

REQUEST FOR PROPOSALS

by

THE UNIVERSITY OF TEXAS AT EL PASO

for

**Lease of Space for the Operation of a Campus Bookstore at
The University of Texas at El Paso**

RFP No. 724-1606-JBT

Deadline for Submittal of Proposals: Tuesday April 11, 2017 at 3:00 PM MST

Issued: Thursday, March 9, 2017

REQUEST FOR PROPOSAL

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SECTION 1
BACKGROUND AND OBJECTIVE

1.1 Description of University

The fundamental mission of the University of Texas at El Paso (“**University**”) is to provide quality higher education to the citizens of El Paso, west Texas, and northern Mexico. As an academic institution of The University of Texas System, the University is mandated to be an institution of the first class for the education of all qualified individuals who seek admission. The faculty and administration are committed to the transmission of knowledge through instruction of students, the advancement of knowledge through research and publication, and the application of knowledge through service. The University provides high-quality programs of study leading to bachelor, master, and doctoral degrees to a diverse population. The University is becoming increasingly known for the quality of faculty research and is committed to augmenting support for the efforts of the faculty. In the area of service, the University offers diverse programs for young people; continuing education; extensive programs in art, music and drama; lectures; athletics; and numerous other services.

The University has an enrollment of more than 23,922 students in 72 degree-granting programs at the undergraduate level, 74 master's degree programs, and 22 doctoral programs. The University has approximately 3,600 employees. The majority of the students commute to campus, with less than 1.5 percent of students residing in campus housing. The University is comprised of 75 buildings on a 360-acre campus. Most of the campus is contiguous. The School of Pharmacy is located approximately 1.5 miles from the main campus. There is the possibility that other facilities that are physically separate from the main campus will exist in the future.

1.2 The University Bookstore is currently operated and managed by Follett Higher Education Group, Inc. The University Bookstore (“**Main Bookstore**”) is located on the west side of the University campus, at the northeast corner of University Avenue and Sun Bowl Drive. The address of this location is 2201 Sun Bowl Drive, El Paso, Texas 79902. There are outlet locations inside the Sun Bowl Stadium and the Don Haskins Center which sell school-branded apparel during University athletic events (“**Outlet Locations**”).

The Main Bookstore contains approximately 35,521 of gross square footage and a net rentable square footage of approximately 20,000. The net rentable square footage excludes the lobby area and space reserved for a food venue operated by the University’s food service operator. The Sun Bowl outlet location contains approximately 1,632 net rentable square feet and the Don Haskins Center outlet location contains approximately 168 net rentable square feet.

The gross annual revenue for the last three fiscal years for the combined bookstore and sundries operations are as follows:

September 1, 2012 through August 31 2013:	\$6,047,967.11
September 1, 2013 through August 31 2014:	\$6,185,042.89
September 1, 2014 through August 31 2015:	\$6,417,095.58

UNIVERSITY MAKES NO REPRESENTATIONS AS TO THE SUITABILITY OF ANY OF THE PROPOSED PREMISES FOR THE RESPONDENT’S PURPOSES. THE UNIVERSITY MAKES NO REPRESENTATION OR GUARANTY, WRITTEN OR ORAL, THAT ANY PARTICULAR VOLUME OR SCOPE OF GOODS AND SERVICES WILL ACTUALLY BE REQUIRED OR PURCHASED BY THE UNIVERSITY’S COMMUNITY FROM ANY OF THE PROPOSED PREMISES. THE UNIVERSITY MAKES NO REPRESENTATION OR COMMITMENT, WRITTEN OR ORAL, THAT THE UNIVERSITY WILL USE OR PURCHASE ANY GOODS AND SERVICES FROM ANY OF THE PROPOSED PREMISES AND NONE SHOULD BE IMPLIED OR ASSUMED.

The University enrollment figures for the last five years are indicated below:

2011: 22,640
2012: 22,749
2013: 23,003
2014: 23,079
2015: 23,397

The Main Bookstore currently operates under the following schedule:

Monday - Friday	8:00 a.m. to 5:00 p.m.
Saturday	10:00 a.m. to 2:00 p.m.
Sunday	Closed

The Outlet Locations operate at various times, usually when an event is scheduled at that venue.

1.3 Objective of this Request for Proposal.

The University desires to lease space on its campus in El Paso, Texas (“**Campus**”) for the operation a bookstore that sells, textbooks, trade books, school supplies, computer and/or computer supplies, medical supplies, apparel and clothing, school spirit merchandise, and other goods of a nature commonly sold at stores located on institutions of higher education. The store shall be open to both the University campus and the general public (collectively, the “**University’s Community**”). Through this Request for Proposal (“**RFP**”), the University is seeking competitive sealed proposals from qualified vendors for the lease of space for the installation and operation of a bookstore at the locations specified in Section 1.2.

In awarding the lease, the University is willing to consider proposals tailored to a combination of e-commerce and traditional on-site store operations. Respondents should indicate whether reduced physical space requirements are desired for such a combined operation model.

The University’s goals in this RFP are to:

- 1.3.1 Select from the vendors responding to this RFP one or more qualified Respondents (hereafter called “**Respondent**”, whether one or more) that will provide the University’s Community the best possible combination of quality merchandise, customer service, and pricing for textbooks and University-branded apparel. The successful Respondent, if any, selected by University through this RFP will be the Respondent that submits a proposal on or before the Submittal Deadline that is the most advantageous to University. The successful Respondent is referred to as “**Contractor**.”
- 1.3.2 Maximize the financial return to the University for the Respondent’s use of University space needed to operate the bookstore.
- 1.3.3 Maximize capital improvements to University store space.
- 1.3.4 In return for qualified sponsorship recognition as defined in the *Internal Revenue Code and Treasury Regulations*, seek sponsorship support that may be in the form of textbook scholarships or financial support of non-athletic events hosted by the University.
- 1.3.5 Encourage the use of alternate sales and delivery modes, including e-commerce, for textbooks and other goods, particularly to the extent such business models are efficient in the use of on-campus space and provide goods at favorable prices.
- 1.3.6 License its trademarks to the Contractor. University will provide approved logos and artwork. UTEP will provide the form of such agreement.

- 1.3.7 Offer the opportunity for the successful Respondent(s) to integrate with the University's online purchasing system, SciQuest, through which University may make purchases from the successful Respondent.
- 1.3.8 Enter into an agreement ("**Agreement**") with each selected Respondent to lease the use of space on each Campus for the operation of the store for an initial term of seven (7) years, with the University having the right to renew the Agreement for up to three (3) additional periods of one (1) year each. The Agreement will, in the sole discretion of the University, be on substantially the terms and conditions attached as **Exhibit B**; provided however, that University recognizes that while this RFP contemplates a combined bookstore and sundries store operation, the final agreement may allow for severance of the bookstore operations from the sundries store.
- 1.3.9 In accordance with the policies of The University of Texas System, University requires that the compensation structure under any agreements resulting from this RFP not include a payment based on a percentage royalty directly tied to the sales of Academic Materials. "**Academic Materials**" means any and all printed, digital, compiled or computer-generated educational materials, including books, whether sold or rented, that a student is required or recommended to use in connection with an educational course offered by University on the Campus

1.4 Location Offered Under this RFP.

The University desires that the stores be located at the locations indicated on **Exhibit A** to this RFP. The Main Bookstore location excludes the first floor lobby and food service areas.

1.5 No Guaranty of Award Under RFP

The University makes no warranty or guarantee that an award will be made as a result of this RFP. The 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 proposed form of Agreement when the University deems such to be in the University's best interest.

1.6 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:

- 1.6.1 **Beverage Sales.** Exclusive beverage vending and sponsorship agreement with Coca-Cola Refreshments, which will expire on August 31, 2018.
- 1.6.2 **Office Supplies.** Non-exclusive contracts with El Paso Office Products and Pencil Cup as on-line vendors for University's office supply purchase program.
- 1.6.3 **Athletics Sponsorship.** Exclusive contract with IMG College, LLC for marketing and sponsorship signage and activities at its athletic venues.
- 1.6.4 **Ricoh.** Non-exclusive contract with Ricoh USA Inc. for printing and copy services, which includes printing of academic course pack materials, which contract will expire on July 02, 2019.
- 1.6.5 **Snack Vending.** Non-exclusive contract with McCliff Partners for the operation of snack vending machines on the Campus. Contract expires September 30, 2019.
- 1.6.6 **Food Services.** Non-exclusive contract with Sodexo Services of Texas Limited Partner for the sale of retail food products on the Campus that expires July 19, 2018.

- 1.6.7 Discounted Microsoft Software.** University participates in a System-wide agreement with other component institutions of The University of Texas System for purchasing discounted *Microsoft®* software products. University reserves the right to determine which software products Respondent will offer for sale in the University Bookstore and to limit to whom and on what terms such software shall be made available, so that University may comply with its obligations under any and all applicable licensing and related agreements. Currently University contracts with a third party provider to sell discounted Microsoft Software electronically to students, faculty and staff.
- 1.6.8 University Class Rings.** Exclusive contract granted to Jostens, Inc. ("**Jostens**") for the right to design, manufacture and merchandise the official University class rings. The term of the contract is through June 30, 2019.
- 1.6.9 Athletic Department Merchandise.** University's Athletic Department reserves the right to contract, on a non-exclusive basis, with third parties for the sale and merchandising of Athletic Merchandise (as defined below). Respondent's right to sell Athletic Merchandise is subject to the provisions below:
- 1.6.9.1** Lessee shall coordinate and cooperate with University's Department of Intercollegiate Athletics ("**Athletic Department**") for the non- exclusive right to sell Athletic Department merchandise ("**Athletic Merchandise**") as further defined and described below. Lessee shall track all sales and royalty payments of the Athletic Merchandise separate and apart from sales of the University Goods and shall provide such accounting to University on a monthly basis. The Athletic Merchandise shall consist of the following:
- 1.6.9.2 Spirit Goods.** Lessee shall offer for sale offer for sale on the Premises and on the Virtual Campus Store distinct lines of athletic and spirit- related apparel, novelty items, and souvenirs displaying University Marks and specifically tailored toward the University's alumni and supporters, or potential supporters, of University athletics (collectively, "**Spirit Goods**"). The inventory of Spirit Goods displayed and sold by the University Bookstore shall include, but shall not be limited to, items as t-shirts, caps, polo-shirts, sweatshirts, jerseys, banners, shorts, training apparel, sports bags, backpacks, and banners.
- 1.6.9.3 Co-Branded Spirit Goods.** In addition to the Spirit Goods, Lessee shall offer for sale on the Premises and on the Virtual Campus Store a broad variety of merchandise utilizing University Marks on nationally recognized and branded products such as Nike, Reebok, New Balance, Antigua, Puma, and/or Adidas (collectively, "**Co-Branded Spirit Goods**"). University shall have the right to direct Lessee, from time to time, to obtain and offer for sale specific Co-Branded Spirit Goods. If Lessee is so directed by University, then Lessee shall, to the extent that it is commercially practicable, obtain and offer for sale those Co-Branded Spirit Goods specified by University, among the other products that may be sold by Lessee under the terms of this Agreement.
- 1.6.10 SciQuest Supplier.** University has an agreement with SciQuest Inc. to enable University departments to purchase goods and services for use by the departments in connection with their designated functions. The items so acquired by the University's departments are not resold as part of any commercial retail or wholesale operation.
- 1.6.11 Existing Inventory.** University requires that the Contractor purchase the Bookstore inventory then on hand under terms mutually agreeable to the existing operator of the Bookstore and the Contractor.

PERSONS DESIRING TO RESPOND TO THIS RFP SHOULD READ ALL THE INFORMATION CONTAINED IN THIS RFP CAREFULLY AND WITH EACH PROPOSAL SUBMITTED INCLUDE A COMPLETE RESPONSE TO ALL REQUIREMENTS OF THIS RFP IN THE MANNER DIRECTED BY THIS RFP.

SECTION 2
SIGNIFICANT DATES, UNIVERSITY ADDRESSES, FORMAT AND PLACE FOR SUBMISSION

2.1 Significant Dates for This RFP and Proposals.

The following significant dates and deadlines are applicable to this RFP:

Date of Issuance of RFP:	Thursday, March 9, 2017
Pre-Proposal Conference:	Tuesday, March 21, 2017 10:00 a.m. Mountain Standard Time
Deadline for Questions/Concerns:	Thursday, March 30, 2017 2:00 p.m. Mountain Standard Time
Deadline for Submittal of Proposals:	Tuesday, April 11, 2017 3:00 p.m. Mountain Standard Time
Proposal must remain valid for at least:	One Hundred Ninety (190) days after Deadline for Submittal of Proposals

2.1.1 Pre-Proposal Conference. University will hold a pre-proposal conference at **10:00 a.m. Mountain Prevailing Time** on Tuesday March 21, 2017 in Room 301 of Kelly Hall Building (ref. **EXHIBIT A**). The pre-proposal conference will allow all Respondents an opportunity to ask University’s representatives relevant questions and clarify provisions of this RFP. Site visit to follow conference.

A guided tour of the proposed Premises will be included as a part of the conference agenda. This may be the only opportunity for potential Respondents to view the Premises before the submittal of Proposals.

2.2 University Contact Person for Inquiries Concerning This RFP

2.2.1 University Contact. Respondents must direct all questions, concerns or inquiries regarding this RFP in writing solely to the following person (“**University Contact**”) and no other:

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
Procurement Analyst
Phone: 915-747-5488
Fax: 915-747-5932
E-mail: jbtrejo3@utep.edu
(Email communications are preferred)

2.2.2 Deadline for Inquiries. The University Contact must receive all questions, inquiries or requests for clarification in writing no later than the Deadline for Questions/Concerns in Section 2.1, above. All questions, inquiries and requests for clarification must reference “RFP No. 724-1606-JBT” in the subject line. The University Contact will have a reasonable amount of time to respond to questions or concerns. It is the University’s intent to respond to all appropriate questions and

concerns; however, the University reserves the right to decline to respond to any question or concern.

2.2.3 Revisions to RFP by Addenda. The University reserves the right to revise and amend this RFP as it deems necessary or desirable to correct errors, clarify requirements, and/or accomplish the stated objectives of this RFP. In such event, the University will issue “**Addenda to RFP.**”

2.3 Nature and Physical Format of Proposals.

2.3.1 Nature of Proposals. Proposals should provide a straightforward, concise description of the Respondent's ability to meet the requirements and specifications of this RFP. The emphasis should be on clarity of content and responsiveness to the requirements and specifications of this RFP.

2.3.2 Physical Format of Proposals.

2.3.2.1 Number of Proposal Copies to Be Submitted.

Respondents may review solicitation FAQ's and Solicitation Manual at the University's online procurement management website (“**Sourcing Manager**”). Sourcing Manager's internet address is www.sourcingmanager.utep.edu

Respondent must submit one (1) original signed hard copy, eight (8) hard copies and one (1) readable CD-ROM or USB flash drive marked as **RFP No.: 724-1606-JBT**. University requests that the CD-ROM format be in the MS Office application suite (Word, Excel, Access), or Adobe PDF CD format. An original signature by an authorized officer of Respondent must appear on the Execution of Offer (ref. **Exhibit E**) original proposal (hardcopy). The copy of Respondent's proposal bearing an original signature should contain the mark “original” on the front cover of the proposal. Respondents must acknowledge the attributes for the documents requested in Section 2.5 (the “**Submittal Checklist**”) of this RFP in Sourcing Manager.

2.3.2.2 Page Size, Binders, and Dividers. Proposals must be typed on letter- size (8-1/2” x 11”) paper, and must be submitted in a binder. Preprinted material should be referenced in the proposal and included as labeled attachments. Sections within a proposal should be divided by tabs for ease of reference.

2.3.2.3 Table of Contents. Proposals must include a Table of Contents with page number references. The Table of Contents must contain sufficient detail and be organized according to the same format as presented in this RFP, to allow easy reference to the sections of the proposal as well as to any separate attachments (which should be identified in the main Table of Contents). If a Respondent includes supplemental information or non- required attachments with its proposal, this material should be clearly identified in the Table of Contents and organized as a separate section of the proposal.

2.3.2.4 Pagination. All pages of the proposal should be numbered sequentially in Arabic numerals (1, 2, 3, etc.). Attachments should be numbered or referenced separately.

2.4 Address and Means for Submission of Proposal.

2.4.1 Place and Deadline for Submission of Proposals. The University will accept for consideration proposals submitted in response to this RFP only until the Deadline for Submittal of Proposals. To be considered, proposals must be received and time-stamped by the University at the following location on or before the Deadline for Submittal of Proposals:

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
Procurement Analyst
Phone: 915-747-5488
Fax: 915-747-5932
E-mail: jbtrejo3@utep.edu

The University will not under any circumstances consider a proposal that is received or time-stamped after the Deadline for Submittal of Proposals.

2.4.2 Submission.

Proposals must be received by University on or before the Submittal Deadline (ref. [Section 2.1](#) of this RFP)

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

Mail/Courier Delivery:

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

Hand Delivery:

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

2.4.2.2 Electronic submission and acknowledgement of the attributes for the documents requested in [Sections 4.5](#) (the “**Terms and Conditions**”) and [2.6](#) (the “**Submittal Checklist**”) of this RFP in Sourcing Manager at the Sourcing Manager Internet address at (<https://adminapps.utep.edu/sourcing/>).

Failure to comply with the hard copy, CD ROM/USB and Sourcing Manager electronic submittal requirements will result in disqualification of submittal.

2.5 Return of Proposal. Upon a Respondent’s request and at the Respondent’s expense, the University will return to a Respondent a proposal received after the Deadline for Submittal of Proposals if the proposal and return address are properly identified.

2.6 Submittal Checklist.

Respondent is instructed to complete, sign, and return the following documents as a part of its proposal. All proposals documents that require a signature must be signed by a representative of the Respondent duly authorized to bind the Respondent to its proposal. If Respondent fails to complete, sign and return each of the following items with Respondent’s proposal, then University may reject the proposal:

2.6.1 Signed and Completed **Addenda Checklist** (ref. [Exhibit D](#))

2.6.2 Signed and Completed **Execution of Offer** (ref. [Exhibit E](#))

2.6.3 Responses to questions and requests for information in [Section 5 Required Proposal Information](#) of this RFP)

- 2.6.4 Signed and completed originals of the **HUB Subcontracting Plan** or other applicable documents (ref. Section 4.6 of this RFP and **Exhibit C**).
- 2.6.5 Responses to questions and requests for information in **Exhibit F** – Sponsorship Recognition & Guidelines.
- 2.6.6 Responses to questions and requests for information in **Exhibit G** - Electronic and Information Resources Environment Specifications Respondent
- 2.6.7 Responses to questions and requests for information in **Exhibit H** - Security Characteristics and Functionality of Respondent's Information Resources.

SECTION 3
PROCESS AND CRITERIA FOR SELECTION OF SUCCESSFUL PROPOSALS

3.1 Nature of Successful Proposals.

A Respondent is encouraged to prepare its response to this RFP in such a way as to demonstrate to the University that by selecting such Respondent the University will (i) achieve the maximum overall revenue to the University consistent with the University's policies and regulations; (ii) obtain the best scope and value in the goods and services to be made available to the University's Community at the Respondent's store; and (iii) have confidence that the Respondent's management and operational expertise in operating similar stores promotes the University's realization of its objectives for this RFP.

3.2 Evaluation of Proposals.

An evaluation team selected by the University will evaluate all proposals of proper format that are timely submitted in response to this RFP.

University will open the HUB Subcontracting Proposal Envelope (Ref. Section 4.6 below) submitted by a Respondent prior to opening the Respondent's proposal in order to ensure that the Respondent has submitted the number of completed and signed originals of the Respondent's HUB Subcontracting Plan (also called the "**HSP**") that are required by this RFP (ref. Section 4.6 of this RFP.)

The evaluation of the submitted proposals and the selection of the Respondent will be based on the information provided by the Respondents in their respective proposals. The University reserves the right to give consideration to additional information that comes to the University's attention concerning a Respondent or proposal if the University deems such information relevant to a fair evaluation of the proposal(s) submitted in response to this RFP. The University reserves the right to seek clarification from any Respondent concerning any item contained in its proposal prior to final selection. At the University's sole discretion, such clarification may be obtained through telephone conference, personal meeting, electronically, or via written communication.

University will use commercially reasonable efforts to avoid public disclosure of the contents of a proposal prior to selection of the Respondent.

3.2.1 Subsequent Oral Presentations. After completion of the initial review and evaluation of the submitted proposals, the University may in its sole discretion invite one or more selected Respondents to participate in oral presentations concerning their respective proposals.

3.2.2 Negotiations with Select Respondents. At the University's sole option and discretion, the University may discuss and negotiate all elements of the proposals submitted by one or more selected Respondents whose proposals are within a competitive range determined by the University.

3.2.3 Revisions of Proposals. After submission of a proposal but before the final selection of the successful proposal is made, the University may select one or more Respondents to revise their respective proposals in order to obtain the best and final offers of such Respondents. In that event, representations made by a Respondent in its revised proposal, including price, scope and consideration quotes, will be binding on the Respondent. The University will provide each selected Respondent within the competitive range with an equal opportunity for discussion and revision of its proposal.

3.2.4 Determination of Successful Respondent. The University may make the selection of the successful proposal on the basis of the proposals initially submitted, without discussion, clarification or modification. In the alternative, University may make the selection of the

successful proposal on the basis of negotiation with any of the Respondents. The University is not obligated to select the Respondent offering the most attractive economic terms if that person's proposal is not the most advantageous to the University overall, as determined by the University. The University will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by the University.

3.2.5 Rejection of Proposals. The University reserves the right to (i) enter into an Agreement for all or any portion of the requirements and specifications set forth in this RFP; (ii) reject any and all proposals and re-solicit proposals; or (iii) reject any and all proposals and temporarily or permanently abandon this selection process, as the University deems to be in the best interests of the University.

3.3 Description of Criteria for Selection of Respondent.

The following criteria will be considered by the University in evaluating proposals and selecting the successful proposal(s):

3.3.1 Threshold Criteria Not Scored. The following criteria are minimum thresholds that the University will consider in evaluating proposals, but are not separately scored.

3.3.1.1 Ability of University to comply with laws regarding Historically Underutilized Businesses;

3.3.1.2 Ability of University to comply with laws regarding purchases from persons with disabilities.

3.3.1.3 Ability of University to comply with all applicable laws pertaining to the University's operation and function as a Texas state agency and public institution of higher education.

3.3.2. Other Criteria. Other criteria that the University will use in the evaluation of responses to this RFP include, in no particular order:

3.3.2.1 5% - The Respondent's reputation and demonstration of its competence, experience and prior success operating bookstores in environments similar to a university campus.

3.3.2.2 10% - The Respondent's demonstration of its capacity in terms of financial resources to lease, finish-out, install, stock and operate the stores in conformity with the terms of the Agreement.

3.3.2.3 5% - The Respondent's past relationship (if any) with the University and the other institutions of The University of Texas System.

3.3.2.4 10% - The quality, variety and cost of the books and the other goods and services Respondent offers to University and the University Community:

3.3.2.5 30% - The total long-term cost and revenue, capital improvements, and other financial consideration the Respondent will provide to the University if the Respondent is selected, and the nature and scope of the compensation that the Respondent proposes to pay to the University in consideration of using the Premises, related parking and access rights, and for the right to operate the store.

3.3.2.6 10% - The consistency and compatibility of the Respondent's proposal with the University's plans and business needs.

- 3.3.2.7 10%** - The extent to which Respondent's proposed operations meet the University's needs.
- 3.3.2.8 5%** - The total sponsorship benefit Respondent offers to the University.
- 3.3.2.9 10%** - The Respondent's exceptions to the terms and conditions set forth in the Agreement of this RFP.
- 3.3.2.10 5%** - The Respondent's clear description of and proposed scope of Respondent's goods and services, and the manner in which those goods and services are to be delivered to the University Community.

SECTION 4
GENERAL TERMS AND CONDITIONS

4.1 Compliance with RFP Requirements.

Proposals submitted in response to this RFP should comply with all the requirements, specifications and conditions described in this RFP and provide all information expressly required under the terms of this RFP.

4.2 Inconsistencies in the RFP.

If there is a conflict or inconsistency among the provisions of this RFP, the provision minimizing University's obligations or increasing the Respondent's obligations or requiring Respondent to supply the better quality or greater quantity of the books, goods and services will prevail.

4.3 Proposal Validity Period.

Each proposal must state that it will remain valid for the University's acceptance for a minimum of **one hundred ninety (190) days** after the Deadline for Submittal of Proposals, to allow time for evaluation, selection, and any unforeseen delays in University's review of the proposal.

4.4 Premises.

The proposed location for each of the campus stores offered under this RFP is described on the **Exhibit A - Campus Map and Proposed Premises**. The premises at each location will each be delivered to the Respondent in "as is, where is" condition, save and except as otherwise expressly provided in **Section 1.2** of the Agreement.

4.5 Terms of the Agreement.

The basic proposed terms and conditions for the transaction contemplated by this RFP for (i) occupancy and use of the Premises for the purpose of selling the books, goods and services; (ii) the potential purchase by University of any items offered by Respondent at a store; and (iii) sponsorship of University by Respondent; are set out in **Exhibit B**.

4.5.1 Revisions to Agreement. The basic terms and provisions of the Agreement are not subject to substantial change, but specific terms and provisions of the Agreement may be negotiated to address specific issues raised by the Respondent in its proposal. The University may consider the issues raised by a Respondent as part of evaluating the Respondent's proposal. The University, in its sole discretion, may determine to accept or reject any or all requested changes.

4.6 Historically Underutilized Business Plan.

4.6.1 All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (each a "**HUB**") 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, Respondent subcontracts any of the Services, then Respondent 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 4.6.1** 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. Respondent acknowledges that, if selected by University, its obligation to make a good

faith effort to utilize HUBs when subcontracting any of the Services will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of the Services by the Respondent is subject to review by University to ensure compliance with the HUB program.

4.6.2 University has reviewed this RFP in accordance with Title 34, *Texas Administrative Code*, Section 20.13 (a), and has determined that subcontracting opportunities are probable under this RFP. Therefore, a HUB Subcontracting Plan (“**HSP**”) is required as part of Respondent’s proposal. The HSP will be developed and administered in accordance with University’s Policy on Utilization of Historically Underutilized Businesses attached as **Exhibit C** and incorporated for all purposes.

4.7 Respondent’s Limited Exclusive Rights.

The successful Respondent will, subject to the terms and provisions of the Agreement, be awarded the exclusive right and obligation to operate a store of the nature awarded, subject, however, to already existing exclusive rights granted to third parties, which are described in Section 1.6.

4.8 Modification and Resubmission of Proposal Prior to Deadline for Submittal of Proposals.

No proposal may be changed, amended, or modified after it has been submitted to the University, except in accordance with Section 3.2.3. However, a proposal may be withdrawn in its entirety and an alternative or modified proposal may be resubmitted by the Respondent at any time prior to the Deadline for Submittal of Proposals. No proposal may be withdrawn after the Deadline for Submittal of Proposals without the University’s written consent, which consent will be based on the Respondent’s submittal of a written explanation and documentation evidencing a reason acceptable to the University, in the University’s sole discretion.

4.9 Effect of Submission of Proposal.

By signing and submitting a proposal in response to this RFP, the Respondent warrants, agrees and stipulates that:

4.9.1 Representations and Warranties. The representations and warranties made by a Respondent within its proposal are binding on the Respondent, except as otherwise agreed in writing by the University.

4.9.2 Respondent’s Responsibility for Costs. Each Respondent is solely responsible for all costs relating to its preparing and submitting a response to this RFP. A Respondent submits its proposal at its own risk and expense.

4.9.3 Proposal Not Contingent. The Respondent certifies that the submission of a proposal is the Respondent’s good faith intent to enter into the Agreement with the University if the Respondent’s proposal is selected and that such intent is not contingent upon the University’s acceptance or execution of any terms, conditions, or other documents not expressly attached to or referenced in the Respondent’s proposal.

4.9.4 Property of the University. The proposal and any other information submitted by Respondent in response to this RFP become the property of the University.

4.9.5 No Conflicts with Applicable Law or RFP. The Respondent certifies that any terms, conditions, or documents attached to or referenced in its proposal are applicable to this RFP only to the extent that they do not (i) conflict with the laws of the State of Texas or this RFP; and (ii) place any requirements on the University that are not set forth in this RFP.

4.9.6 Solicitation, Not a Contract. Respondent acknowledges and agrees that (i) this RFP is a solicitation for a proposal and is not a contract or an offer to contract; and (II) the submission of a proposal by the Respondent in response to this RFP will not create a contract between the University and the Respondent.

4.9.7 No Compensation for Consideration of Proposal. The Respondent has not given or offered to give, nor does the Respondent 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 submitted proposal.

4.9.8 Business and Family Contacts. That (i) no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection, exists between (a) on the one hand, the equity owner(s) of the Respondent if the Respondent is a sole proprietorship, the officers or directors of the Respondent if the Respondent is a corporation, the partners of the Respondent if the Respondent is a partnership, the joint venturers of the Respondent if the Respondent is a joint venture, or the members or managers of the Respondent if the Respondent is a limited liability company, and (b) on the other hand, an employee of any component institution of The University of Texas System; save and except for those relationships that have been previously disclosed to University in writing; and (ii) the Respondent has not been an employee of any component institution of The University of Texas System within the immediate twelve (12) months prior to the Deadline for Submittal of Proposals; and (iii) 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 the Respondent's proposal or any contract resulting from this RFP. (See *Texas Government Code* Section 669.003)

4.10 Proposals as Public Information Under the *Texas Public Information Act*.

By signing and submitting a proposal in response to this RFP, the Respondent agrees and stipulates that the Respondent has been notified that the University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information. The University may, but is not required to, seek to protect from disclosure all information submitted in response to this RFP until such time as a final Agreement under this RFP is executed. Upon execution of a final Agreement, University will consider all information, documentation, and other materials submitted by a Respondent 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* (*Texas Government Code*, Chapter 552.001, et seq.). The University will endeavor in good faith to notify a Respondent of a request for disclosure of public information that implicates the Respondent's proposal to this RFP, in order that the Respondent, at its sole cost and expense, might have the opportunity to raise any objections to disclosure to the Texas Attorney General. Persons submitting proposals in response to this RFP are advised that certain information contained in a proposal may be protected from release under *Texas Government Code* §§552.101, 552.110, 552.113, and 552.131.

4.11 Signed and Authorized Proposal.

Proposals submitted by a Respondent must be signed by a representative of the Respondent duly authorized to bind the Respondent to its proposal.

4.12 Rejection of Non-Conforming Proposals.

By signing and submitting a proposal in response to this RFP, the Respondent acknowledges and agrees that the University, at its sole discretion, reserves the right to reject any proposals that (i) are unclear, or difficult to understand; (ii) do not conform to the format and organization specified in this RFP; (iii) are qualified with conditional clauses; (iv) contain material irregularities of any kind; (v) fail to provide all of the information required of the Respondent by this RFP; or (vi) fail to follow or comply with any other requirements of this RFP.

4.13 Broker's Fees.

No claim for fees or commissions payable to a real estate or business broker will be paid by the University in connection with this RFP. BY SIGNING AND SUBMITTING A PROPOSAL IN RESPONSE TO THIS RFP, A RESPONDENT AGREES TO INDEMNIFY THE UNIVERSITY FROM AND AGAINST ALL LIABILITIES, CLAIMS AND COSTS (INCLUDING, WITHOUT LIMITATION, COSTS OF DEFENSES, COURT COSTS AND ATTORNEYS FEES) PERTAINING TO FEES OR COMMISSIONS CLAIMED BY OR PAYABLE TO A REAL ESTATE OR BUSINESS BROKER IN CONNECTION WITH THIS RFP THAT ARISE BY, THROUGH OR UNDER THE RESPONDENT.

RESPONDENT AGREES TO DEFEND (WITH COUNSEL APPROVED BY THE UNIVERSITY), INDEMNIFY, AND HOLD HARMLESS THE UNIVERSITY OF TEXAS – AT EL PASO, THE UNIVERSITY OF TEXAS SYSTEM, AND THEIR RESPECTIVE 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, WITHOUT LIMITATION, ALL REASONABLE ATTORNEYS FEES, COURT COSTS AND COSTS OF DEFENSE 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 THE RESPONDENT OR ANY AGENT, EMPLOYEE, SUB-RESPONDENT, OR SUPPLIER OF THE RESPONDENT IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.

4.14 Certifications.

By signing and submitting a proposal in response to this RFP, the Respondent certifies and warrants to the University that (i) no compensation has been received by the Respondent from The University or The University of Texas System for the Respondent's participation in the preparation of the requirements or specifications for this RFP; and (ii) the Respondent has not directly or indirectly communicated the whole or any part of Respondent's proposal to another person that engages in the collegiate bookstore business and has submitted, intends to submit, or will consider submitting a proposal in response to this RFP.

SECTION 5
REQUIRED PROPOSAL INFORMATION

- 5.1** Each Proposal must include information that clearly indicates that Respondent meets each of the following minimum qualification requirements:
- 5.1.1** Respondent shall provide its operating and pricing philosophy for providing textbooks at the lowest possible price to students.
 - 5.1.2** Respondent shall describe the merchandising and operating philosophy of company.
 - 5.1.3** Respondent shall stipulate financial considerations and capital investment to be paid to University.
 - 5.1.4** Respondent shall provide its customer service philosophy.
 - 5.1.5** Respondent shall provide their operating policies and procedures to prevent credit card fraud and identity theft.
 - 5.1.6** Respondent shall provide an organizational chart of their management structure.
 - 5.1.7** Respondent shall indicate the percentage of discount offered to departments, faculty, staff, and alumni.
 - 5.1.8** Respondent shall indicate whether a discount program will be made available to students.
 - 5.1.9** Respondent shall indicate the method of payments that will be accepted.
 - 5.1.10** Respondent shall provide its percentage mark up on new, used, and electronic textbooks.
 - 5.1.11** Respondent shall indicate its ability to provide a textbook rental program.
 - 5.1.12** Respondent shall indicate its ability to provide textbooks in an “e-book” format.
 - 5.1.13** Respondent shall indicate its ability to provide “price match” options for textbook purchases.
 - 5.1.14** Respondent shall provide its textbook buyback policy, including percentage of retail price that will be returned to students wishing to sell back textbooks in good condition.
 - 5.1.15** Respondent shall provide a summary description of the qualifications and credentials for any proposed bookstore general manager and assistant manager(s).
 - 5.1.16** Respondent shall describe its process and procedures for faculty textbook adaptations.
 - 5.1.17** Respondent shall describe its policy with respect to allowing student backpacks and other personal items into the store.
 - 5.1.18** Respondent shall address the company's willingness to provide employment opportunities to University's students. Students employed by Respondent must be paid, at a minimum, the prevailing federal minimum wage.
 - 5.1.19** Respondent shall describe the training programs to be given to its store employees, including frequency of training sessions.
 - 5.1.20** Respondent shall indicate its willingness to purchase any existing bookstore inventory from current bookstore operator.

5.2 Required Information in Proposals.

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 SECTIONS 552.021 AND 552.023, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 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 substantive responses to all of the questions set forth in this Section 5. In preparing its proposal, the Respondent should (i) address the matters requested of Respondent in this Section 5 in the order presented below; and (ii) begin each response by setting out both the applicable matter number and the specific wording of the request for information being addressed. In cases where a Respondent believes that a request for information does not apply or the Respondent is unable to respond to the request, the Respondent must indicate in reasonable detail why the request is not applicable or will not be responded to.

5.2.1 Scope and Method of Services. Describe the scope and method of services to be provided by Respondent. Please check all boxes that may apply; if the grid provided in this Section fail to describe Respondent's proposed scope and methods of services, please describe Respondent's intended scope and methods or expand the grid as necessary.

OPTION 1	
A single physical location for both textbooks and retail merchandise	
OPTION 2	
Two (2) separate physical locations for textbooks and retail merchandise.	
OPTION 3	
A single physical location for textbooks only. No retail merchandise location.	
OPTION 4	
E-Store (online purchase/ E- commerce presence) for textbooks and retail merchandise, in addition to a physical location(s) for retail merchandise and/or text books.	
OPTION 5	
E-Store (online purchase/ E- commerce presence) for both textbooks and retail merchandise. No physical location.	

5.2.2 Identity Information. Provide the following information:

- 5.2.2.1** Legal name of the proposed Respondent and relationship with the Respondent if not the same entity
- 5.2.2.2** Assumed name (if any) under which Respondent would operate the Bookstore
- 5.2.2.3** State of Respondent's incorporation or formation, if Respondent is an entity
- 5.2.2.4** If Respondent is an entity, its state charter or formation number
- 5.2.2.5** Address of Respondent's and if different, Respondent's principal place of business
- 5.2.2.6** Address of Respondent's office that would be providing service under the Agreement
- 5.2.2.7** Number of years Respondent has operated in the collegiate bookstore business.
- 5.2.2.8** Approximate number of Respondent's employees, including approximate number of employees in Texas.

- 5.2.2.9 Approximate number of bookstores operated by Respondent, including approximate number of bookstores operated in Texas.
- 5.2.2.10 Respondent's annual revenues from its bookstore operations for Respondent's three prior fiscal years
- 5.2.2.11 Name of Respondent's parent company (if any) **NOTE:** If Respondent 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.
- 5.2.2.12 Name and Social Security Number for each person having at least 25% ownership interest in Respondent. This disclosure is mandatory pursuant to Section 231.006, Family Code, and will be used for the purpose of determining whether an owner of Respondent 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, Chapter 552, Government Code, and other applicable law.

5.2.3 Transition Plan.

- 5.2.3.1 **Transition Plan.** Describe Respondent's transition plan for assuming operation of the existing store operations and each significant phase in the Respondent's plan for ensuring a smooth transition from the current store operator to the Respondent.
 - 5.2.3.2 **University Current Book Inventory.** Describe Respondent's ability to purchase or acquire the existing bookstore saleable inventory, including but not limited to textbooks, new, used, rental textbooks, trade and paperback books, technical and reference books, branded apparel, and other retail merchandise.
 - 5.2.3.3 **Furniture and Fixtures.** Describe or list which of the existing furnishings and fixtures owned by University or current store operator and located in the store premises that the Respondent would desire to use in its operations.
- 5.2.4 **Time Frame.** Describe the time period(s) in which the Respondent proposes complete each significant phase described in its answer to Section 5.2.3.

5.2.5 Financial Consideration.

- 5.2.5.1 **Capital Contribution.** University is interested in contracting with a Respondent that has the financial strength to pay University monetary consideration for the Lease and contribution of capital improvement dollars ("**Capital Contribution**") to support facility improvements of the Premises, while maintaining sufficient working capital to fund its operations. Please indicate financial ability and Capital Contribution that Respondent would be willing to pay.
- 5.2.5.2 **Base Fee.** Describe the "Rent" (payments made monthly for the use of 21,069 square feet of space) (including any escalations) Respondent would pay University under the Agreement for the use of the campus store premises and/or the opportunity to serve the University's Community.
- 5.2.5.3 **One-Time Payment due at Signing.** Describe the one-time payment Respondent would pay at signing under this Agreement.
- 5.2.5.4 **Royalty or Percentage Sales.** Describe the annual amount or formula for calculating the amount of any "Royalty" or "percentage of sales volume" Respondent would propose to pay to University under the Agreement. (Please note that University may not be paid royalty or percentage of sales volume on "Academic Materials" (as defined in Section 1.3.9).

- 5.2.5.5 Annual Percentage Sales Guarantee.** Please provide an annual percentage sales guarantee that the Respondent would be willing to provide.
- 5.2.5.6 Advertising and Promotions Budget.** Please provide the budget Respondent would allocate and expend annually in advertising and promotion expenses to ensure that the University's bookstore remains competitive in the marketplace.
- 5.2.5.7 Cash Contributions for Renewal Options.** Please provide the amount Respondent would contribute upon exercising each renewal option.

5.2.6 Other Consideration. The Contractor shall:

- 5.2.6.1** Provide all equipment supplies, signs, personnel, merchandise, and other items necessary to perform required services, including telephone, credit card machines and file servers for internet commerce.
- 5.2.6.2** Provide college student appropriate merchandise such as college of science lab equipment, personal protection equipment, college of nursing merchandise, etc.
- 5.2.6.3** Provide a professional display at outlet locations.
- 5.2.6.4** Offer a large and varied selection of "soft goods" such as computer supplies, office supplies, personal care items, emblematic apparel, memorabilia and other miscellaneous items that will be acceptable to the end user.
- 5.2.6.5** Offer quality merchandise to the University's Community under pricing policies that are fair and competitive for like, or similar quality, as compared to other university bookstores and also with retail establishments in the surrounding area.
- 5.2.6.6** Keep apprised of new merchandise of interest to the University's Community.
- 5.2.6.7** Provide staffing for efficient customer traffic flow during rush periods and minimize the time spent by customers waiting in lines.
- 5.2.6.8** Comply with ADA requirements necessary to meet the needs of disabled persons.
- 5.2.6.9** Be involved in the academic, cultural, athletic, and social environment of the University, taking advantage of opportunities to offer special merchandising such as game-by-game athletic promotions and other assistance based upon the University's activities.
- 5.2.6.10** Provide cap and gown sales and rental services for students, faculty, and staff.
- 5.2.6.11** Provide location for sales of class rings.

5.2.7 Use of Space. The Respondent chosen to operate the Premises shall:

- 5.2.7.1** Maintain all responsibility for the telecommunication setups, hook-ups, installation, copiers, marketing, and payment on all services.
- 5.2.7.2** Assume responsibility for all alterations, changes, or modifications to the assigned facilities (i.e., fixtures, partitions, displays, desks, etc.). All such changes must have prior written approval by the University.
- 5.2.7.3** Maintain continuous operation of on-campus bookstore location and game-day operation of the Sun Bowl and Don Haskins Center locations.

- 5.2.7.4 Be responsible for the custodial service within the bookstore and shall maintain good, standard housekeeping practices relative to store front windows and other glass, sweeping, mopping of floors, dusting, trash disposal, and keeping aisles free of obstacles. The University shall be responsible for custodial services in the lobby and other common areas of the building.
- 5.2.7.5 Maintain Material Safety Data Sheets (MSDS) for any chemicals used or stored within the bookstore premises must be submitted to the Director of Environmental Health and Safety.
- 5.2.7.6 Be responsible for the repair or replacement cost of any damage to retail space caused by the misuse or negligence on the part of the its employees or customers, excluding ordinary wear and tear.
- 5.2.7.7 Report any damage to retail space within twenty-four (24) hours of the occurrence.
- 5.2.7.8 Be responsible for pest control services in the bookstore and notices of scheduled services must be posted in bookstore.

5.2.8 Equipment, Furniture, and Fixtures. The Contractor shall:

- 5.2.8.1 Provide all equipment, furniture and fixtures required for the proper execution of bookstore operations. This shall include but not be limited to office furniture, office equipment, display cases, shelving, cash registers, computers, merchandising units, printer, copiers, etc.
- 5.2.8.2 Provide their own Point-of-Sale system and terminals.
- 5.2.8.3 Indicate whether a personal storage area is required for students being served by the bookstore.
- 5.2.8.4 Provide maintenance and repair of all moveable fixtures and equipment furnished by Contractor and of University property or equipment used by Contractor for the life of the contract.

5.2.9 Operating Schedule. The Contractor shall be required to operate the bookstores on a twelve-month basis, based on the University's academic calendar (academic calendar updated periodically at <http://academics.utep.edu/Default.aspx?alias=academics.utep.edu/registrar>). The University reserves the right to establish or change the service hours, plans or methods of operations of the bookstore.

5.2.10 Merchandising Rights. The University shall grant the Contractor the right to sell University licensed products, however the right is not exclusive. Exclusive rights do not include merchandise and services sold elsewhere within the campus by departments, student organizations and clubs, or through other arrangements.

5.2.11 Parking. Contractor's staff are required to purchase valid parking permits from the University's Parking and Transportation Services office. Contractor's staff will be responsible for payment of parking or traffic fines.

5.2.12 Official Website

- 5.2.12.1 Contractor shall establish and maintain an official, user friendly Internet website related to the marketing, sale, and promotion of merchandise. Contractor shall obtain University approval on the content, layout, and design of the website. The University

shall provide a link to the Contractor's website on the University's home page.

- 5.2.12.2 Contractor shall keep an updated inventory of all items for sale on the website.
- 5.2.12.3 Merchandise on website shall be similar to merchandise available in the store.
- 5.2.12.4 Contractor should be able to provide in-store pick up of items purchased online.
- 5.2.12.5 Contractor should have the willingness to use social media to promote the University's bookstore.

5.2.13 University Responsibilities

- 5.2.13.1 University shall be responsible for paying the utility costs associated with the bookstore operation.
- 5.2.13.2 University shall be responsible for any maintenance or repairs to HVAC, electrical or plumbing issues.
- 5.2.13.3 University shall keep in good order, condition, and repair all common areas outside of the bookstore.
- 5.2.13.4 University shall provide telephone lines up to the premises, however, Contractor shall be responsible for costs associated with telephone services required for operations under the Agreement.
- 5.2.13.5 University shall notify Contractor of both estimated and actual enrollment figures.

5.2.14 Textbooks

- 5.2.14.1 Contactor's bookstore manager shall provide textbook adoption forms in paper and electronic format to University faculty addressing the quantity of books required, title of books, edition, and any study guides or peripheral items needed for classes.
- 5.2.14.2 Sufficient quantities of textbooks and related supplies and materials must be maintained as required or recommended by the faculty for University courses, including short-term and fast-track sessions.
- 5.2.14.3 Contactor must ensure that the specified editions of texts are available for sale.
- 5.2.14.4 Orders for textbooks must be placed in ample time for the books to arrive prior to the beginning of each semester.
- 5.2.14.5 Contactor must provide a wide selection of current trade, academic, and technical literature in support of required material for the academic disciplines of the University.
- 5.2.14.6 Contactor must provide timely responses to customers requiring special order literature and other such materials.
- 5.2.14.7 Contactor shall utilize industry standard, competitive and fair pricing structures for new and used textbooks, e-books, paperback books and trade books.
- 5.2.14.8 Contactor shall put forth their best effort to make maximum use of used books and e-books in order to decrease book costs to students.

- 5.2.14.9** Contactor must provide timely reports to faculty on the status of their orders for books, supplies, and other materials for their respective courses, including items determined to be unavailable, delayed in delivery, new editions, etc.
- 5.2.14.10** Contactor shall provide a desk copy of textbooks to University faculty who are unable to obtain a desk copy from publisher within a reasonable time period.
- 5.2.15 Book Buybacks.** Respondent should indicate its willing to provide book buyback services, including frequency and buyback locations
- 5.2.15.1** Respondent shall indicate the percentage of retail price that will be given to students wishing to sell back used textbooks in good condition, providing the textbooks will be necessary for the following academic term.
- 5.2.15.2** Respondent shall provide their textbook buyback policy.
- 5.2.16 Sign-On Bonus.** Describe any sign-on bonus or cash contributions the Respondent would pay University upon execution of the agreement.
- 5.2.17 Sponsorship Payments.** Describe the annual sponsorship payment that the Respondent will make available to University as additional consideration in exchange for the qualified sponsorship recognition as defined in the *Internal Revenue Code and Treasury Regulations*. Sponsorship consideration may include scholarships and non- athletic sponsorship.
- 5.2.17.1** Respondent shall indicate their willingness to provide support for textbook scholarship(s) and or other types of scholarships.
- 5.2.17.2** Respondent shall indicate their willingness to participate in non-athletic sponsorships.
- 5.2.18 E-commerce Fee.** Describe consideration offered to University for e- commerce models such as a pay per click fee, percentage of transaction or cost per sale.
- 5.2.19 Capital Improvement Contribution.** Indicate whether Respondent would be willing to contribute funds to be used towards capital improvements to the Premises either in the form of a one-time payment or amortized over the initial term of the Lease.
- 5.2.20 Other Consideration.** Describe any other consideration the Respondent would pay to University under the Agreement.

5.2.21 Discounts. Respondent must provide a detailed list of all categories of products offered to the University with the associated Manufacturer’s Suggested Retail Price (“**MSRP**”) and any discount offered to University on purchase for University use as follows.

Discount for Product		
Product Description	% Discount	List Promotional Product Offerings <i>(Respondent should specify any Athletic or other Products that Operator will provide to University at no charge)</i>
	%	
	%	
	%	
	%	
	%	
	%	
	%	
	%	
	%	
	%	
Other Product Consideration: (Please specify)		
	%	
	%	
	%	

5.2.21.1 Credit for Additional Respondent Products. During each Contract Year, Respondent will provide the University with the ability to order additional Respondent Products at no charge up to the retail value listed below.

Promotional Merchandise Allotment \$_____ Suggested Retail Price

5.2.22 Site Improvements.

5.2.22.1 Desired Improvements. Describe in detail any improvements, the type of space, and any other necessary utilities, loading facilities, common area facilities, access, or services the Respondent requires or desires for its proposed operation of the Bookstore in the Space as described in **Exhibit A** to this RFP. If the Respondent recommends a different size or configuration for the Premises, please so indicate in the proposal.

5.2.22.2 Consent to Improvements. Improvements to the bookstore made during the term of the contract shall require written approval by the University and become the property of the University upon termination or expiration of the Agreement.

5.2.22.3 Renovations to Site. The University recognizes that unique improvements may be required by the Contractor to conduct operations within the Premises. Describe all such improvements or modifications that the Respondent believes necessary for the operation of its Bookstore in each of the Initial Space and the Premises, as described **Exhibit A** to this RFP.

- 5.2.23 Security Issues.** Describe how security issues (both physical security and electronic security) will be addressed for its operation of the Bookstore in the Premises.
- 5.2.23.1** Contractor shall comply with University police and other University officials in the provision of security for the bookstore. The Contractor shall maintain security alarms for the bookstore, compatible with the University's security system.
 - 5.2.23.2** Contractor is responsible for providing security training and for enforcing security policies and procedures as they apply to its staff.
 - 5.2.23.3** No illegal drugs or other prohibited substances are allowed on the premises. Alcohol consumption or possession is not allowed on the premises. No smoking is allowed on the campus including inside or outside of the any University facility.
 - 5.2.23.4** The Contractor shall control the distribution of keys to the bookstore with the understanding that the University shall have a master set for emergency use. Should any of the Contractor's employees lose assigned keys, or jeopardize the security of the facility in any other way, Contractor shall be charged for the associated costs required to rekey the facility.
- 5.2.24 Financial Reporting.** Describe the financial reporting, POS and inventory tracking system the Respondent will use in its Bookstore operation on the University's Campuses. Please confirm that this system can generate periodic sales reports, and that this system is compatible with University's campus (declining balance) card program.
- 5.2.25 Reports.** A monthly report shall be provided on, or before the last day of the month, each month.
- 5.2.25.1 A monthly report in a form acceptable to the University shall be provided on, or before the last day of the month succeeding the end of each Accounting Period during the Initial Term or any Extension Term of this Agreement. This monthly report shall be based on the University's fiscal year, which runs from September 1 to August 31. Contractor shall submit to University a copy of the following information:**
 - 5.2.25.1.1** Gross Sales for the month reported
 - 5.2.25.1.2** Exclusion from gross sales for the month reported
 - 5.2.25.1.3** Net sales for the month reported
 - 5.2.25.1.4** Royalties, commissions or rent paid to University for the month reported
 - 5.2.25.1.5** Cumulative contract year-to-date information
 - 5.2.25.1.6** A consolidated statement of total operations covered by this Agreement, reported on an Accounting Period basis and year-to-date basis and itemizing the actual and budgeted sales revenue, inventory costs, labor costs, fringe benefits, payroll taxes, and other expenses.
 - 5.2.25.1.7** Contractor shall provide audited annual financial statements and an annual payment statement derived from sales tax reports prepared by a certified public accountant.
- 5.2.26 Comparable Operations.** Briefly describe up to three comparable projects that the Respondent has completed in the last three (3) years or are currently under development that demonstrate the Respondent's ability to complete the objectives of this RFP.
- 5.2.27 Access to Information by Individuals with Disabilities.** Indicate whether the Respondent will consent to include in the Agreement the following "Access by Individuals with Disabilities" language:

Access to Information by Individuals with Disabilities. Respondent represents and warrants (“**EIR Accessibility Warranty**”) that the electronic and information resources and all associated information, documentation, and support that it provides to University under this Agreement (collectively, the “**EIRs**”) comply with the applicable requirements set forth in Title 1, Chapter 213, *Texas Administrative Code*, and Title 1, Chapter 206, Rule 206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M, *Government Code*.) To the extent Respondent becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Respondent represents and warrants that it will, at no cost to University, either (i) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (ii) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Respondent fails or is unable to do so, then University may terminate this Agreement and Respondent will refund to University all amounts University has paid under this Agreement within thirty (30) days after the termination date.

If the Respondent objects to the inclusion of the “Access to Information by Individuals with Disabilities” language in the Agreement, the Respondent must, as part of its proposal, specifically identify and describe in detail all of the reasons for the Respondent’s objection. A GENERAL OBJECTION IS NOT AN ACCEPTABLE RESPONSE TO THIS QUESTION.

5.2.28 Financial Rating. Submit with the response the current financial rating of the Respondent or any related documentation (such as a Dunn and Bradstreet analysis) that indicates the financial stability of the Respondent.

5.2.29 Pending Acquisitions Involving Respondent. Indicate whether the Respondent is currently for sale or involved in any transaction to expand or to become acquired by another business entity. If yes, the Respondent must explain the expected impact, both in organizational and directional terms.

5.2.30 Litigation Report. Describe the details of all past or pending litigation or claims filed against the Respondent that would affect its performance under the Agreement with the University (if any).

5.2.31 Landlord and/or Higher Ed References.

Submit a landlord reference list of no less than three (3) organizations with which the Respondent currently has contracts and/or to which the Respondent has previously operated a bookstore (within the past five (5) years) of a type and scope similar to that required by this RFP. The Respondent must include in its landlord reference list the landlord’s company name, contact person, telephone number, project description, length of business relationship, and background of bookstore or sundry/spirit store operations provided by the Respondent. If the Respondent operates a bookstore facility at another institution affiliated with The University of Texas System, please list the institution(s). No more than two of the references requested above may be at other institutions within The University of Texas System. References that are served in the same manner that Respondent proposes to service University are encouraged.

5.2.32 Personnel

5.2.32.1 Resumes. Submit 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 the Respondent.

5.2.32.2 Staffing. If relevant, provide on-campus staffing levels, including, job titles and responsibilities, and qualifications. Include staffing levels for both peak and off-peak periods, for each bookstore location.

5.2.32.3 Manager History. Submit a list of institutions or business that may have requested the proposed on-site manager's removal within the last five (5) years of the RFP return date. An explanation stating the reason for removal shall accompany each contract listed.

5.2.32.4 Training Programs. Provide a written outline describing the training program that Respondent intends to use for the staff of the store, including any of University's students that may work there. The description should include training courses offered and frequency of training sessions.

5.2.33 Management Responsibilities

5.2.33.1 Contractor shall be completely responsible for the management of all bookstore services it operates under the contract. This shall include all bookstore operating costs such as inventory, labor (including management and supervisory) fringe benefits, payroll taxes, insurance, telephone equipment and repairs, in-store security, pest control, custodial services, etc.

5.2.33.2 Contractor's written policies and procedures should be congruent with the University's policies and procedures.

5.2.33.3 Contractor shall bear any loss caused from dishonest acts on the part of its employees.

5.2.33.4 Contractor shall be responsible for the disposition of damaged or surplus books, supplies, tools, materials, and any other damaged or surplus merchandise.

5.2.33.5 Contractor shall designate a representative to meet with University representatives to discuss improvements, changes, or problems with bookstore operations.

5.2.33.6 Contractor shall employ qualified staff, adequate in number, training and experience for the efficient management and operation of the bookstore.

5.2.33.7 Contractor shall ensure that all of its employees adhere to all campus regulations and policies and demonstrate courtesy to all patrons.

5.2.33.8 Personnel relations of the Contractor's staff shall be the Contractor's responsibility, including compliance with all applicable laws and regulations related to the employment of personnel.

5.2.33.9 Contractor must comply with Equal Opportunity laws regarding employment training, job assignments, promotions, transfers, layoffs, terminations, and rates of pay. Contractor must not discriminate against any employee applicant for employment due to race, color, creed, religion, national origin, sex, age, physical ability or marital status.

5.2.33.10 Employment policies for Contractor's staff must meet the requirements of the Fair Labor Standard Act and all other regulations required by federal or state law. All material relating to personnel policies and procedures must be available for review by the University upon request.

5.2.34 Disaster Recovery Plans. Indicate whether the Respondent has a contingency plan or disaster recovery plan in the event of major casualty or natural disaster affecting the store. If so, submit a copy of the plan.

5.2.35 Anticipated Issues. Describe any difficulties the Respondent anticipates in performing its duties under the Agreement with University and how the Respondent plans to manage these difficulties.

- 5.2.36 Required Operational Assistance.** Describe any assistance the Respondent will require from University in performing the Agreement.
- 5.2.37 Other Information.** Provide any other information that the Respondent considers relevant to the University's evaluation of the Respondent's response to this RFP.
- 5.2.38 Virtual Store.** Describe the Respondent's plans and timeline for implementation of a virtual store/website. Proposal should include but not be limited to:
- 5.2.38.1** faculty textbook adoptions
 - 5.2.38.2** reservation and/or sale of textbooks
 - 5.2.38.3** sale of course materials and merchandise
 - 5.2.38.4** describe University's role or resources needed for Respondent to provide such service
 - 5.2.38.5** specify if the Respondent will collaborate with external entities to provide such service
 - 5.2.38.6** specify if other services and/or external entities will be solicited
 - 5.2.38.7** specify method and controls that will be implemented to ensure University pricing is not greater than that which is offered to the general public or on the Respondent's primary website.
- 5.2.39 Technology Devices.** Respondent shall submit a plan and timeline if there is intent to sell hardware, software, peripherals, cell phones, and other technology devices. Include the financial considerations associated with this proposal. Such plans shall at a minimum describe the type and brands of goods, and a description of the proposed pricing of these goods, both to University's students and to others.
- 5.2.40 Electronic/Digital Materials.** University is interested in proposals addressing the growing demand for electronic/digital content of academic material. The program should strive to be as affordable and effective a method of content delivery for students as is possible.
- 5.2.40.1** Online/Interactive Programs. Describe any program that enhances online and interactive teaching and learning programs of University's faculty and the steps the Respondent would take to promote the same.
 - 5.2.40.2** Comparative Costs. Provide average cost in comparison to new book, used book and rental book pricing.
 - 5.2.40.3** Timeline. Provide timeline for execution and any resources required from University to successfully implement.
 - 5.2.40.4** Blackboard. Describe approach for implementation of the program will be mandatory, optional and/or phase in approach. University uses Blackboard as its learning peripheral. The Respondent's program must be able to interface with Blackboard.
- 5.2.41 University Assistance.** Describe what University resources (if any) are required to implement this program.
- 5.2.41.1** Future Plans. What future plans does the Respondent have for further development of electronic/digital content to students at affordable and competitive pricing?
 - 5.2.41.2** Online System. Respondent must include web links or screen shots of Respondent's online ordering system for other higher education institutions.

5.2.42 Electronic and Information Resources. In its proposal, Respondent must respond to each item listed in **Exhibit G** - Electronic and Information Resources (“*EIR*”) Environment Specifications to this RFP. **Exhibit G** will establish specifications, representations, warranties and agreements related to the EIR that Respondent is offering to provide to The University.

5.2.43 Security Characteristics. In its proposal, Respondent must respond to each item listed in **Exhibit H**, Security Characteristics and Functionality of Respondent’s Information Resources. **Exhibit H** will establish specifications, representations, warranties and agreements related to the EIR that Respondent is offering to provide to The University. Responses to **Exhibit H** will be incorporated into the Agreement and will be binding on Respondent.

5.2.44 Conservation and Sustainability Initiatives. Describe environmental conservation and sustainability initiatives or programs Respondent will implement with respect to the Bookstore and report on a quarterly basis for submittal to University’s Sustainability Committee. Data must have quantitative measurements.

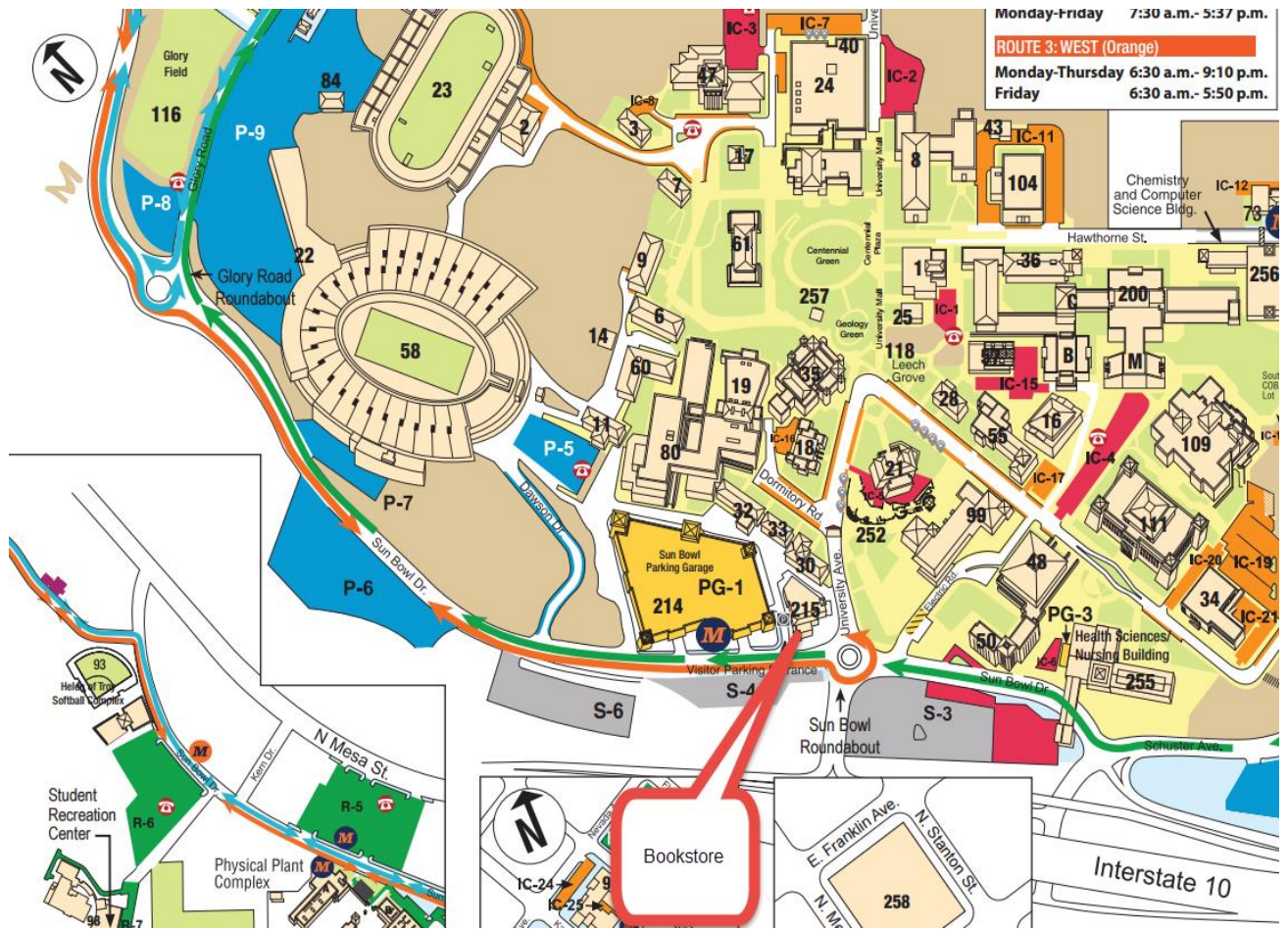
5.2.45 Net Payment Terms. Respondent must affirmatively confirm that it is aware of and agrees that University’s payment terms for the procurement of goods and services from Respondent are “Net 30 days.”

Respondent must indicate below the prompt payment discount that Respondent will provide to University:

Prompt Payment Discount: _____% _____ days/net 30 days

**EXHIBIT A TO RFP
CAMPUS MAPS AND PREMISES**

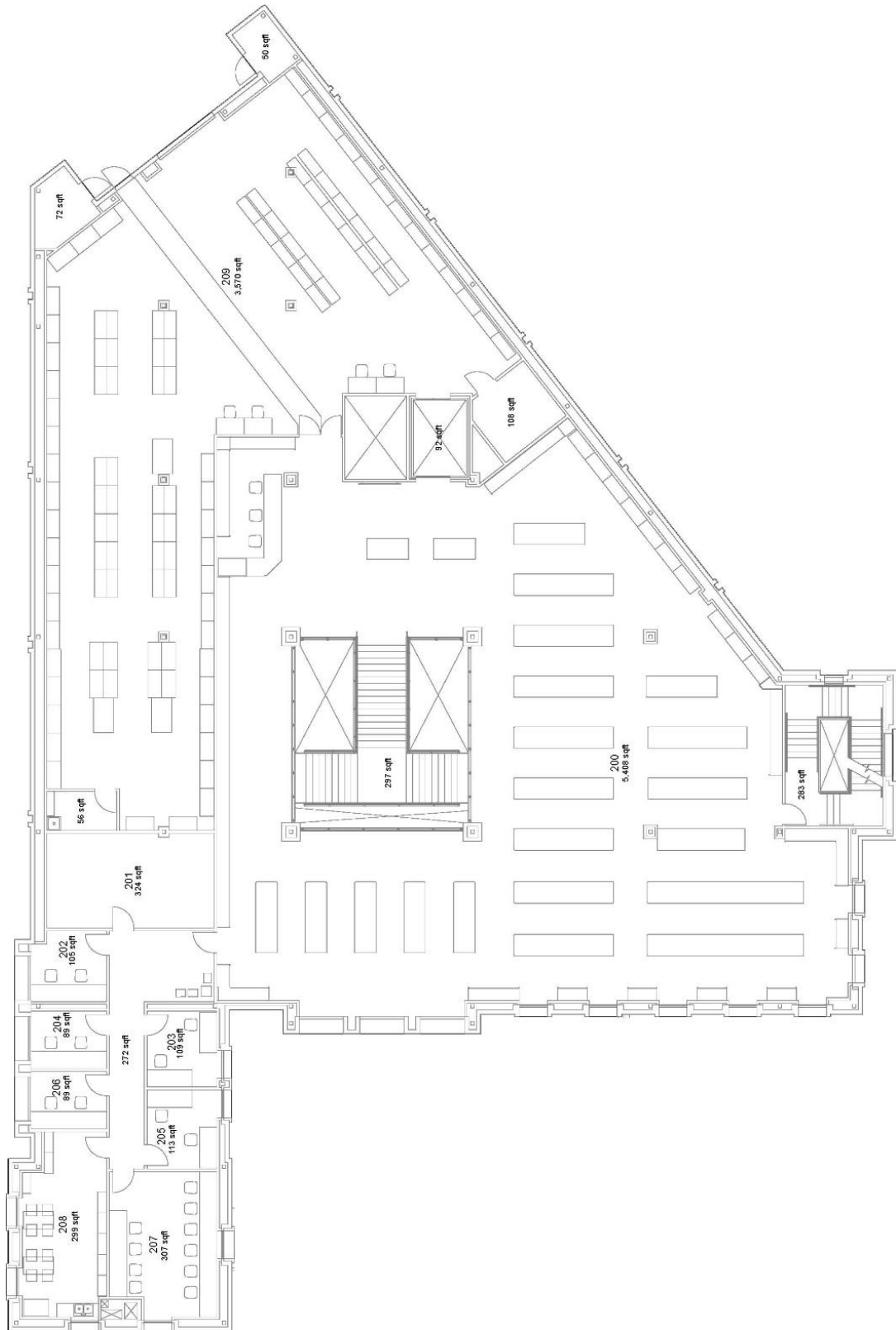
CAMPUS MAP. Electronic copy available online at: <http://maps.utep.edu/>



1st Level University Bookstore



2nd Level University Bookstore



Current Interior Space Designations

BUILDNG NAME	FLOOR	ROOM NAME	AREA	USE DESC	USES DESCRIPTION	UTEP USES	PROGRAM
University Bookstore	01	Bookstore-Follett	128	Locker Room	General		Bookstore
University Bookstore	01	Bookstore-Follett	20	Locker Room	General		Bookstore
University Bookstore	01	Bookstore-Follett	9762	Merchandising	General	Merchandising	Bookstore
University Bookstore	01	Bookstore-Follett	65	Merchandising Service	General	Merchandising	Bookstore
University Bookstore	01	Bookstore-Follett	218	Merchandising Service	General	Merchandising	Bookstore
University Bookstore	01	Bookstore-Follett	70	Merchandising Service	General	Merchandising	Bookstore
University Bookstore	01	Bookstore-Follett	69	Merchandising Service	General	Merchandising	Bookstore
University Bookstore	01	Bookstore-Follett	92	Office	Office	Office	Bookstore
University Bookstore	02	Bookstore-Follett	324	Conference Room	Office	Conference	Bookstore
University Bookstore	02	Bookstore-Follett	299	Lounge	General	Lounge	Bookstore
University Bookstore	02	Bookstore-Follett	5408	Merchandising	General	Merchandising	Bookstore
University Bookstore	02	Bookstore-Follett	3570	Merchandising Service	General	Merchandising	Bookstore
University Bookstore	02	Bookstore-Follett	109	Office	Office	Office	Bookstore
University Bookstore	02	Bookstore-Follett	113	Office	Office	Office	Bookstore
University Bookstore	02	Bookstore-Follett	307	Office	Office	Office	Bookstore
University Bookstore	02	Bookstore-Follett	89	Office	Office	Office	Bookstore
University Bookstore	02	Bookstore-Follett	89	Office	Office	Office	Bookstore
University Bookstore	02	Bookstore-Follett	105	Office	Office	Office	Bookstore
University Bookstore	02	Bookstore-Follett	272	Office Service	Office	Office	Bookstore
			21,109				

EXHIBIT B TO RFP
CAMPUS STORE AGREEMENT TERMS

The University desires that the Campus Store Agreement include the following business terms, and all Respondents should clearly and precisely indicate any proposed changes from the matters listed below. Following selection of the successful Respondent to this RFP, the University will prepare and submit to the Respondent the first draft of the proposed Lease.

1. Premises. The Premises will be delivered in “as is, where is” condition. University may, at its expense and discretion, relocate the Premises to another site on the campus during the term of the Lease.

2. Term. A primary term of seven years, with up to three additional renewal periods of one year each.

3. Rent. Respondent should suggest a proposed rental schedule, clearly indicating amounts and times of payment. Because the University is a not-for-profit agency of the State of Texas, payments received by the University as compensation under the Lease Agreement (whether denominated as “rent” or otherwise) may be subject to Unrelated Business Income Tax (“**UBIT**”) under the U.S. Internal Revenue Code. For the purposes of aiding University in its annual calculation of its UBIT obligations, if any, arising with respect to the compensation received under this Lease, Respondents should anticipate that the Lease will separately define the elements of the payment stream to the University, which elements may include, without limitation, the following:

- 3.1 Base rental for the lease of the Premises
- 3.2 Guaranteed Percentage Royalty for the lease of the Premises
- 3.3 Lease of University personal property used in the Premises
- 3.4 License of University Marks
- 3.5 Fieldhouse event sales
- 3.6 Advertising on campus
- 3.7 Catalogue Sales
- 3.8 Credit Card Marketing
- 3.9 Sale of electronic communication devices
- 3.10 Sale of bookstore inventory
- 3.11 Capital contribution (if any) to the remodeling of the Premises
- 3.12 Periodic renovation fee
- 3.13 Lessee’s textbook buyback rights
- 3.14 Lessee’s donation of scholarships
- 3.15 Utility services reimbursement
- 3.16 Qualified sponsorship
 - 3.16.1 Official Sponsor Designation
 - 3.16.2 Public address announcements at University events
 - 3.16.3 Link to sponsor’s web-site link
 - 3.16.4 Sponsor Logo in print materials
 - 3.16.5 Promotional product placement
 - 3.16.6 Financial sponsorship for non-athletic events

4. Permitted Use and Exclusive Campus Rights. To the extent authorized by the Constitution and laws of the State of Texas, and except as otherwise expressly agreed in the Lease, so long as the Lease remains in effect University will not grant to any other person the right to:

(i) operate a physical book store on University’s Campus or offer academic materials pertaining to educational courses offered by the University on the Campus for sale from a physical location on the Campus; provided that such right is not intended to prohibit the sale of used textbooks and instructional materials on Campus by students, student groups, faculty and/or staff of the University.

(ii) offer University-licensed clothing and merchandise for sale from a physical location on the Campus;

(iii) have an internet page and/or link in the public area of University's official website (www.utep.edu; subject to change) for the purposes of (1) electronically connecting to a bookstore; or (2) offering to sell academic materials; or

(iv) sell or rent University graduation regalia and graduation products (including without limitation, graduation regalia, customized invitations and announcements, and diploma frames) from a physical location on the Campus or through a link in the public area of University's website.

5. Third Party Rights. As indicated in Section 1.7 of the RFP, Respondent's ability to sell specific goods and services at the Premises may be restricted or limited by existing contracts between the University and third parties.

6. Costs of Operation. At a minimum, Contractor shall be responsible for the following costs of operation under the Lease:

8. Construction of Improvements. The cost and performance of all improvements and alterations to the Premises Contractor desires for the operation of the bookstore. All improvements and alterations constructed in the Premises shall be subject to prior University approval.

9. Taxes. All ad valorem, sales and income taxes pertaining to Contractor's lease of the Premises and operation of the bookstore.

10. Insurance.

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

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

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

Workers' Compensation policy must include any states where contractor performs operations for University.

Commercial General Liability Insurance with limits of not less than:

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

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

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for Bodily Injury and Property Damage;

If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

Certificates of Insurance and Additional Insured Endorsements reflecting applicable limits, sub-limits, self-insured retentions and deductibles will be provided to University upon request. Contractor will be responsible for any and all deductibles, self-insured retentions or waiting period requirements. If the Cyber Liability policy is written on a claims-made basis, the retroactive date should be prior to the commencement of this agreement/addendum. If the Cyber Liability policy is written on a claims-made basis and non-renewed at any time during and up until the project completion signing date, Contractor shall purchase an Extended Reporting Period for at least a two-year period. University "its subsidiaries" and The Board of Regents of the University of Texas System will be named as an additional insureds and University will be provided with a waiver of subrogation, both by endorsement to the required Cyber Liability policy. In addition, the Insured vs. Insured exclusion shall not apply to University "its subsidiaries" and The Board of Regents of the University of Texas System for a wrongful act of (Contractor).

2. Contractor will deliver to University:

Evidence of insurance on a Texas Department of Insurance approved certificate form (Acord form is a Texas Department of Insurance pre-approved form) verifying the existence and actual limits of all required insurance policies after the execution and delivery of this Agreement and prior to the performance of any Work by Contractor under this Agreement. Additional evidence of insurance will be provided verifying the continued existence of all required insurance no later than thirty (30) days prior to each annual insurance policy renewal.

All insurance policies (with the exception of workers' compensation, employer's liability and professional liability) will be endorsed and name the Board of Regents of The University of Texas System, The University of Texas System and University as Additional Insureds for liability caused in whole or in part by Contractor's acts or omissions with respect to its on-going and completed operations up to the actual liability limits of the required insurance policies maintained by Contractor. Commercial General Liability Additional Insured endorsement including ongoing and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.

Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System The University of Texas System and University. **All insurance policies** will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System, The University of Texas System and University. No policy will be canceled until after thirty (30) days' unconditional written notice to University. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to University thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this Section.

Contractor will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by University prior to the performance of any Work by Contractor under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Contractor's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by University or the University of Texas System. Contractor's or subcontractor's insurance will be kept in force until all Work has been fully performed and accepted by University in writing.

11. Security. Securing the Premises against the risk of loss or damage to the property.

12. Telecommunication. All installation and service charges for telecommunications serving the Premises.

13. Pest Control. Contractor shall maintain the Premises free from rodents, insects and other pests.

14. Waste and Garbage Removal. Removal of all dry garbage within the Premises and the disposal of dry garbage in University-provided trash receptacles.

15. Signage. The cost of erecting signage, which shall be subject to prior approval of University.

16. FISCAL MATTERS

16.1 Payments by Customers. Contractor is solely responsible for collecting payment of all sales from its operations. The University will not assume the role of a collection agency for Lessee. The University will not adjudicate disputes between customers and Lessee over the existence or the amount of debts. Save and except to the extent that the University itself is a customer as a result of an official University purchasing transaction conducted under this Agreement, the University will not be deemed a party to or responsible for any contracts, transactions, or agreements between Lessee and any person purchasing goods or services from the Bookstore.

16.1.1 Credit Cards. With respect to its operations, Lessee will accept payment, at a minimum, through cash and American Express, Discover, MasterCard, and VISA charge cards. Lessee will pay all merchant charges associated with acceptance of charge cards. Lessee will additionally offer a gift card program for the Bookstore.

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

16.1.3 Miner Gold Card. Lessee will accept payment for purchases through the University's card system/platform ("**Card System**"). This Card System includes a debit card program for use by the University's students, faculty, staff and guests for purchase of products at food service, bookstore, laundry, photocopy vending and other locations on the Campus on a declining balance basis. Lessee shall accept the Card System as a valid form of payment and shall provide, install, maintain and replace as necessary all hardware, software and accessories required to accommodate Card System transactions. The University shall be responsible for the purchase of the cards used in the Card System, installation of communication lines for the Card System, selling and establishing purchase value of the University cards for use in the Card System, determining the vending categories under which the Card System can be used for purchases, and providing administrative and operational oversight of the Card System. Lessee shall invoice the University weekly for Card System transactions, which invoice may include sales and use tax charged to customers at point of sale. Lessee will provide with such invoices documentary evidence of the underlying transactions of a form and substance reasonably acceptable to University. Such invoice shall contain an account of the total amount of Goods and Services purchased in gross dollars from University Cards transactions during such weekly period. Remittance of sales tax for Card System transactions shall be the sole responsibility of Lessee. The University will remit payment for Card System transactions with net thirty (30) days following receipt of Lessee's invoices.

16.1.4 Gift Cards. Lessee will offer for sale "gift" cards that may be used to purchase goods and services at the Bookstore.

16.1.5 Merchant Processor. Lessee may select and use a merchant processing service of Lessee's choice for credit transactions.

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

16.2.1 University Purchases. University will pay Lessee invoices in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code, as it may be amended. In no event will Lessee enter into cash transactions with any University departments for the sale of any hardware, software, goods, or service through the Bookstore. Lessee shall submit timely billing for any charge sales incurred by the University's departments. Lessee will accept University departmental charges as a form of tender for Bookstore purchases in accordance with applicable University policies. Purchases must be accompanied by appropriate University forms and be completed in a manner approved by University. If made available within the Term of this Agreement, Lessee will also accept University's procurement and/or campus debit cards. UNIVERSITY DOES NOT COMMIT TO MAKE ANY PURCHASES OF GOODS AND SERVICES UNDER THIS AGREEMENT.

16.2.2 Sales Taxes. State Customers will pay for all State Customer Transactions in accordance with the Texas Prompt Payment Act, currently codified in Chapter 2251, Texas Government Code. State Customers are exempt from certain state taxes under various exemption statutes. the University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the Goods and Services in accordance with Section 151.309, Texas Tax Code, and Title 34, Texas Administrative Code ("**TAC**") Section 3.322. Notwithstanding their exemption from certain state taxes, a State Customer shall be responsible for any taxes (except corporate income taxes, franchise taxes, and taxes on Lessee's personnel, including personal income tax and social security taxes) from which the State Customer is not exempt. Lessee will provide reasonable cooperation and assistance to State Customers in obtaining any tax exemptions to which the State Customers are entitled. Interest will be payable by State Customers on all overdue amounts as specified in Section 2251.026, Texas Government Code, as amended from time to time.

16.3 Point of Sale System. Lessee shall obtain vendor certification and become established as a transaction integration agent with the University's stored value card Lessee (if any), CS Gold, and maintain a Point of Sale system compatible with the University's Card System in order to facilitate proper recordkeeping of the University's accounting books and records. Lessee, at its cost, will purchase, install, maintain and replace as necessary all hardware, software, and accessories (including the installation of any necessary communication or networking changes) that are necessary to implement and maintain the POS devices to interface with the Card System. Upon Lessee's written request, the University will provide Lessee with specifications for CS Gold POS and/or card reading devices.

16.4 Accounting Period. The accounting period used for this Agreement shall be monthly, as based on the University's Fiscal Year.

16.5 Inspection and Audit. Lessee shall give University prior written notice of any audit of Lessee by any governmental entity of its records and/or operations pertaining to the Bookstore. The University shall receive full reports of any such audits. During the term of this Agreement and for a period of four years thereafter, the University shall have the right (separate and distinct from any audit rights of the Texas State Auditor under applicable law) to conduct its own audit of Lessee's records and operations by giving seven working days' notice to Lessee. In the event that such an audit is undertaken, Lessee shall provide reasonable working space and access to its records to the University's auditors. the University shall notify Lessee, in writing, of any deficiency made known as a result of said audits. Lessee shall, within thirty

days of receipt of written notice, correct any deficiencies noted by said audit in its accounting or operating procedures. If the University should uncover the underreporting of sales by more than one percent (1 %), the cost of such audit shall be at Lessee's expense and Lessee shall promptly pay the University for any underpayments under this Agreement related to such under-reporting of sales. All financial records and inventory records related to Lessee's performance of this Agreement shall be maintained in Lessee's offices.

16.6 Maintenance of Accounting Records. Lessee shall maintain accurate, complete and separate books of accounts according to generally accepted accounting principles reflecting completely its operations under this Agreement, together with appropriate supporting data and documents. Lessee shall make such books of accounts, supporting data, and documents available to the University for inspection, reproduction, and such records will be kept at a reasonable place in or near Hidalgo County or Cameron County, Texas, or in Travis County, Texas, and Lessee will make such financial records available for inspection there for a period of at least four years after the termination of this Agreement. University shall give Lessee seven days' prior written notice of its request to examine books of accounts and supporting data.

17. MORTGAGES AND FINANCING. The University must approve all grants of liens and security interests involving Respondent's interest in the lease and bookstore property. The University's interest in the Premises shall never be subordinated in favor of any third party lender.

18. OPERATING SCHEDULE. Hours of operation shall complement the University's class schedules and holidays.

19. PERSONNEL. All personnel working in the Premises shall be subject to University rules, including criminal background checks. Operations in the Premises shall be managed by persons reasonably experienced in operating a bookstore in a university campus setting.

20. MARKETING AND ADVERTISING. All marketing and advertising pertaining to the operation of the bookstore in the Premises shall be subject to the regulation and prior approval of the University,

21. STATE LAW ADDENDUM. The state law contract provisions shown on the attached **Exhibit B-1** shall be included within the Lease.

EXHIBIT B-1

STATE LAW ADDENDUM – SPACE USE AGREEMENTS

**THE PROVISIONS OF THIS STATE LAW ADDENDUM MAY NOT BE ALTERED
BY AGREEMENT OF THE PARTIES EXCEPT AS PROVIDED IN SECTION 14 BELOW.**

This STATE LAW ADDENDUM – SPACE USE AGREEMENTS (“**State Law Addendum**”) is attached to and made a part for all purposes of that certain agreement (as amended from time to time, “**Agreement**”) entitled “_____” and dated effective _____, 20____, between _____ (“**Owner**”) and the **BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM**, for the use and benefit of The University of Texas _____, an institution of higher education and agency of the State of Texas (“**BOR**”), concerning the BOR’s use and occupancy of _____ (“**Premises**”) in the _____ (“**Building**”), located in _____, Texas, as more particularly described in the Agreement.

This State Law Addendum amends and modifies the Agreement and the parties expressly agree that so long as BOR or another agency of the State of Texas is a party to the Agreement, the provisions of this State Law Addendum shall control to the extent of any conflict between the provisions of this State Law Addendum and the remainder of the Agreement. This State Law Addendum also amends and modifies any agreement, certification, confirmation, and other documentation signed, approved or provided by BOR in connection with the Agreement or the transactions contemplated therein, including but not limited to any estoppel certificates, subordination and/or non-disturbance agreements (collectively, “**Ancillary Agreements**”), and the parties expressly agree that so long as BOR or another agency of the State of Texas is a party to any Ancillary Agreement, the provisions of this State Law Addendum shall control to the extent of any conflict between the provisions of this State Law Addendum and such Ancillary Agreement.

1. **Prohibition on Violation of State Law and Constitution by BOR.** OWNER AND BOR HEREBY AGREE THAT BOR SHALL NOT BE REQUIRED TO PERFORM ANY ACT OR REFRAIN FROM PERFORMING ANY ACT UNDER THIS AGREEMENT OR ANY ANCILLARY AGREEMENT IF THAT PERFORMANCE OR NON-PERFORMANCE WOULD CONSTITUTE A VIOLATION OF THE CONSTITUTION OR LAWS OF THE STATE OF TEXAS.
2. **Waivers and Releases.** Pursuant to Article III, Sections 49, 50, 51, 55 and the other applicable provisions of the Texas Constitution, no provision of this Agreement and the Ancillary Agreements providing for (i) BOR’s waiver, release or exculpation of Owner and/or Owner’s officers, employees, principals and agents for claims, liabilities and damages of any kind or nature arising from the negligent or willful acts or omissions of said persons, whether jointly or severally; or (ii) limitations on the remedies or recourse of BOR against Owner and/or Owner’s officers, employees, principals and agents, whether jointly or severally, for claims, liabilities and damages of any kind or nature, shall be of force and effect, except as otherwise expressly provided by statute. Without limitation of the foregoing, any waiver of subrogation rights by BOR under the Agreement, any Ancillary Agreement, or under any policy of insurance provided by or on behalf of Owner with respect to the Agreement or any Ancillary Agreement shall be effective only to the extent authorized by applicable law.
3. **Indemnities.** Pursuant to Article III, Sections 49, 50, 51, 55 and the other applicable provisions of the Texas Constitution, no provision of this Agreement and the Ancillary Agreements providing that BOR will reimburse, indemnify or hold harmless Owner or any other person for any liability, claim or damages that are not caused by the negligent or willful acts or omissions of BOR shall be of force and effect.
4. **Courts, Jury Trial and Waiver.** Except as otherwise expressly provided by statute, no provision of this Agreement and the Ancillary Agreements shall constitute, nor is it intended to constitute, a waiver of BOR’s or the State of Texas’ exemptions, privileges, and immunities provided by or allowed under the Constitution of the State of Texas or any other applicable laws, including without limitation (i) sovereign immunity to suit; (ii) sovereign immunity against the recovery of money damages; or (iii) right to a jury trial for any issue arising under the Agreement or any Ancillary Agreement. Except as otherwise expressly provided by statute, no provision of this Agreement and Ancillary Agreements providing that BOR consents to the jurisdiction of any

court shall be binding against BOR.

5. **Attorney Fees.** No provision of this Agreement and the Ancillary Agreements requiring BOR to pay court costs, costs of suit, or attorney fees incurred by Owner or any other person in enforcing or interpreting the terms of this Agreement or any Ancillary Agreement shall be of force and effect, except as otherwise expressly provided by statute.
6. **Arbitration.** Pursuant to Texas Government Code §2009.005(c), no provision of the Agreement and the Ancillary Agreements providing for the arbitration of disputes concerning the Agreement or any Ancillary Agreement by the parties shall be of force and effect.
7. **State Property.** No provision of the Agreement and the Ancillary Agreements purporting to grant to Owner (i) a security interest or lien against the real or personal property of the BOR or any other state agency; or (ii) a contractual right or power of attorney to take control over or otherwise handle or dispose of the property of BOR or any other state agency, shall be of force and effect.
8. **Insurance.** Owner acknowledges that BOR is an agency of the State of Texas and has only such authority as is granted to BOR by state law or as may be reasonably implied from such law, and that any obligation of BOR under this Agreement or any Ancillary Agreement to obtain insurance is expressly made subject to the BOR's authority under state law to obtain such insurance. Owner further agrees that BOR shall have the right, at its option, to (a) obtain liability insurance protecting BOR and its employees and property insurance protecting BOR's interests in real property and the contents located in such real property, to the extent authorized by Section 51.966 of the Texas Education Code or other law; or (b) self-insure against any risk that may be incurred by BOR as a result of its operations under this Agreement or any Ancillary Agreement.
9. **Texas State Auditor's Office.** Owner acknowledges and stipulates that, notwithstanding anything to the contrary set forth in this Agreement and the Ancillary Agreements, the Texas State Auditor's Office (collectively, with any successor agency thereto, the "State Auditor") is authorized under applicable Texas law (including, without limitation, Texas Education Code Sections 51.9335(c), 73.115(c) and 74.008(c)), in each case, as may be amended from time to time, to conduct an audit or investigation in connection with any of the funds or payments received and accepted by Owner from BOR pursuant to this Agreement or any Ancillary Agreement. Owner agrees to cooperate with the State Auditor in the conduct of any such audit or investigation, including, without limitation, providing the State Auditor with all records requested as may be required under applicable Texas law. All costs and expenses of any such audit or investigation by the State Auditor shall be BOR's sole responsibility, except and unless such audit and investigation determines that the amounts paid by BOR for the applicable period which are the subject of such audit or investigation were in excess of the amounts properly payable under this Agreement or any Ancillary Agreement, in which event Owner will pay to BOR the amount determined to be in excess of the correct amount. In addition, if the excess amounts are greater than five percent (5.0%) than the amounts properly payable under this Agreement or any Ancillary Agreement, Owner shall reimburse BOR for the actual and reasonable cost of such audit by the State Auditor.
10. **Public Information Act.** Any obligation of BOR under the Agreement or any Ancillary Agreement to (i) keep the terms and provisions of the Agreement or such Ancillary Agreements confidential; and/or (ii) not disclose the financial terms of this Agreement or such Ancillary Agreement, shall be binding on BOR only to the extent permitted by law, including without limitation Chapter 552 of the Texas Government Code (commonly known as the Texas Public Information Act) or any successor law or other similar statutory provisions.
11. **Accessibility Inspection.** Texas Government Code §469.106(c) and §2167.006(b) provide that before the premises subject of the Agreement may be occupied in whole or in part by BOR, an on-site inspection of the Building and the Premises must be performed by (i) the Texas Department of Licensing and Regulation ("TDLR"), (ii) an entity who has contracted with the Texas Commission of Licensing and Regulation ("TCLR") pursuant to Texas Government Code §469.055, or (iii) a person who holds a certificate of registration issued pursuant to Texas Government Code §469.201, to ensure compliance with the accessibility standards and specifications adopted by TCLR (Title 16, Texas Administrative Code, Chapter 68) under authority of Texas Government Code Chapter 469. The provisions of this Section shall apply to any additional or new premises that may be occupied or used by BOR after the effective date of the Agreement.

- (a) **Repair.** The term "Inspector" as used in this paragraph means any one or more of the following: The TDLR, any contracted entity, or any certificated person described above in this paragraph as authorized to perform on-site inspections. If the Inspector finds any condition in the Premises or the Building not in compliance with TDLR accessibility standards and specifications (conditions as to which the TDLR has waived compliance pursuant to a variance or other written departmental action shall be deemed to be in compliance), Owner may, but is not obligated, to correct such noncompliance, but if Owner shall not have corrected such noncompliance by the date that is sixty (60) days after the report of the Inspector shall have been delivered to Owner or such later date as may be established by the TDLR for correction of such non-complying conditions (such period being the "Cure Period"), then pursuant to Texas Government Code Chapter 469, BOR must terminate this Agreement upon written notice to Owner given within thirty (30) days after the expiration of the Cure Period and prior to correction of such noncompliance by Owner, time being of the essence. If this Agreement is cancelled by BOR pursuant to the provisions of this Section, the cancellation shall be effective upon written notice to Owner, and BOR shall be automatically released of all claims of Owner for rent or use fees or for damages or liability arising from the termination.
- (b) **Cooperation.** Owner and BOR shall provide to TDLR and the Inspector all necessary cooperation and information concerning inspection of the Building and the Premises and any corrective action required. BOR shall pay any fees charged by TDLR for inspection of the Building under Texas Government Code Chapter 469, as amended from time to time.

12. HIPAA. If the BOR's permitted use of the Premises under the Agreement includes the provision of health care services to patients, the Owner acknowledges and stipulates that as a licensed health care provider, BOR is required to comply with state and federal privacy laws as to BOR's patients, including the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Subparts A and E of Part 164 and all amendments thereto (commonly known as the "Privacy Standards"), as promulgated by the U.S. Department of Health and Human Services pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 and all amendments thereto ("HIPAA"). In the event that in its use of the Premises, BOR creates, stores or maintains "protected health information" ("PHI"), as that term is defined by 45 CFR §160.103, in the Premises, the parties agree that nothing in this Agreement gives Owner or Owner's employees and agents any right to access, use or disclose PHI and that Owner and its employees and agents shall never need or seek access to, or the use of, any PHI of BOR. However, in the event PHI is accessed (whether inadvertently or otherwise) by Owner or its employees or agents, the party discovering such disclosure shall promptly notify the other party and Owner agrees to promptly take commercially reasonable measures to prevent any subsequent dissemination by Owner or Owner's employees or agents of such PHI to third parties. The parties agree that the provisions of this Section do not create, and are not intended to create, a "business associate" relationship between the parties as that term is defined by the Privacy Standards. The parties further agree that in the event that Owner or its employees or agents have a lawful right to enter into the Premises without the permission and/or knowledge of BOR, Owner shall have no right to access PHI or deprive BOR of access to such PHI, provided that BOR shall take reasonable efforts to safeguard PHI confidentially and securely so as to prevent Owner or its employees or agents from inadvertently coming into contact with PHI on the Premises. This section shall be interpreted to ensure that, to the extent possible, BOR remains in compliance with HIPAA and all other state and federal privacy laws. To the extent that any other provision of this Agreement can be read to provide Owner with any right to access PHI, this Section shall govern. Good and Services. Owner is advised that pursuant to Texas Education Code 51.9335, in any contract for the acquisition of goods and services to which an institution of higher education is a party, a provision required by applicable law to be included in the contract is considered to be a part of the executed contract without regard to: (i) whether the provision appears on the face of the contract; or (ii) whether the contract includes any provision to the contrary.

13. Amendment. THE PROVISIONS OF THIS STATE LAW ADDENDUM MAY BE AMENDED BY AGREEMENT OF THE PARTIES ONLY WITH THE WRITTEN APPROVAL OF THE OFFICE OF GENERAL COUNSEL OF THE UNIVERSITY OF TEXAS SYSTEM.

EXHIBIT C TO RFP
HISTORICALLY UNDERUTILIZED SUBCONTRACTING PLAN

See the following pages

PLEASE NOTE THAT FAILURE TO SUBMIT THE HUB SUBCONTRACTING PLAN PROPOSAL WILL
RESULT IN AUTOMATICALLY DISQUALIFICATION.



HUB SUBCONTRACTING PLAN (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- ❖ If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:
 - Section 1 – Respondent and Requisition Information
 - Section 2 a. – Yes, I will be subcontracting portions of the contract
 - Section 2 b. – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors
 - Section 2 c. – Yes
 - Section 4 – Affirmation
 - GFE Method A (Attachment A) – Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

- ❖ If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract* in place for five (5) years or less meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
 - Section 1 – Respondent and Requisition Information
 - Section 2 a. – Yes, I will be subcontracting portions of the contract
 - Section 2 b. – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
 - Section 2 c. – No
 - Section 2 d. – Yes
 - Section 4 – Affirmation
 - GFE Method A (Attachment A) – Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

- ❖ If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract* in place for five (5) years or less does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
 - Section 1 – Respondent and Requisition Information
 - Section 2 a. – Yes, I will be subcontracting portions of the contract
 - Section 2 b. – List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
 - Section 2 c. – No
 - Section 2 d. – No
 - Section 4 – Affirmation
 - GFE Method B (Attachment B) – Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.

- ❖ If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources, complete:
 - Section 1 – Respondent and Requisition Information
 - Section 2 a. – No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources
 - Section 3 – Self Performing Justification
 - Section 4 – Affirmation

**Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*



HUB SUBCONTRACTING PLAN (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders contracts,
- 32.7 percent for all special trade construction contracts,
- 23.6 percent for professional services contracts,
- 24.6 percent for all other services contracts, and
- 21 percent for commodities contracts.

-- Agency Special Instructions/Additional Requirements --

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

SECTION 1 RESPONDENT AND REQUISITION INFORMATION

a. Respondent (Company) Name: _____ State of Texas VID #: _____
 Point of Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____

b. Is your company a State of Texas certified HUB? - Yes - No

c. Requisition #: _____ Bid Open Date: _____
(mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION 2 SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b, of this SECTION and continue to Item c of this SECTION.)
- **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract</u> * in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract</u> * in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs .
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>)

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the **aggregate expected percentage** of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract* in place with for five (5) years or less **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements".

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

**Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

Enter your company's name here: _____ Requisition #: _____

SECTION 3 SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- **Yes** (If **Yes**, in the space provided below list the specific page(s)/section(s) of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- **No** (If **No**, in the space provided below explain how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

SECTION 4 AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature Printed Name Title Date
(mm/dd/yyyy)

- REMINDER:**
- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
 - If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method B (Attachment B)

Enter your company's name here: _____	Requisition #: _____
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IMPORTANT: If you responded "No" to SECTION 2, Items c and d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanAttachment-B.doc>

SECTION B-1 SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing this attachment.

Item #: _____ Description: _____

SECTION B-2 MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, to continue to SECTION B-4.)
- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3 NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you MUST comply with items a, b, c and d, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and minority or women trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and minority or women trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://www.window.state.tx.us/procurement/cmb/cmbhub.html>. HUB Status code "A" signifies that the company is a Texas certified HUB.
- b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	VID #	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more minority or women trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to minority or women trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>
- d. List two (2) minority or women trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Minority/Women Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

HSP Good Faith Effort - Method B (Attachment B) *Cont.*

Enter your company's name here: _____	Requisition #: _____
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SECTION B-4 SUBCONTRACTOR SELECTION

a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item #: _____ Description: _____

b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

Company Name	Texas certified HUB	VID # <small>(Required if Texas certified HUB)</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is **not** a Texas certified HUB, provide **written** justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more minority or women trade organizations or development centers at least seven (7) working days prior to submitting its bid response to the contracting agency.

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

Section A PRIME CONTRACTOR'S INFORMATION

Company Name: _____ State of Texas VID #: _____

Point-of-Contact: _____ Phone #: _____

E-mail Address: _____ Fax #: _____

Section B CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____

Point-of-Contact: _____ Phone #: _____

Requisition #: _____ Bid Open Date: _____
(mm/dd/yyyy)

Section C SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

<p>1. Potential Subcontractor's Bid Response Due Date:</p>	<p>If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than <input type="text" value="Select"/> Central Time on: _____ Date (mm/dd/yyyy)</p> <p><small>In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, we must provide the same notice to two (2) or more minority or women trade organizations or development centers at least seven (7) working days prior to submitting our bid response to the contracting agency.</small></p> <p><small>(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)</small></p>
<p>2. Subcontracting Opportunity Scope of Work:</p>	
<p>3. Required Qualifications:</p> <p><input type="checkbox"/> - Not Applicable</p>	
<p>4. Bonding/Insurance Requirements:</p> <p><input type="checkbox"/> - Not Applicable</p>	
<p>5. Location to review plans/specifications:</p> <p><input type="checkbox"/> - Not Applicable</p>	

**EXHIBIT D TO RFP
ADDENDA CHECKLIST**

Proposal of: _____
(Respondent Company Name)

To: The University of Texas at El Paso

Ref: RFP related to Lease Space for the Operation of a Campus Store and Bookstore

RFP No.: 724-1606-JBT

Ladies and Gentlemen:

The undersigned Respondent hereby acknowledges receipt of the following Addenda to the captioned RFP (initial if applicable).

No. 1 _____ No. 2 _____ No. 3 _____ No. 4 _____ No. 5 _____

Respectfully submitted,

Respondent: _____

By: _____
(Authorized Signature for Respondent)

Name: _____

Title: _____

Email: _____

Date: _____

EXHIBIT E TO RFP
EXECUTION OF OFFER

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

- 2.1 By signature hereon, Respondent represents and warrants the following:
- 2.1.1 Respondent acknowledges and agrees that (i) this RFP is a solicitation for a proposal and is not a contract or an offer to contract; (ii) the submission of a proposal by Respondent in response to this RFP will not create a contract between University and Respondent; (iii) University has made no representation or warranty, written or oral, that one or more contracts with University will be awarded under this RFP; and (iv) Respondent will bear, as its sole risk and responsibility, any cost arising from Respondent's preparation of a response to this RFP.
 - 2.1.2 Respondent is a reputable company that is lawfully and regularly engaged in providing the goods and services.
 - 2.1.3 Respondent has the necessary experience, knowledge, abilities, skills, and resources to perform the goods and services.
 - 2.1.4 Respondent is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances.
 - 2.1.5 Respondent understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in the Agreement under which Respondent will be required to operate.
 - 2.1.6 If selected by University, Respondent 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.
 - 2.1.7 If selected by University, Respondent will maintain any insurance coverage as required by the Agreement during the term thereof.
 - 2.1.8 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. Respondent acknowledges that University will rely on such statements, information and representations in selecting Lessee. If selected by University, Respondent will notify University immediately of any material change in any matters with regard to which Respondent has made a statement or representation or provided information.

RESPONDENT WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, THE UNIVERSITY OF TEXAS 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 RESPONDENT OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF RESPONDENT IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.

- 2.1.9 Pursuant to Sections 2107.008 and 2252.903, *Government Code*, any payments owing to Respondent under any contract or agreement resulting from this RFP may be applied directly

to any debt or delinquency that Respondent 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.

- 2.2** By signature hereon, Respondent offers and agrees to furnish the goods and services to University and comply with all terms, conditions, requirements and specifications set forth in this RFP.
- 2.3** By signature hereon, Respondent affirms that it has not given or offered to give, nor does Respondent 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 submitted proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting contracts, and the Respondent may be removed from all proposal lists at University.
- 2.4** By signature hereon, Respondent certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, *Tax Code*, or that Respondent is exempt from the payment of those taxes, or that Respondent 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 contract or agreement.
- 2.5** By signature hereon, Respondent hereby certifies that neither Respondent nor any firm, corporation, partnership or institution represented by Respondent, or anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in Section 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.
- 2.6** By signature hereon, Respondent certifies that the individual signing this document and the documents made a part of this RFP, is authorized to sign such documents on behalf of Respondent and to bind Respondent under any agreements and other contractual arrangements that may result from the submission of Respondent's proposal.
- 2.7** By signature hereon, Respondent certifies as follows:
- "Under Section 231.006, *Family Code*, relating to child support, Respondent certifies that the individual or business entity named in the Respondent's proposal is not ineligible to receive the specified contract award and acknowledges that any agreements or other contractual arrangements resulting from this RFP may be terminated if this certification is inaccurate."
- 2.8** By signature hereon, Respondent certifies that (i) 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 Respondent that is a sole proprietorship, the officers or directors of any Respondent that is a corporation, the partners of any Respondent that is a partnership, the joint venturers of any Respondent that is a joint venture or the members or managers of any Respondent that is a limited liability company, on one hand, and an employee of any component of The University of Texas System, on the other hand, other than the relationships which have been previously disclosed to University in writing; (ii) Respondent has not been an employee of any component institution of The University of Texas System within the immediate twelve (12) months prior to the Submittal Deadline; and (iii) 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 Respondent's proposal or any contract resulting from this RFP (ref. Section 669.003, *Government Code*). All disclosures by Respondent in connection with this certification will be subject to administrative review and approval before University enters into a contract or agreement with Respondent.
- 2.9** By signature hereon, Respondent certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 2.10** By signature hereon, Respondent represents and warrants that all products and services offered 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.

2.11 Respondent will and has disclosed, as part of its proposal, any exceptions to the certifications stated in this Execution of Offer. All such disclosures will be subject to administrative review and approval prior to the time University makes an award or enters into any contract or agreement with Respondent.

2.12 If Respondent will sell or lease computer equipment to the University under any agreements or other contractual arrangements that may result from the submission of Respondent's proposal then, pursuant to Section 361.965(c), *Health & Safety Code*, Respondent certifies that it 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 Title 30, Chapter 328, Subchapter I, *Texas Administrative Code*. Section 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.

2.13 Respondent should complete the following information:

If Respondent is a Corporation, then its State of Incorporation is: _____

If Respondent is a Corporation, then Respondent's Corporate Charter Number is: _____

RFP No.: 724-1606-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 SECTIONS 552.021 AND 552.023, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 559.004, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Respectfully submitted and Certified By:

Respondent: _____

By: _____
(Authorized Signature for Respondent)

Name: _____

Title: _____

Email: _____

Phone: _____

Fax: _____

Address: _____

Date: _____

EXHIBIT F TO RFP
SAMPLE OF QUALIFIED SPONSORSHIP RECOGNITION

1. Specific Recognition

- 1.1 Official Sponsor Designation.** Sponsor may incorporate the designation “an Official Sponsor of The University of Texas at El Paso” in banners, announcements, logos, products and other material used in connection with this Agreement.
- 1.2 Public Address Announcements.** University will recognize Sponsor as an “Official Sponsor of The University of Texas at El Paso” through the following public address announcements:
- 1.3 Link to Sponsor’s Website.** University will post Sponsor Logo on University’s website as more particularly provided in a website sponsorship agreement acceptable to University in all respects.
- 1.4 “Sponsor Logo” means [Note: Sponsor Logo will be included prior to execution of Agreement.]**

Sponsor Logo in Print Materials. Sponsor Logo will be printed in _____.

1.5 Promotional Product and Printed Material Distribution

- 1.5.1 Products and Materials.** Subject to the terms and conditions of this Agreement and approval of University, Sponsor will have the following distribution rights for qualified sponsorship recognition material as defined in the *Internal Revenue Code and Treasury Regulations* (“**Sponsorship Recognition Material**”):

Sponsor understands, acknowledges, and agrees that the method of distribution and the amount, scope, and type of promotional products that may be distributed in accordance with this Section will be determined by University.

- 1.5.2 Policy Limitations.** University Rules, including Rule 80301, place restrictions on the display and distribution of promotional products and the distribution of printed material related to goods or services provided by Sponsor. Among other restrictions, such activities: (i) may not interfere with the use of facility entrances and exits or the flow of pedestrian or vehicular traffic; (ii) may not harass, embarrass, or intimidate the people being solicited; (iii) may not violate any applicable law or regulation; (iv) may only be authorized the day before and the day of an intercollegiate athletic event or an athletic related event taking place in a facility used for athletic events; (v) may only be conducted from booths, tables, and kiosks (or in a University designated area for display of motorized vehicles) immediately adjacent to an athletic facility, the location and number of which have been authorized by University; (vi) must be conducted in accordance with University Rules, including those regarding safety; and (vii) must not include making sales or taking orders.
- 1.5.3 License Required.** Any promotional products distributed under this Agreement that are imprinted with the name, logos, trademarks, service marks and other symbols of University (collectively, “**University Marks**”) may only be imprinted pursuant to a license issued by Strategic Marketing Affiliates LLC or any successor identified by University.

EXHIBIT G TO RFP
ELECTRONIC AND INFORMATION RESOURCES ENVIRONMENT SPECIFICATIONS

The specifications, representations, warranties and agreements set forth in Responder's responses to this **Exhibit G** 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).
 - 1.1 Hardware: If Responder will provide hardware, does the hardware have multiple hard drives utilizing a redundant RAID configuration for fault tolerance? Are redundant servers included as well?
 - 1.2 Operating System and Version:
 - 1.3 Web Server: Is a web server required? If so, what web application is required (Apache or IIS)? What version? Are add-ins required?
 - 1.4 Application Server:
 - 1.5 Database:
 - 1.6 Other Requirements: Are any other hardware or software components required?
 - 1.7 Assumptions: List any assumptions made as part of the identification of these environment requirements.
 - 1.8 Storage: What are the space/storage requirements of this implementation?
 - 1.9 Users: What is the maximum number of users this configuration will support?
 - 1.10 Clustering: How does the EIR handle clustering over multiple servers?
 - 1.11 Virtual Server Environment: Can the EIR be run in a virtual server environment?
2. If the EIR will be hosted by Responder, describe in detail what the hosted solution includes, and address, specifically, the following issues:
 - 2.1 Describe the audit standards of the physical security of the facility; and
 - 2.2 Indicate whether Responder 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 Responder's technical staff? What is the estimated cost of required training?
6. Upgrades and Patches: Describe Responder's strategy regarding EIR upgrades and patches for both the server and, if applicable, the client software. Included Responder'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, Responder or University, will be responsible for maintaining critical EIR application security updates?
3. If the EIR is hosted, indicate whether Responder'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 Responder 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 Responder place the EIR source code in escrow with an escrow agent so that if Responder is no longer in business or Responder has discontinued support, the EIR source code will be available to University.

Accessibility Information

Responder must provide the following, as required by Title 1, Rule §213.38(b) of the *Texas Administrative Code*:

1. Accessibility information for the electronic and information resources ("**EIR**")¹ products or services proposed by Responder, where applicable, through one of the following methods:
 - (A) the URL to completed Voluntary Product Accessibility Templates ("**VPATs**")² or equivalent reporting templates;
 - (B) an accessible electronic document that addresses the same accessibility criteria in substantially the same format as VPATs or equivalent reporting templates; or
 - (C) the 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 Responder's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, Responder's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results.

¹ Electronic and information resources are defined in Section 2054.451, *Texas Government Code* ([link](#)) and Title 1, Rule §213.1 (6) of the *Texas Administrative Code* ([link](#)).

² Voluntary Product Accessibility Templates are defined in Title 1, Rule §213.1 (19) of the *Texas Administrative Code* ([link](#)). For further information, see this [link](#) to a VPAT document provided by the Information Technology Industry Council.

EXHIBIT H TO RFP
SECURITY CHARACTERISTICS AND FUNCTIONALITY OF RESPONDENT'S INFORMATION
RESOURCES

The specifications, representations, warranties and agreements set forth in Respondent's responses to this **Exhibit H** 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 Respondent (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 of the RFP) to be provided or used by Respondent 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 Respondent 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 Respondent:

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 Respondent's data center and network components.
6. What procedures and best practices does Responder 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 Respondent take to detect and prevent unintentional, accidental and intentional corruption or loss of University Records?
8. Will the Respondent 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 Respondent objects, explain basis for the objection to a vulnerability scan.

9. Describe processes Respondent 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 Respondent 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 Respondent uses to ensure the restoration and availability of University Records.
11. Does Respondent encrypt backups of University Records? If yes, describe the methods used by Respondent to encrypt backup data. If no, what alternative safeguards does Respondent 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 Respondent monitor the safeguards required by the HIPAA Security Rule (45 C.F.R. §164 subpts. A, E (2002)) and Respondent's own information security practices, to ensure continued compliance? If yes, provide a copy of or link to the Respondent's HIPAA Privacy & Security policies and describe the Respondent'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 Respondent'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 Respondent:

7. What administrative safeguards and best practices does Respondent have in place to vet Respondent'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 Respondent have in place to ensure that user credentials are updated and terminated as required by changes in role and employment status?
9. Describe Respondent'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 Respondent:

1. What administrative safeguards and best practices does Respondent have in place to vet Respondent'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 Respondent 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 Respondent 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 Respondent 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 Respondent:

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 Respondent will safeguard University Records.
3. Do Information Resources secure data transmission between University and Respondent? If yes, describe how Respondent 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 Respondent:

1. Describe Respondent'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 Respondent have in place to detect information security breaches and notify University and other customers? Include Respondent's definition of security breach.
3. Describe the procedures and methodology Respondent has in place to detect information security breaches, including unauthorized access by Respondent'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 Respondent:

1. Describe the procedures and methodology Respondent 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 Respondent 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 Respondent'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 Respondent for security or privacy violations or security breaches or incidents, including the final outcome.