

REQUEST FOR PROPOSAL

by

The University of Texas at El Paso

for

**Selection of a Licensee of University's Trademarks
for use in Licensee's Multimedia Athletics Marketing Program**

related to

**The University of Texas at El Paso
Department of Intercollegiate Athletics**

RFP No. 724-1813-JBT

Submittal Deadline: Friday, September 28, 2018, at 3:00 P.M. Mountain Time

Issued: Friday August 10, 2018

REQUEST FOR PROPOSAL

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SECTION 1

INTRODUCTION

1.1 Description of University

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

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

1.2 Background and Special Circumstances

Proposers may review frequently asked questions (FAQs) and the Solicitation Manual at the Miner Mall Sourcing Manager Internet address, www.sourcingmanager.utep.edu.

University's Department of Intercollegiate Athletics ("**Athletics Department**") has proudly represented the University on the field and on the court at both a regional and a national level. The Athletics Department disperses information to the public, alumni, current students, faculty and staff through a wide variety of mediums such as Internet broadcasts, social media, radio and television, on campus networks, special events, publications, and in-game elements. The University is a member of the National Collegiate Athletic Association (NCAA) and Conference USA. The University's Department of Athletics supports 16 NCAA Division I varsity intercollegiate athletic programs that compete at the highest level of collegiate athletics. All of the University's men's and women's programs offer athletic scholarships.

The University's varsity sport programs are as follows:

Men's

Basketball
Cross Country
Golf
Football
Track & Field (Indoor) (Outdoor)

Women's

Basketball
Cross Country
Golf
Rifle
Track & Field (Indoor) (Outdoor)
Volleyball
Soccer
Softball
Tennis

Athletics Department athletics supports and complements the educational mission of University by providing student-athletes the academic resources to obtain their baccalaureate degree while participating in athletics competition as a Division I Football Bowl Subdivision (FBS) member of the National Collegiate Athletic Association (“**NCAA**”).

To fulfill the mission, Athletics Department seeks to:

Develop and maintain a highly competitive and sound athletics program, reaching a standard of excellence in athletics consistent with the mission of University.

Provide an environment to promote and enhance the emotional well-being and the social development of student-athletes.

Provide an environment that is committed to fair and equitable treatment of both male and female student-athletes as well as staff members.

Promote sensitivity to diversity issues for all student-athletes and staff in accordance with NCAA principles, University policies and Conference USA policies.

Comply with and follow the principle of institutional control in operating our athletic program in a manner that is consistent with the letter and spirit of the NCAA, Conference USA and University rules and regulations, policies and procedures.

University intends to license its trademarks to an entity that will use the trademarks to operate a University-specific multimedia athletics marketing program (collectively, “**Program**”), including a comprehensive plan to generate revenue, maximize marketing of Athletics Department, strengthen University’s statewide reach, and enhance University’s presence in Conference USA markets. The Program should be broad-based to include diverse constituents including businesses, community leaders, alumni, and fans. The relationship between University and the Licensee (ref. **Section 1.3**) should complement the stated mission, vision, goals, principles and objectives of University and Athletics Department.

The University currently is under contract with IMG College (formerly ISP) who manages and handles expenses internally as an organization. The University has received a guarantee payment from IMG College in the past and would prefer a model of this same structure. The University is willing to offer new qualified sponsorship inventory and prefers a financial model with mutual beneficial growth for both parties.

The University is set to receive a total amount of \$1,825,000 guarantee (\$1,800,000 in a financial guarantee and \$25,000 in the form of a stipend) from IMG College for the final year of the current Program in 2018-19.

The University may be able to offer new inventory suggested by Licensee to assist with growth of this Program in the future. University is open to additional assets as requested by a Licensee on a case by case basis.

1.3 Objective of Request for Proposal

University is soliciting proposals in response to this Request for Proposal for Selection of a Licensee (“**Licensee**”) of University’s Trademarks for use in Licensee’s Multimedia Athletics Marketing Program, RFP No. 724-1813-JBT (this “**RFP**”), from experienced, successful, financially stable and qualified operators of multimedia athletics marketing programs. The Program, which is more specifically described in **Section 5.4** (Scope of Program) of this RFP, will include certain (1) sponsorship rights; (2) naming rights; (3) publication rights; and (4) radio and television broadcast rights.

The License will include an initial term that expires no later than June 30, 2029. The University will have the option to extend the term for one (1) additional three (3) year term.

1.4 Group Purchase Authority

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

SECTION 2

NOTICE TO PROPOSER

2.1 Submittal Deadline

University will accept proposals submitted in response to this RFP until **3:00 p.m., Mountain Time, on Friday, September 28, 2018.**

2.2 University Contact Person

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

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

*University instructs interested parties to restrict all contact and questions regarding this RFP to written communications delivered (i) in accordance with this Section on or before **Friday, August 31, 2018, at 2:00 p.m., Mountain Time (Question Deadline)**, or (ii) if questions relate to *Historically Underutilized Businesses*, in accordance with **Section 2.5**.*

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

2.3 Criteria for Selection

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

Proposer is encouraged to propose terms and conditions offering the maximum benefit to University in terms of (1) total overall Royalty (ref. **Section 6**) and other benefits to University, and (2) Program management expertise. Proposers should describe all educational, state and local government benefits that may be available to University in connection with the Program and the License.

An evaluation team from University will evaluate proposals. The evaluation of proposals and the selection of Licensee will be based on the information provided by Proposer in its proposal. University may give consideration to additional information if University deems such information relevant.

The Criteria to be considered by University in evaluating proposals and selecting Licensee, will be those factors listed below:

- | | | |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 2.3.1 | the Guaranteed Royalty, AGR Milestone Royalty Payments and any Performance Bonuses paid to University (ref. Section 6); | 35% |
| 2.3.2 | the reputation of the Proposer and of Proposer's Program and comments from Proposer's references; | 20% |
| 2.3.3 | the quality of Proposer's Program and the proven record of the Program's success at institutions similar to UTEP in terms of size of institution, region and competition at the Football Bowl Subdivision Level | 15% |

| | | |
|-------|----------------------------------------------------------------------------------------------------------|-----|
| 2.3.4 | the extent to which the Program meets University's needs; | 15% |
| 2.3.5 | any costs to the University of licensing its trademarks to Proposer for inclusion in Proposer's Program; | 5% |
| 2.3.6 | Proposer's exceptions to the terms and conditions set forth in Section 4 of this RFP; and | 5% |
| 2.3.7 | the financial stability of Proposer and, back office support provided by Proposer | 5% |

2.4 Key Events Schedule

| | |
|-----------------------------------------------------------------------------------------------------|-------------------------------------------------------|
| Issuance of RFP | August 10, 2018 |
| Pre-Proposal Conference (Ref. Section 2.6 of this RFP) Site Visit following conference | August 24, 2018, 10:00 a.m. Mountain Time |
| Deadline for Questions/Concerns (Ref. Section 2.2 of this RFP) | August 31, 2018, 2:00 p.m. Mountain Time |
| Submittal Deadline (Ref. Section 2.1 of this RFP) | September 28, 2018, 3:00 p.m. Mountain Time |

2.5 Pre-Proposal Conference

University will hold a pre-proposal conference at 10:00 a.m. Mountain Time, on Thursday, **August 24, 2018**, in Room 301 in Kelly Hall 3rd Floor (ref. **APPENDIX FOUR Campus Map**). The pre-proposal conference will allow all Proposers an opportunity to ask University's representatives relevant questions and clarify provisions of this RFP. Site Visit following conference.

The following is a conference bridge information for the Pre-Proposal meeting but on site attendance is preferred;

| | |
|---------------------------------|----------------|
| Conference Bridge Phone Number: | 1-888-330-1716 |
| Access Code: | 3706949 |

SECTION 3

SUBMISSION OF PROPOSAL

3.1 Number of Copies

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

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

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

3.2 Submission

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

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

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

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

AND

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

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

3.3 Proposal Validity Period

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

3.4 Terms and Conditions

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

- 3.4.1.1 Specifications and Additional Questions (ref. **Section 5**);
- 3.4.1.2 License (ref. **APPENDIX TWO**);
- 3.4.1.3 Proposal Requirements (ref. **APPENDIX ONE**);
- 3.4.1.4 Notice to Proposers (ref. **Section 2**).

3.5 Submittal Checklist

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

- 3.5.1 Signed and Completed Execution of Offer (ref. **Section 2** of **APPENDIX ONE**)
- 3.5.2 Signed and Completed Royalty and Payment Schedule (ref. **Section 6**)
- 3.5.3 Responses to Proposer's General Questionnaire (ref. **Section 3** of **APPENDIX ONE**)
- 3.5.4 Signed and Completed Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**)
- 3.5.5 Responses to questions and requests for information in the Specifications and Additional Questions Section (ref. **Section 5**)

SECTION 4

GENERAL TERMS AND CONDITIONS

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

SECTION 5

SPECIFICATIONS AND ADDITIONAL QUESTIONS

5.1 General

Minimum requirements and specifications for the Program, as well as certain requests for information to be provided by Proposer as part of its proposal, are set forth below. As indicated in **Section 2.3**, the successful Proposer is referred to as the “**Licensee**.”

5.2 Minimum Requirements

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

- 5.2.1 Proposer shall have a minimum of three (3) years’ experience with Division I FBS level athletic programs. The Program shall be operated by qualified and experienced staff of the Proposer.

5.3 Additional Questions Specific to this RFP

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

- 5.3.1 If Proposer takes exception to any terms or conditions set forth in the License (ref. **APPENDIX TWO**), Proposer must submit a list of the exceptions.
- 5.3.2 By signing the Execution of Offer (ref. **Section 2 of APPENDIX ONE**), Proposer agrees to comply with Certificate of Interested Parties laws (ref. [§2252.908, Government Code](#)) and [1 TAC §§46.1 through 46.5](#)) as implemented by the Texas Ethics Commission (TEC), including, among other things, providing TEC and University with information required on the form promulgated by TEC and set forth in **APPENDIX EIGHT**. *Proposer may learn more about these disclosure requirements, including applicable exceptions and use of the TEC electronic filing system, by reviewing [§2252.908, Government Code](#), and information on the TEC website at https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html. **The Certificate of Interested Parties must only be submitted by Licensee upon delivery to University of a signed License.***
- 5.3.3 In its proposal, Proposer must indicate whether it will consent to include in the License the “Access by Individuals with Disabilities” language that is set forth in **APPENDIX FIVE, Access by Individuals with Disabilities**. If Proposer objects to the inclusion of the “Access by Individuals with Disabilities” language in the License, Proposer must, as part of its proposal, specifically identify and describe in detail all of the reasons for Proposer’s objection. **NOTE: A GENERAL OBJECTION IS NOT AN ACCEPTABLE RESPONSE TO THIS QUESTION.**
- 5.3.4 In its proposal, Proposer must respond to each item listed in **APPENDIX SIX, Electronic and Information Resources (EIR) Environment Specifications**. **APPENDIX SIX** will establish specifications, representations, warranties and agreements related to the EIR that Proposer is offering to provide to University. Responses to **APPENDIX SIX** will be incorporated into the License and will be binding on Licensee.
- 5.3.5 In its proposal, Proposer must respond to each item listed in **APPENDIX SEVEN, Security Characteristics and Functionality of Licensee’s Information Resources**. **APPENDIX SEVEN** will establish specifications, representations, warranties and agreements related to the EIR that Proposer is offering to provide to University. Responses to **APPENDIX SEVEN** will be incorporated into the License and will be binding on Licensee.

5.3.6 Briefly describe up to three (3) comparable projects that Proposer has completed in the last three (3) years or are currently under development and that demonstrate Proposer's ability to complete the objectives of this RFP.

5.3.7 **Personnel**

5.3.7.1 Submit summary resumes for Proposer's key personnel who will be administering the Program under the License, including specific experience with similar projects and number of years of employment with the Proposer.

5.3.7.2 Provide Proposer's Program staffing proposal, including job titles and responsibilities, and qualifications for peak and off-peak periods.

5.4 **Scope of Program**

The Program should include all elements described by the License (ref. **APPENDIX TWO**).

If the Program does not include any of the elements described by the License, please specifically identify all elements that are not included.

If the Program includes any elements not described by the License, please submit a detailed description of the additional elements in Proposer's Program.

SECTION 6

ROYALTY AND PAYMENT SCHEDULE

Proposal of: _____
 (Proposer Name)

To: The University of Texas at El Paso

RFP No.: 724-1813-JBT

Ladies and Gentlemen:

Having carefully examined all the specifications and requirements of this RFP (including **Section 14** of **APPENDIX TWO**) and any attachments thereto, the undersigned proposes to license University's trademarks and provide the Program pursuant to the above-referenced Request for Proposal upon the terms quoted below.

6.1 Royalty for Use of University Trademarks

In consideration of the license rights that will be granted to Licensee by University, during the Term (ref. **Section 11.1** of **APPENDIX TWO, SCHEDULE 1**), Proposer will pay University a Royalty (ref. **Section 14.1** of **APPENDIX TWO**) on Adjusted Gross Revenue (ref. **Section 14.1** of **APPENDIX TWO SCHEDULE 1**), at the following percentage rates:

Years One through Five:

| Compensation July 1, 2019- June 30, 2020 | Compensation July 1, 2020 - June 30, 2021 | Compensation July 1, 2021 - June 30, 2022 | Compensation July 1, 2022 - June 30, 2023 | Compensation July 1, 2023 - June 30, 2024 |
|----------------------------------------------|----------------------------------------------|----------------------------------------------|----------------------------------------------|----------------------------------------------|
| Guaranteed Royalty | Guaranteed Royalty | Guaranteed Royalty | Guaranteed Royalty | Guaranteed Royalty |
| \$ | \$ | \$ | \$ | \$ |
| AGR Milestone Royalty Threshold Level | AGR Milestone Royalty Threshold Level | AGR Milestone Royalty Threshold Level | AGR Milestone Royalty Threshold Level | AGR Milestone Royalty Threshold Level |
| \$ | \$ | \$ | \$ | \$ |
| Additional Proposed AGR Milestone Royalty | Additional Proposed AGR Milestone Royalty | Additional Proposed AGR Milestone Royalty | Additional Proposed AGR Milestone Royalty | Additional Proposed AGR Milestone Royalty |
| \$ | \$ | \$ | \$ | \$ |

Years Six through Ten:

| Compensation July 1, 2024 - June 30, 2025 | Compensation July 1, 2025 - June 30, 2026 | Compensation July 1, 2026 - June 30, 2027 | Compensation July 1, 2027 - June 30, 2028 | Compensation July 1, 2028 - June 30, 2029 |
|-------------------------------------------|-------------------------------------------|-------------------------------------------|-------------------------------------------|-------------------------------------------|
| Guaranteed Royalty | Guaranteed Royalty | Guaranteed Royalty | Guaranteed Royalty | Guaranteed Royalty |
| \$ | \$ | \$ | \$ | \$ |
| AGR Milestone Royalty Threshold Level | AGR Milestone Royalty Threshold Level | AGR Milestone Royalty Threshold Level | AGR Milestone Royalty Threshold Level | AGR Milestone Royalty Threshold Level |
| \$ | \$ | \$ | \$ | \$ |
| Additional Proposed AGR Milestone Royalty | Additional Proposed AGR Milestone Royalty | Additional Proposed AGR Milestone Royalty | Additional Proposed AGR Milestone Royalty | Additional Proposed AGR Milestone Royalty |
| \$ | \$ | \$ | \$ | \$ |

*** SUMMARY OF TOTAL COMPENSATION:**

| | | |
|---------------|--------------------------------------|----|
| 2019 – 2029 | Total Guaranteed Royalty | \$ |
| 2019 – 2029 | Total AGR Milestone Royalty Proposed | \$ |
| TOTAL: | | \$ |

6.2 Please list Performance Bonus Payments to be offered in Addition to above

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

PROPOSAL REQUIREMENTS

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SECTION 1

GENERAL INFORMATION

1.1 Purpose

University is soliciting competitive sealed proposals from Proposers having suitable qualifications and experience licensing trademarks of universities (including athletic departments) and operating a Program in accordance with the terms, conditions and requirements set forth in this RFP. This RFP provides sufficient information for interested parties to prepare and submit proposals for consideration by University.

By submitting a proposal, Proposer certifies that it understands this RFP and the conditions under which Proposer will operate its Program. Proposer also certifies that it understands that (a) all costs relating to preparing a response to this RFP, and (b) all costs (other than taxes and returns) relating to operating the Program will be the sole responsibility of the Proposer.

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

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

1.2 Inquiries and Interpretations

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

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

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

1.3 Public Information

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

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

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

1.4 Type of Agreement

Licensee, if any, will be required to enter into a contract with University in a form substantially similar to the Trademark License Agreement (the "**License**") attached to this RFP as **APPENDIX TWO** and incorporated for all purposes.

1.5 Proposal Evaluation Process

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

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

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

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

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

1.6 Proposer's Acceptance of RFP Terms

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

1.7 Solicitation for Proposal and Proposal Preparation Costs

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

1.8 Proposal Requirements and General Instructions

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

1.9 Preparation and Submittal Instructions

1.9.1 Specifications and Additional Questions

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

1.9.2 Execution of Offer

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

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

1.9.3 Royalty and Payment Schedule

Proposer must complete and return the Royalty and Payment Schedule (ref. **Section 6** of this RFP), as part of its proposal. In the Royalty and Payment Schedule, the Proposer should describe in detail (a) the total Royalty to be paid under the License; and (b) the method by which the Royalty will be calculated.

University will not recognize or accept any deductions from the Royalty that are not specifically stated in the Royalty and Payment Schedule.

In the Royalty and Payment Schedule, Proposer should describe the schedule on which each portion of the Royalty will be paid.

1.9.4 Proposer's General Questionnaire

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

1.9.5 Addenda Checklist

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

1.9.6 Submission

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

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

University will not under any circumstances consider a proposal that is received after the Submittal Deadline. University will not accept proposals submitted by telephone or FAX transmission.

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

SECTION 2

EXECUTION OF OFFER

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

- 2.1 Representations and Warranties.** Proposer represents, warrants, certifies, acknowledges, and agrees as follows:
- 2.1.1 Proposer will provide the Program and comply with all terms, conditions, requirements and specifications set forth in this RFP and any resulting agreements.
 - 2.1.2 This RFP is a solicitation for a proposal and is not a contract or an offer to contract. Submission of a proposal by Proposer in response to this RFP will not create a contract between University and Proposer. University has made no representation or warranty, written or oral, that one or more contracts with University will be awarded under this RFP. Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
 - 2.1.3 Proposer is a reputable company that is lawfully and regularly engaged in **operating a Program**.
 - 2.1.4 Proposer has the necessary experience, knowledge, abilities, skills, and resources to **operate a Program**.
 - 2.1.5 Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances.
 - 2.1.6 Proposer understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in the **License** under which Proposer will be required to operate.
 - 2.1.7 Proposer will not delegate any of its duties or responsibilities under this RFP or the **License** to any sub-contractor, except as expressly provided in the **License**.
 - 2.1.8 Proposer will maintain any insurance coverage required by the **License** during the entire term.
 - 2.1.9 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. University will rely on such statements, information and representations in selecting Licensee. If selected by University, Proposer will notify University immediately of any material change in any matters with regard to which Proposer has made a statement or representation or provided information.
 - 2.1.10 PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, UT SYSTEM, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTling ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF PROPOSER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROPOSER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.
 - 2.1.11 Pursuant to §§[2107.008](#) and [2252.903](#), *Government Code*, any payments owing to Proposer under the License may be applied directly to any debt or delinquency that Proposer owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until such debt or delinquency is paid in full.
 - 2.1.12 Proposer offers and agrees to license certain University trademarks from University and comply with all terms, conditions, requirements and specifications set forth in this RFP.
 - 2.1.13 Any terms, conditions, or documents attached to or referenced in Proposer's proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP, and (b) do not place any requirements on University that are not set forth in this RFP. Submission of a proposal is Proposer's good faith intent to enter into the License with University as specified in this RFP and that Proposer's intent is not contingent upon University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.
 - 2.1.14 Pursuant to [Chapter 2270, Texas Government Code](#), Proposer certifies it (1) does not currently boycott Israel; and (2) will not boycott Israel during the term of any contract or agreement resulting from this RFP. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.

- 2.1.15 Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Proposer certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.
- 2.2 No Benefit to Public Servants.** Proposer has not given or offered to give, nor does Proposer intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its proposal. Failure to sign this [Execution of Offer](#), or signing with a false statement, may void the submitted proposal or any resulting contracts, and Proposer may be removed from all proposer lists at University.
- 2.3 Tax Certification.** Proposer is not currently delinquent in the payment of any taxes due under [Chapter 171, Tax Code](#), or Proposer is exempt from the payment of those taxes, or Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at University's option, may result in termination of any resulting contract.
- 2.4 Antitrust Certification.** Neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, nor anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in [§15.01 et seq., Business and Commerce Code](#), or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
- 2.5 Authority Certification.** The individual signing this document and the documents made a part of this RFP, is authorized to sign the documents on behalf of Proposer and to bind Proposer under any resulting agreements.
- 2.6 Child Support Certification.** Under [§231.006, Family Code](#), relating to child support, the individual or business entity named in Proposer's proposal is not ineligible to receive the specified contract award and any contracts resulting from this RFP may be terminated if this certification is inaccurate.
- 2.7 Relationship Certifications.**
- No relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Proposer that is a sole proprietorship, the officers or directors of any Proposer that is a corporation, the partners of any Proposer that is a partnership, the joint venturers of any Proposer that is a joint venture, or the members or managers of any Proposer that is a limited liability company, on one hand, and an employee of any member institution of UT System, on the other hand, other than the relationships which have been previously disclosed to University in writing.
 - Proposer has not been an employee of any member institution of UT System within the immediate twelve (12) months prior to the Submittal Deadline.
 - No person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in Proposer's proposal or any contract resulting from this RFP (ref. [§669.003, Government Code](#)).
 - All disclosures by Proposer in connection with this certification will be subject to administrative review and approval before University enters into any contract resulting from this RFP with Proposer.
- 2.8 Compliance with Equal Employment Opportunity Laws.** Proposer is in compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 2.9 Compliance with Safety Standards.** Proposer complies with safety standards established and promulgated under the Federal Occupational Safety and Health Law ([Public Law 91-596](#)) and the *Texas Hazard Communication Act*, [Chapter 502, Health and Safety Code](#), and all related regulations in effect or proposed as of the date of this RFP.
- 2.10 Exceptions to Certifications.** Proposer will and has disclosed, as part of its proposal, any exceptions to the information stated in this [Execution of Offer](#). All information will be subject to administrative review and approval prior to the time University makes an award or enters into any contract with Proposer.
- 2.11 Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act Certification.** If Proposer will sell or lease computer equipment to University under any contract resulting from this RFP then, pursuant to [§361.965\(c\), Health & Safety Code](#), Proposer is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in [Chapter 361, Subchapter Y, Health & Safety Code](#), and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in [30 TAC Chapter 328, §361.952\(2\), Health & Safety Code](#), states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term "computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.
- 2.12 Conflict of Interest Certification.**
- Proposer is not a debarred vendor or the principal of a debarred vendor (i.e. owner, proprietor, sole or majority shareholder, director, president, managing partner, etc.) either at the state or federal level.
 - Proposer's performance under any contract resulting from this RFP will not constitute an actual or potential conflict of interest.
 - Proposer has disclosed any personnel who are related to any current or former employees of University.
 - Proposer has not given, nor does Proposer intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to an officer or employee of University in connection with this RFP.

213 Proposer should complete the following information:

If Proposer is a Corporation, then State of Incorporation: _____

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

RFP No.: 724-1813-JBT

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

Submitted and Certified by:

(Proposer Institution's Name)

(Signature of Duly Authorized Representative)

(Printed Name/Title)

(Date Signed)

(Proposer's Street Address)

(City, State, Zip Code)

(Telephone Number)

(FAX Number)

SECTION 3

PROPOSER'S GENERAL QUESTIONNAIRE

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

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

3.1 Proposer Profile

3.1.1 Legal name of Proposer company:

Address of principal place of business:

Address of office that would be providing the Program under the License:

Number of years in Business: _____

State of incorporation: _____

Number of Employees: _____

Annual Revenues Volume: _____

Name of Parent Corporation, if any _____

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

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

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

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

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

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

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

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

3.2 Approach to Project

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

3.3 Project Support

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

3.4 Quality Assurance

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

3.5 Miscellaneous

- 3.5.1 Proposer will provide a list of any additional benefits not otherwise identified in this RFP that Proposer would propose to provide to University. Additional benefits must be directly related to the Program in connection with the License.
- 3.5.2 Proposer will provide details describing any unique or special benefits offered or advantages to be gained by University from doing business with Proposer. Additional benefits must be directly related to the Program in connection with the License.
- 3.5.3 Does Proposer have a contingency plan or disaster recovery plan in the event of a disaster? If so, then Proposer will provide a copy of the plan.

SECTION 4
ADDENDA CHECKLIST

Proposal of: _____
(Proposer Name)

To: The University of Texas at El Paso

RFP No.: 724-1813-JBT _____

Ladies and Gentlemen:

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

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

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

APPENDIX TWO
TRADEMARK LICENSE AGREEMENT

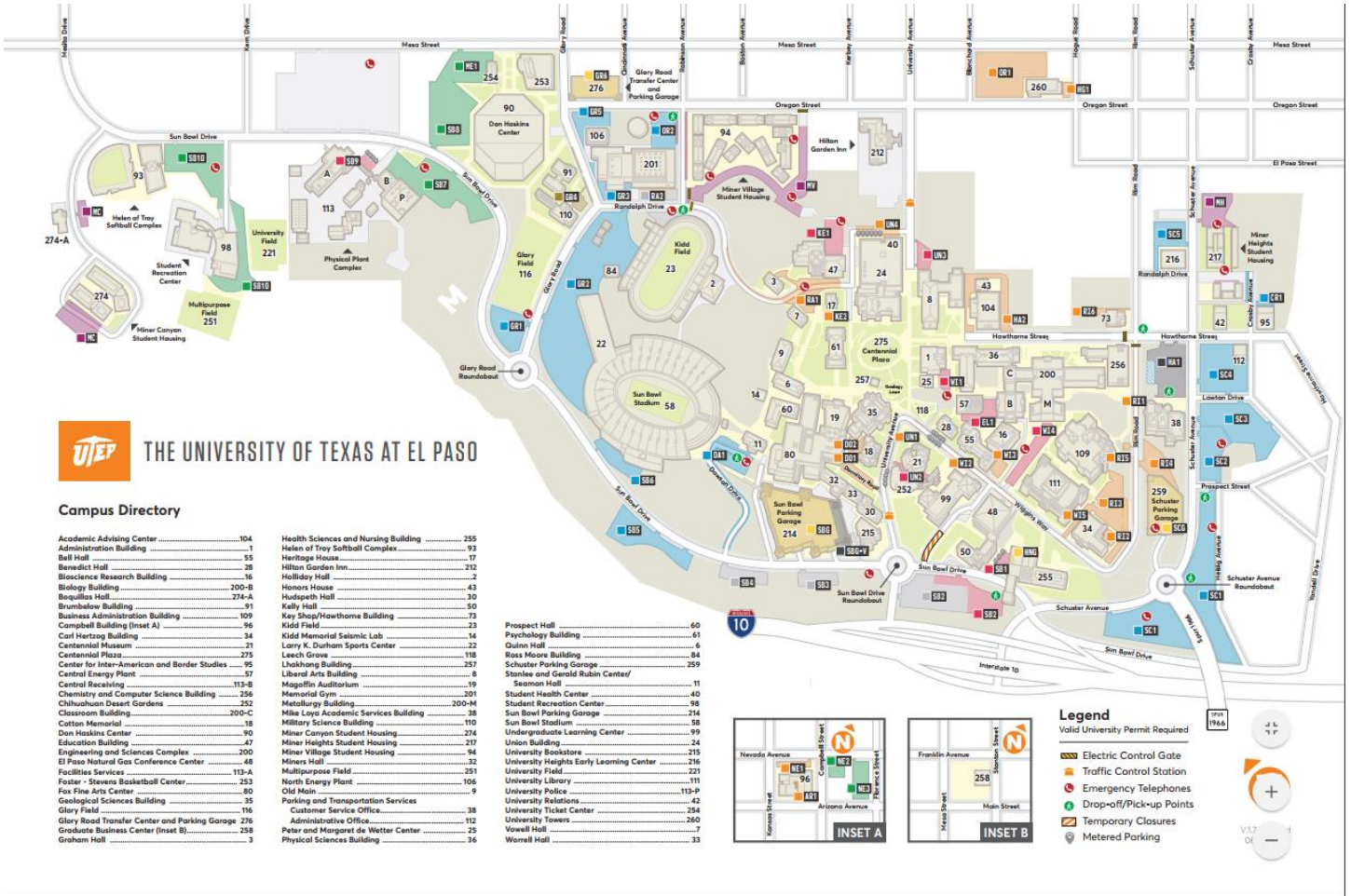
SCHEDULE 1 – TRADEMARK LICENSE AGREEMENT

**SCHEDULE 2 – EXHIBIT B- AGREEMENT FOR USE OF DESIGNATED MARKS IN
CONNECTION WITH MULTIMEDIA ATHLETICS MARKETING RIGHTS
PROGRAM**

SCHEDULE 3 – EXHIBIT C- TRADEMARK SUBLICENSE AGREEMENT

APPENDIX THREE

CAMPUS MAP



UTEP THE UNIVERSITY OF TEXAS AT EL PASO

Campus Directory

| | | | |
|----------------------------------------------------|-------|-------------------------------------------|-------|
| Academic Advising Center..... | 104 | Health Sciences and Nursing Building..... | 255 |
| Administration Building..... | 1 | Helen of Troy Softball Complex..... | 93 |
| Bell Hall..... | 55 | Hilton Garden Inn..... | 212 |
| Benedict Hall..... | 28 | Holliday Hall..... | 2 |
| BioScience Research Building..... | 16 | Honors House..... | 43 |
| Biology Building..... | 200-B | Hudspeth Hall..... | 30 |
| Boquillas Hall..... | 274-A | Kally Hall..... | 50 |
| Brumlow Building..... | 91 | Key Shop/Hawthorne Building..... | 73 |
| Business Administration Building..... | 109 | Kidd Field..... | 23 |
| Campbell Building (Inset A)..... | 96 | Kidd Memorial Seismic Lab..... | 14 |
| Carl Herzog Building..... | 34 | Larry K. Durham Sports Center..... | 22 |
| Centennial Museum..... | 21 | Leach Grove..... | 118 |
| Centennial Plaza..... | 275 | Liberal Arts Building..... | 8 |
| Center for Inter-American and Border Studies..... | 95 | Magoffin Auditorium..... | 19 |
| Central Energy Plant..... | 57 | Memorial Gym..... | 201 |
| Central Receiving..... | 113-B | Metallurgy Building..... | 200-M |
| Chemistry and Computer Science Building..... | 256 | Mike Loya Academic Services Building..... | 38 |
| Chihuahuan Desert Gardens..... | 252 | Military Science Building..... | 110 |
| Classroom Building..... | 200-C | Miner Canyon Student Housing..... | 274 |
| Cotton Memorial..... | 18 | Miner Heights Student Housing..... | 217 |
| Don Haskins Center..... | 90 | Miner Village Student Housing..... | 94 |
| Education Building..... | 47 | Miners Hall..... | 32 |
| Engineering and Sciences Complex..... | 200 | Multipurpose Field..... | 251 |
| El Paso Natural Gas Conference Center..... | 48 | North Energy Plant..... | 106 |
| Facilities Services..... | 113-A | Old Main..... | 9 |
| Foster - Stevens Basketball Center..... | 253 | Parking and Transportation Services..... | 3 |
| Fox Fine Arts Center..... | 80 | Customer Service Office..... | 254 |
| Geological Sciences Building..... | 35 | Administrative Office..... | 112 |
| Glory Field..... | 116 | Peter and Margaret de Watter Center..... | 25 |
| Glory Road Transfer Center and Parking Garage..... | 276 | Physical Sciences Building..... | 36 |
| Graduate Business Center (Inset B)..... | 258 | | |
| Graham Hall..... | 3 | | |

APPENDIX FOUR

ACCESS BY INDIVIDUALS WITH DISABILITIES

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

APPENDIX FIVE

ELECTRONIC AND INFORMATION RESOURCES ENVIRONMENT SPECIFICATIONS

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

University is primarily a Microsoft products environment.

Basic Specifications

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

Security

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

4. If confidential data, including HIPAA or FERPA data, is stored in the EIR, will the data be encrypted at rest and in transmittal?

Integration

1. Is the EIR authentication Security Assertion Markup Language (**SAML**) compliant? Has Proposer ever implemented the EIR with Shibboleth authentication? If not, does the EIR integrate with Active Directory? Does the EIR support TLS connections to this directory?
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-based? Other?
5. Will University have access to the EIR source code? If so, will the EIR license permit University to make modifications to the source code? Will University's modifications be protected in future upgrades?
6. Will Proposer place the EIR source code in escrow with an escrow agent so that if Proposer is no longer in business or Proposer has discontinued support, the EIR source code will be available to University?

Accessibility Information

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

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

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

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

APPENDIX SIX

SECURITY CHARACTERISTICS AND FUNCTIONALITY OF LICENSEE'S INFORMATION RESOURCES

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

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

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

General Protection of University Records

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

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

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

12. Describe the security features incorporated into Information Resources to safeguard University Records containing confidential information.

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

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

Access Control

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

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

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

Use of Data

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

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

render University Records unrecoverable and prevent accidental and unauthorized access to University Records? Describe the degree to which sanitizing and disposal processes addresses University data that may be contained within backup systems. If University data contained in backup systems is not fully sanitized, describe processes in place that would prevent subsequent restoration of backed-up University data.

Data Transmission

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

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

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

Notification of Security Incidents

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

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

Compliance with Applicable Legal & Regulatory Requirements

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

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

APPENDIX SEVEN

CERTIFICATE OF INTERESTED PARTIES (Texas Ethics Commission Form 1295)

This is a sample Texas Ethics Commission's FORM 1295 – CERTIFICATE OF INTERESTED PARTIES. If not exempt under [Section 2252.908\(c\), Government Code](#), Licensee must use the Texas Ethics Commission electronic filing web page (at https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html) to complete the most current Certificate of Interested Parties form and submit the form as instructed to the Texas Ethics Commission and University.

The Certificate of Interested Parties will be submitted only by Licensee to University with signed License.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

| | |
|-----------------------------------------------------------------------------------------------------------------------------------|------------------------|
| Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties. | OFFICE USE ONLY |
| 1 Name of business entity filing form, and the city, state and country of the business entity's place of business. | |
| 2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed. | |

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

| 4 Name of Interested Party | City, State, Country (place of business) | Nature of Interest (check applicable) | |
|----------------------------|---------------------------------------------|---------------------------------------|--------------|
| | | Controlling | Intermediary |
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5 Check only if there is no Interested Party.

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address _____
(street) (city) (state) (zip code) (country)

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

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

 Signature of authorized agent of contracting business entity
 (Declarant)

ADD ADDITIONAL PAGES AS NECESSARY