy companies during the term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
20. **Contractor Certification Regarding COVID-19 Vaccination.** Pursuant to [Section 161.0085, Texas Health and Safety Code](#) (enacted by [SB 968, 87<sup>th</sup> Texas Legislature, Regular Session \(2021\)](#)), Contractor certifies that it does not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Contractor's business. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
21. **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 in [1 TAC Chapter 213](#) and [1 TAC §206.70](#) (ref. [Subchapter M, Chapter 2054, Texas Government Code](#)). To the extent Contractor becomes aware the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants it will, at no cost to 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. 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.
22. **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 its subject matter. This Agreement and each of its provisions will be binding upon the parties, and may not be waived, modified, amended or altered, except by a writing signed by University and Contractor.
23. **Force Majeure.** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("**force majeure occurrence**"). Provided, however, in the event of a force majeure occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that University may continue to provide services during the occurrence.
24. **Limitations.** THE PARTIES ARE AWARE THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS (**LIMITATIONS**) ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THIS AGREEMENT, INCLUDING TERMS AND CONDITIONS RELATING TO LIENS ON 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, AND TERMS AND CONDITIONS RELATED TO LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

25. **Cybersecurity Training Program.** If Contractor and/or its subcontractors, officers, or employees will have an account on a state computer system (for example, an account to an application, database, or network), then pursuant to Section 2054.5192, Texas Government Code, Contractor and its subcontractors, officers, and employees must complete a cybersecurity training program certified under [Section 2054.519, Texas Government Code](#) and selected by the University. The cybersecurity training program must be completed by Contractor and its subcontractors, officers, and employees during the term and any renewal period of this Agreement. Contractor shall verify completion of the program to the University.
26. **Texas Public Information Act - Subchapter J Requirements.** Pursuant to [Section 552.372 of the Texas Government Code](#), Contractor must:
- (1) preserve all contracting information (ref. [Section 552.003\(1-a\), Texas Government Code](#)) related to this Agreement as provided by the records retention requirements applicable to University for the duration of this Agreement;
  - (2) promptly provide to the University any contracting information related to this Agreement that is in the custody or possession of Contractor on request of the University; and
  - (3) on completion of this Agreement, either:
    - (A) provide at no cost to the University all contracting information related to this Agreement that is in the custody or possession of Contractor, or
    - (B) preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to the University.

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

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

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

27. **Contractor Compliance and Warranty Relating to Cloud Computing Services.** The Texas Department of Information Resources (DIR) has established and implemented a state risk and authorization management program providing a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services (CCSs) that process (including storing or transmitting) the data of Texas state agencies (TX-RAMP). The requirements of TX-RAMP include [Section 2054.0593 of the Texas Government Code, Title 1, Rule 202.77 of the Texas Administrative Code](#), and DIR's TX-RAMP Manual.

Contractor represents and warrants that throughout the term of this Agreement it will comply with the requirements of TX-RAMP and that all CCSs subject to TX-RAMP will comply with the requirements of and be certified under TX-RAMP. The CCSs subject to TX-RAMP include those provided by Contractor either through this Agreement or in furtherance of this Agreement, including CCSs provided through

Contractor's subcontractors or third-party providers. A CCS used in furtherance of this Agreement includes a CCS that Contractor or its subcontractors or third-party providers use to process (including storing or transmitting) University data, even if the University itself does not access or use that CCS. Contractor's subcontractors or third-party providers responsible solely for servicing or supporting a CCS provided by Contractor or another Contractor subcontractor or third-party provider shall not be required to provide evidence of TX-RAMP certification; instead, Contractor will be responsible for providing such evidence. The list of current TX-RAMP certified CCSs and DIR's TX-RAMP Manual are set forth at <https://dir.texas.gov/txramp>.

Contractor understands and agrees that the University may not enter into or renew a contract with Contractor to purchase CCSs that are subject to TX-RAMP unless Contractor demonstrates compliance with TX-RAMP requirements. Contractor acknowledges this Agreement may be terminated and payment withheld if Contractor does not comply with TX-RAMP or this Section.

- 28. **Data Security Controls.** Pursuant to [Section 2054.138 of the Texas Government Code](#), as Contractor will be authorized to access, transmit, use, or store data for the University, Contractor is required to meet the security controls the University determines are proportionate with the University's risk under this Agreement based on the sensitivity of the University's data. Contractor must periodically provide to the University evidence that Contractor meets the security controls required under this Agreement.
- 29. **Addendum Controlling.** In the event there is a conflict between the terms and conditions of the Agreement and this Addendum, this Addendum will control.

**Contractor** \_\_\_\_\_

**The University of Texas at El Paso**

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

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

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

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

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

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

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

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

**ATTACHMENT 1 TO EXHIBIT B**

**CONTRACTOR HSP**

**EXHIBIT C**

Intentionally left blank



**EXHIBIT D**

**TO ATHLETIC PRODUCT AGREEMENT**

**Trademark License Agreement**

This Trademark License Agreement (“**License Agreement**”), dated as of September 1, 2022, is by and between THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM, an agency of the State of Texas (the “**Board**”), for the use and benefit of THE UNIVERSITY OF TEXAS AT EL PASO, an agency of the State of Texas (“**University**”), and \_\_\_\_\_ a \_\_\_\_\_ company (the “**Licensee**”).

WHEREAS Licensee and University have entered into that certain Athletic Product and Sponsorship Agreement dated effective as of \_\_\_\_\_, 2022 (hereafter “**Main Agreement**”);

WHEREAS, Board is the owner of and has the right to license the Marks (as defined below); and

WHEREAS, Licensee wishes to use the Marks in the Territory (as defined below) in connection with the Licensed Materials (as defined below) and Board is willing to grant to Licensee a license to use the Marks on the terms and conditions set out in this License Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Definitions. For purposes of this License Agreement, the following terms shall have the following meanings:

“**Action**” has the meaning set forth in **Section 7.1**.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Applicable Laws**” means all applicable national, federal, state, and municipal, laws, regulations, codes, ordinances and orders.

“**Athletic Organization Rules**” means the constitution, bylaws, rules, policies and procedures of the National Collegiate Athletic Association, University’s intercollegiate athletic conference, and any other athletic organization with jurisdiction.

“**Brand Manual**” means University’s brand identity guidelines prescribing the permitted form and manner in which the Marks may be used, which are located at <https://www.utep.edu/university-communications/Files/docs/UTEP-GRAPHIC-IDENTITY-GUIDE.pdf>.

“**Board**” has the meaning set forth in the preamble.

“**Confidential Information**” has the meaning set forth in **Section 0**.

“**Effective Date**” means the date of this License Agreement as set forth in the preamble.

“**Licensed Materials**” means anything Licensee makes, uses, sells, offers for sale, commissions, or directs the use of, which bears, uses, or otherwise displays any of the Marks. Licensed Materials include:

- \_\_\_\_\_
- \_\_\_\_\_; and
- any other materials, products or services that may be agreed upon in writing by Board and Licensee from time to time

“**License Period**” means that period beginning **September 1, 2022**, and continuing through the remainder of the Term.

“**Licensee**” has the meaning set forth in the preamble.

“**Losses**” means losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Marks**” means the trademarks and service marks set forth on **Schedule 1**, whether registered or unregistered, including the listed registrations and applications and any registrations, which may be granted pursuant to such applications.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

“**Term**” has the meaning given to it in **Section 0**.

“**Territory**” means the United States of America.

“**University Rules**” means: (i) the *Rules and Regulations* of the Board at <http://www.utsystem.edu/bor/rules/>; (ii) the policies of The University of Texas System at <http://www.utsystem.edu/bor/procedures/policy/>; and (iii) the institutional rules and regulations and policies of University at <https://www.utep.edu/vpba/hoop/>.

License.

License Grant. Subject to the terms and conditions of this License Agreement and pursuant to the Main Agreement, Board hereby grants to Licensee during the License Period a non-exclusive, non-transferable (except as provided in **Section 0**), non-sublicenseable license to use the Marks on or in connection with the promotion, advertising, and distribution of Licensed Materials in the **Territory**.

Territorial Restrictions. Licensee shall not:

undertake advertising of Licensed Materials in, or specifically aimed at, any country outside the Territory;

actively seek orders for Licensed Materials from outside the Territory; or

establish any branch dealing in Licensed Materials or maintain any distribution center for Licensed Materials outside the Territory.

Business Names and Domain Names. Without Board's prior written consent, Licensee shall not use the Marks (or any Marks confusingly similar thereto), individually or in combination, as part of:

its corporate or trade name; or

any domain name.

Sublicensing. Licensee shall not grant sublicenses under this License Agreement.

Reservation of Rights. Rights granted to Licensee under this License Agreement are limited solely to the License Period. Board expressly reserves all rights not expressly granted to Licensee under this Agreement.

Use of the Marks.

University-Licensed Products. This License will not entitle Licensee to use a Mark for any purpose other than performing its obligations under the License Agreement; therefore, if Licensee desires to use one or more of the Marks on any product to be sold or otherwise distributed, then such use must be authorized pursuant to a separate agreement to license the Marks issued by Collegiate Licensing Company (CLC) or a successor identified by University. When using the Marks under this License, Licensee will comply with all Applicable Laws pertaining to trademarks, including, without limitation, compliance with marking requirements. Licensee shall comply strictly with the directions of Board regarding the form and manner of the application of the Marks, including the directions contained in the Brand Manual and the requirements of **Section 3.2**.

Licensee must obtain prior approval from Director (defined below) for the use of any of the Marks (i) on any products, (ii) for any services, (iii) in any form of advertising or other promotion, and (iv) in any advertising or promotional copy or graphics to be used by Licensee in any media, including, without limitation, a public address announcement or other audio or video broadcast. Director's approval under this **Section 3.2** will not be unreasonably withheld, conditioned or delayed; provided, however, that will have the right, in his or her sole discretion, to decline to approve any use of Marks on any products, for any service, or in copy or graphics that (i) is in violation of any Applicable Laws, Athletic Organization Rules, or University Rules or (ii) Director or University Representatives considers to be misleading or offensive. Requests for approvals will be submitted to:

Craig Westemeier  
Sr. Associate Athletics Director, Brand, Trademarks & Licensing (“**Director**”)  
The University of Texas at Austin  
P.O. Box 7399  
Austin, Texas 78713  
512-475-7923  
512-232-7080 fax  
[trademark@athletics.utexas.edu](mailto:trademark@athletics.utexas.edu)  
or  
[cw@utexas.edu](mailto:cw@utexas.edu)

No Other Marks. Apart from the Marks, no other trademark or logo may be affixed to, or used in connection with, the Licensed Materials, except that Licensee may use its trade name on packaging, advertising and promotional materials for the Licensed Materials.

Trademarks Notices. Licensee shall ensure that all Licensed Materials sold by Licensee and all related quotations, specifications and descriptive literature, and all other materials carrying the Marks, be marked with the appropriate trademark notices in accordance with Board’s instructions.

Ownership and Registration.

Acknowledgement of Ownership. Licensee acknowledges that Board and its Affiliates are the owners of the Marks throughout the world. Any goodwill derived from the use by Licensee of the Marks shall inure to the benefit of Board. If Licensee acquires any rights in any of the Marks, by operation of law, or otherwise, such rights shall be deemed and are hereby irrevocably assigned to Board without further action by any of the parties. Licensee agrees not to dispute or challenge or assist any Person in disputing or challenging Board’s rights in and to any of the Marks or the validity of any of the Marks.

Licensee Restrictions. Licensee agrees that it shall not, during the Term or thereafter, directly or indirectly:

do, omit to do, or permit to be done, any act which will or may dilute the Marks or tarnish or bring into disrepute the reputation of or goodwill associated with the Marks or Board or which will or may invalidate or jeopardize any registration of the Marks; or

apply for, or obtain, or assist any Person in applying for or obtaining any registration of the Marks, or any trademarks, service marks, trade name or other indicia confusingly similar to the Marks in any country.

Maintenance of Registrations. Board shall at expense take all reasonable steps to maintain the existing registrations of the Marks and prosecute to registration any pending applications. Licensee shall provide, at the request of Board and at Licensee’s expense, all necessary assistance with such maintenance and prosecution.

No Encumbrances. Licensee shall not grant or attempt to grant a security interest in, or otherwise encumber, the Marks or record any such security interest or encumbrance against any application or registration regarding the Marks in the United States Patent and Trademarks Office or elsewhere.

Quality Control.

Acknowledgement. Licensee acknowledges and is familiar with the high standards, quality, style and image of Board, and Licensee shall, at all times, conduct its business and use the Marks in a manner consistent with these standards, quality, style and image.

Compliance With Board Specifications. Licensee shall comply with the specifications, standards and directions relating to the Licensed Materials, including their design, manufacture, promotion, packaging, distribution and sale as notified in writing by Board from time to time.

Compliance With Laws. In exercising its rights under this License Agreement, Licensee shall comply with, and shall ensure that all Licensed Material complies with, all Applicable Laws. Licensee shall promptly provide Board with copies of all communications, relating to the Marks or the Licensed Materials, with any governmental, regulatory or industry authority.

Submission of Materials for Approval. Licensee shall, at its own expense, prior to any use of the Marks and thereafter at any time at Board's request) supply a reasonable number of production samples of the Licensed Materials to Board for approval as per the requirements of **Section 3.2**, which may be given or withheld in Board's sole discretion; provided that such approval will not be unreasonably withheld. In the event that Board rejects any sample, it shall use reasonable efforts to give written notice of such rejection to Licensee within thirty (30) days of receipt by Board of the sample. Licensee shall immediately cease distribution of such Licensed Materials and shall not recommence distribution until Board confirms in writing that it may do so. In the absence of a written notice of rejection, within thirty (30) days of receipt of a sample, the sample shall be deemed to have been disapproved by Board.

Complaints. Licensee shall promptly provide Board with details of any complaints it has received relating to the Licensed Materials together with reports on the manner in which such complaints are being, or have been, dealt with and shall comply with any reasonable directions given by Board in respect thereof.

Marketing, Advertising and Promotion.

Marketing and Advertising Requirements. Licensee shall ensure that any of its marketing, promotion, or distribution of the Marks or Licensed Materials in no way reduces or diminishes the reputation, image and prestige of the Marks (including, without limitation, the Licensed Materials).

Approval of Marketing and Advertising Materials. Licensee shall send to Board for its prior written approval the text and layout of all proposed advertisements and marketing and promotional material relating to the Licensed Materials as per the requirements of **Section 3.2**, which may be given or withheld in Board's sole discretion. In the event that Board disapproves of such material, it shall give written notice of such disapproval to Licensee within twenty (20) days of receipt by Board of the material. In the absence of a written notice of disapproval within twenty (20) days of receipt of such materials, the

materials shall be deemed to have been disapproved by Board. Licensee shall not use any material in the advertising, marketing or promotion of Licensed Products which has not been approved by Board.

Cost of Marketing and Advertising. Licensee shall bear the costs of all advertising, Marketing and promotion for the Licensed Products and Services in the Territory.

Celebrity Endorsement. Licensee shall not use a personality or celebrity to endorse or promote any Licensed Materials without the prior written approval of Board.

Protection of the Marks.

Notification. Licensee shall immediately notify Board in writing giving reasonable detail if any of the following matters come to its attention:

any actual, suspected or threatened infringement of the Marks;

any actual, suspected or threatened claim that the Marks is invalid;

any actual, suspected or threatened opposition to the Marks;

any actual, suspected or threatened claim that use of the Marks infringes the rights of any third party;

any person applies for, or is granted, a registered trademarks by reason of which that person may be, or has been, granted rights which conflict with any of the rights granted to Licensee under this License Agreement; or

any other actual, suspected or threatened claim to which the Marks may be subject.

Actions. With respect to any of the matters listed in **Section 0**:

Board shall decide, in its sole discretion, what action if any to take;

Board shall have exclusive control over, and conduct of, all claims and proceedings;

Licensee shall provide Board with all assistance that Board may reasonably require in the conduct of any claims or proceedings; and

Board shall bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for its own account.

Royalties and Payment Terms.

Royalties. The Board licenses the Marks to Licensee royalty free solely to complete its obligations under the Main Agreement.

Confidentiality.

Licensee Obligations. Licensee agrees:

not to disclose or otherwise make available to any third party any information that is treated as confidential by Board, including, without limitation, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, the “**Confidential Information**”) without the prior written consent of Board; *provided, however,* that Licensee may disclose the Confidential Information to its officers, employees, consultants and legal advisors who have a “need to know”, who have been apprised of this restriction and who are themselves bound by nondisclosure restrictions at least as restrictive as those set forth in this **Section 0**;

to use the Confidential Information as permitted under this License Agreement; and

to immediately notify Board in the event it becomes aware of any loss or disclosure of any Confidential Information.

Exceptions. Confidential Information shall not include information that:

is already known to Licensee without restriction on use or disclosure prior to receipt of such information from Board;

is or becomes generally known by the public other than by breach of this License Agreement by, or other wrongful act of, Board;

is received by Licensee from a third party who is not under any obligation to Board to maintain the confidentiality of such information; or

is required to be disclosed by Applicable Law, including without limitation, pursuant to the terms of a court order; *provided, that* Licensee has given Board prior written notice of such disclosure and an opportunity to contest such disclosure.

It shall be the obligation of Licensee to prove that such an exception to the definition of Confidential Information exists.

Representations and Warranties.

Mutual Representations and Warranties. Each party represents and warrants to the other party that:

it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering;

(i) it has the full right, power and authority to enter into this License Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder, and (ii) the execution of this License Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and

when executed and delivered by such party, this License Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

Disclaimer of Representations and Warranties. Nothing in this License Agreement shall constitute any representation or warranty by Board that:

any of the Marks are valid;

any of the Marks (if an application) shall proceed to grant or, if granted, shall be valid; or

the exercise by Licensee of rights granted under this License Agreement will not infringe the rights of any person.

Exclusion of Consequential and Other Indirect Damages. To the fullest extent permitted by law, Board shall not be liable to Licensee for any consequential, incidental, indirect, exemplary, special or punitive damages whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damage was foreseeable and whether or not Licensee has been advised of the possibility of such damages. NOTWITHSTANDING ANY PROVISION IN THIS LICENSE AGREEMENT TO THE CONTRARY, LICENSEE UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT NEITHER BOARD NOR UNIVERSITY SHALL BE REQUIRED TO PERFORM ANY ACT OR TO REFRAIN FROM ANY ACT IF THAT PERFORMANCE OR NON-PERFORMANCE WOULD CONSTITUTE A VIOLATION OF THE CONSTITUTION OR LAWS OF THE STATE OF TEXAS. No provision in this License Agreement shall constitute nor is it intended to constitute a waiver of the Board of Regents of The University of Texas', The University of Texas System's, The University of Texas at El Paso, or the State of Texas' sovereign immunity to suit.

Indemnity.

Indemnity. Licensee shall indemnify, defend and hold harmless Board against all Losses arising out of or resulting from any third party claim, suit, action or proceeding (each, an "**Action**") related to or arising out of: (a) the breach of this License Agreement by Licensee, and (b) Licensee's exercise of its rights granted under this License Agreement, including but not limited to any product liability claim or third party intellectual property rights infringement claim relating to Licensed Materials manufactured, supplied or put into use by Licensee..

Indemnification Procedures. Licensee shall promptly notify the Board in writing of any Action and cooperate with Board at the Licensee's sole cost and expense. Licensee shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Licensee's sole cost and expense. Licensee shall not settle any Action in a manner that adversely affects the rights of the Board without the Board's prior written consent. The Board's failure to perform any obligations under this **Section 0** shall not relieve the Licensee of its obligations under this **Section 0** except to the extent that Licensee can demonstrate that it has been materially prejudiced as a result of such failure. The Board may participate in and observe the proceedings at its own cost and expense.



Assignment. Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this License Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Board's prior written consent. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Licensee (regardless of whether Licensee is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this License Agreement for which Board's prior written consent is required. No delegation or other transfer will relieve Licensee of any of its obligations or performance under this License Agreement. Any purported assignment, delegation or transfer in violation of this **Section 0** is void. Board may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this License Agreement without Licensee's consent. This License Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

Term and Termination.

Term. This License Agreement shall commence as of the Effective Date and, unless terminated earlier in accordance with **Sections 13.2 0** or **13.3**, shall remain in force until termination or expiration of the Main Agreement (the "**Term**"). Notwithstanding the Term, the License Period does not begin until June 1, 2018, and will thereafter continue through the remainder of the Term.

Termination with Termination of the Main Agreement. This License Agreement shall terminate immediately upon termination of the Main Agreement.

Termination for Cause. Board shall have the right to terminate this License Agreement immediately by giving written notice to Licensee if:

Licensee breaches this License Agreement and (if such breach is curable) fails to cure such breach within 14 days of being notified in writing to do so;

(i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven business days or is not dismissed or vacated within 45 days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business;

Licensee challenges the validity or Board's ownership of the Marks; or

there is a change in control of Licensee.

Post-termination Rights and Obligations.

Effect of Termination. On expiration or termination of this License Agreement for any reason and subject to any express provisions set out elsewhere in this License Agreement:

all rights and licenses granted pursuant to this License Agreement shall cease;

Licensee shall cease all use of the Marks;

Licensee shall cooperate with Board in the cancellation of any licenses recorded pursuant to this License Agreement and shall execute such documents and do all acts and things as may be necessary to effect such cancellation;

Licensee shall promptly return to Board, or, at Board's option, destroy, at Licensee's expense, all records and copies of technical and promotional material in its possession relating to the Licensed Materials, and of any Confidential Information of Board and all copies thereof; and

within thirty (30) days after the date of expiration or termination, Licensee shall promptly deliver to Board or any other person designated by Board, or at Board's option, destroy, at Licensee's expense, all Licensed Materials.

NOT UTILIZED.

Surviving Rights. Any rights or obligations of the parties in this License Agreement which, by their nature, should survive termination or expiration of this License Agreement will survive any such termination or expiration, including the rights and obligation set forth in this **Section 0**, and in **Section 0, Section 0, Section 0, Section 0, Section 0, and Section 0.**

Miscellaneous.

Further Assurances. Each party shall, upon the reasonable request, and at the sole cost and expense, of the other party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this License Agreement.

Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this License Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

Public Announcements. Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this License Agreement, or, unless expressly permitted under this License Agreement, otherwise use the other party's trademark, service mark, trade names, logos, symbols or brand names, in each case, without the prior written consent of the other party.

Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; (d) when received by the addressee if sent by e-mail; or (e) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this Section 0.

**Notice to Board**

Director Brand, Trademarks and Licensing  
403 DeLoss Dodds Way  
Austin Texas 78712  
or  
PO Box 7399  
Austin, Texas 78713-7399  
Email: [CW@UTEXAS.EDU](mailto:CW@UTEXAS.EDU)

With a Copy to:

The University of Texas at El Paso  
Purchasing & General Services  
500 West University Avenue, Kelly Hall 3rd Floor  
Fax: 915-747-5932  
Attention: Michael Lau  
Contractor Administration Director  
Email: [mmlau@utep.edu](mailto:mmlau@utep.edu)

and copy to:

The University of Texas at El Paso  
Purchasing & General Services  
500 West University Avenue, Kelly Hall 3rd Floor  
Fax: 915-747-5932  
Email: [dndehoyos@utep.edu](mailto:dndehoyos@utep.edu)  
Attention: Dr. Diane N. De Hoyos  
Assistant Associate Vice President Purchasing & General Services

**Notice to Company:**

\_\_\_\_\_  
Address: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax: \_\_\_\_\_;  
Email: \_\_\_\_\_

Notices will be effective on the date received. The person or persons to be notified or the address for notification may be changed by giving notice as provided in this Section.

Interpretation. For purposes of this License Agreement, (a) the words “include”, “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein”, “hereof”, “hereby”, “hereto” and “hereunder” refer to this License Agreement as a whole. Unless the context otherwise requires, references herein: (i) to Sections, Schedules and Exhibits refer to the Sections of, and Schedules and Exhibits attached to, this License Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by

the provisions thereof; and (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This License Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this License Agreement to the same extent as if they were set forth verbatim herein.

Entire Agreement. This License Agreement, together with all Schedules and Exhibits and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this License Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

No Third-Party Beneficiaries. This License Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this License Agreement.

Headings. The headings in this License Agreement are for reference only and shall not affect the interpretation of this License Agreement.

Amendment and Modification; Waiver. This License Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this License Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this License Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Severability. If any term or provision of this License Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this License Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this License Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Governing Law; Submission to Jurisdiction. This License Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Texas.. Any legal suit, action or proceeding arising out of or related to this License Agreement shall be instituted in the Federal District Court, Western District of Texas, Austin Division located in Austin Texas or the courts of the State of Texas located in the city of Austin and County of Travis, and each party irrevocably submits to

the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

Equitable Relief. Licensee acknowledges that a breach by Licensee of this License Agreement may cause Board irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, Board will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which Board may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this License Agreement to the contrary.

Counterparts. This License Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this License Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this License Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the date first above written.

**DATE EXECUTED:**

\_\_\_\_\_, 2022

**LICENSEE:**

\_\_\_\_\_

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

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

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

**BOARD/UNIVERSITY:**

\_\_\_\_\_, 2022

BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS  
SYSTEM FOR THE USE AND BENEFIT OF THE UNIVERSITY OF  
TEXAS AT EL PASO

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

Name: Dan Sharphorn

Title: Vice Chancellor and General Counsel  
The University of Texas System

**Approved as to content:**

\_\_\_\_\_, 2022

THE UNIVERSITY OF TEXAS AT EL PASO

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

Name: Mark McGurk

Title: Vice President for Business Affairs

**SCHEDULE 1 - EXHIBIT D**  
**TRADEMARKS**  
**LICENSED PRODUCTS AND SERVICES**

[HTTPS://WWW.UTEP.EDU/UNIVERSITY-COMMUNICATIONS/ FILES/DOCS/UTEP-GRAPHIC-IDENTITY-GUIDE.PDF](https://www.utep.edu/university-communications/files/docs/utep-graphic-identity-guide.pdf)

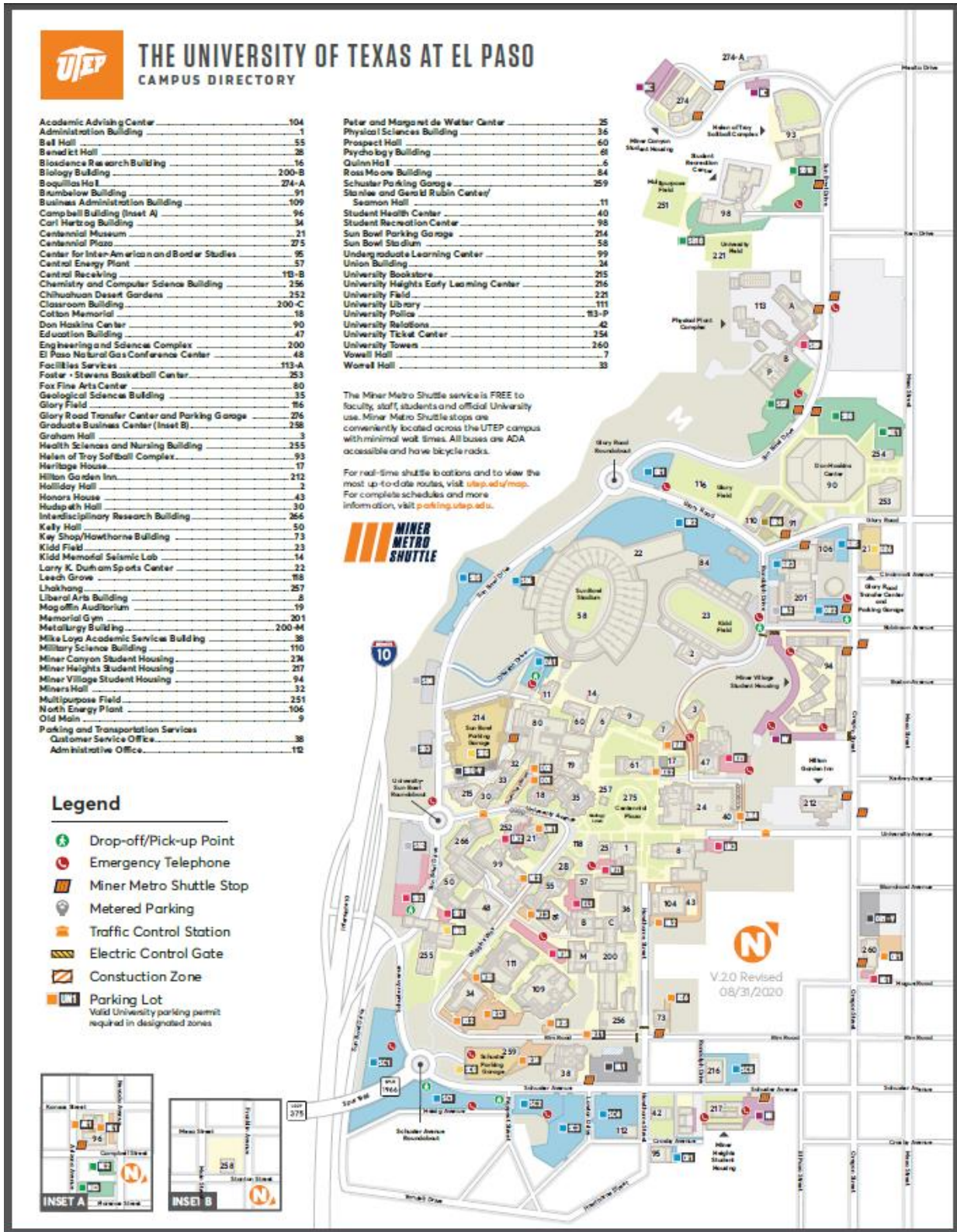
**APPENDIX THREE**  
**HUB SUBCONTRACTING PLAN**

[http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanForm\\_AllDocs.pdf](http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanForm_AllDocs.pdf)



# APPENDIX FOUR CAMPUS MAP

<https://www.utep.edu/map/>



## APPENDIX FIVE

### ACCESS BY INDIVIDUALS WITH DISABILITIES

**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 in [1 TAC Chapter 213](#) and [1 TAC §206.70](#) (ref. [Subchapter M, Chapter 2054, Texas Government Code](#)). To the extent Contractor becomes aware the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants it will, at no cost to 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. 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. Contractor will provide all assistance and cooperation necessary for performance and documentation of accessibility testing, planning, and execution criteria conducted by University or University's third party testing resources, as required by [1 TAC §213.38\(g\)](#).

## 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.

## APPENDIX EIGHT

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

This is a sample Texas Ethics Commission's FORM 1295 – CERTIFICATE OF INTERESTED PARTIES. If not exempt under [Section 2252.908\(c\), Government Code](#), Contractor must use the Texas Ethics Commission electronic filing web page (at [https://www.ethics.state.tx.us/resources/FAQs/FAQ\\_Form1295.php](https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php)) to complete the most current Certificate of Interested Parties form and submit the form as instructed to the Texas Ethics Commission and University. **The Certificate of Interested Parties will be submitted only by Contractor to University with the signed Agreement.**



**CERTIFICATE OF INTERESTED PARTIES**

**FORM 1295**

Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.	<b>OFFICE USE ONLY</b>
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.	Must file online at <a href="http://www.ethics.state.tx.us/File">www.ethics.state.tx.us/File</a>
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.	

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address is \_\_\_\_\_ (street) \_\_\_\_\_ (city) \_\_\_\_\_ (state) \_\_\_\_\_ (zip code) \_\_\_\_\_ (country).

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(month) (year)

\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)

**ADD ADDITIONAL PAGES AS NECESSARY**