# REQUEST FOR PROPOSAL

**by**

**The University of Texas at El Paso**

**for**

**Selection of a Vendor to Provide Vending Services**

**related to**

**UTEP Vending Units**

**RFP No. 724-2102-JBT**

**Submittal Deadline: March 11, 2021**

Issued: February 11, 2021

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## SECTION 1

## INTRODUCTION

### 1.1 Description of University

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

### 1.2 Background and Special Circumstances

Through this Request for Proposal ("RFP"), the University is seeking qualified and experienced companies with Vending Services for University's UTEP Vending Units. This shall be in accordance with the terms, conditions and requirements set forth in this RFP.

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

Attached to this RFP as **Exhibits "A", "B", "C", "D", "E" , "F" and "G"** for the information of Proposer's are documents identified respectively as (A) Preparation Activities and Schedule, (B) Tentative Campus Locations for Equipment, (C) Products and Sales Prices, (D) Vending Royalty Schedule, (E) HUB Subcontracting Plan, and (F) the 2020-2021 Academic Calendar for University, (G) Estimated Snack Vending Sales

### 1.3 Objective of Request for Proposal

The University of Texas at El Paso ("**University**") is soliciting proposals in response to this Request for Proposal for Selection of a Vendor to Provide the Vending Services set forth in the RFP, on the University of Texas at El Paso campus as an independent contractor of the University of Texas at El Paso, but will be subject to following the University facilities rules and regulations set forth by the University and enforced by the University's facility supervisor or designee. University requests interested companies to submit proposals to contract with University to provide Vending services under the terms and conditions set forth in this RFP.

**University expects to enter into a contract with the selected Proposer for a term of up to five (5) years with two (2) one (1) year options to renew on a year to year basis or seven (7) years. A sample Agreement is attached to this RFP as Appendix Two.**

University encourages but shall not require Proposers to submit proposals that include an offer to provide ALL of the services listed in **Section 5.4** (**Scope of Work/Requirements**), Specifications and Additional Requirements, of this RFP; however, University will accept and consider proposals to provide less than all of those services. University may at its discretion accept all or any part of any proposal, subject to the negotiation and execution of an Agreement between the parties.

The University of Texas at El Paso (**University**) is soliciting proposals in response to this Request for Proposal, **RFP No. 724-2102-JBT** (this "RFP"), from qualified vendors to perform work (**Work**) related to the **UTEP Vending Units**. The Services, which are more specifically described in **Section 5.4 (Scope of Work/Requirements)** of this RFP include **UTEP Vending Units**.

### 1.4 Group Purchase Authority

Texas law authorizes institutions of higher education (defined by §61.003, *Education Code*) to use the group purchasing procurement method (ref. §§51.9335, 73.115, and 74.008, *Education Code*). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Proposer under this RFP. In particular, Proposer should note that University is part of The University of Texas System (**UT System**), which is comprised of fourteen institutions described at http://www.utsystem.edu/institutions. UT System institutions

routinely evaluate whether a contract resulting from a procurement conducted by one of the institutions might be suitable for use by another, and if so, this RFP could give rise to additional purchase volumes. As a result, in submitting its proposal, Proposer should consider proposing a pricing model and other commercial terms that take into account the higher volumes and other expanded opportunities that could result from the eventual inclusion of other institutions in the purchase contemplated by this RFP. Any purchases made by other institutions based on this RFP will be the sole responsibility of those institutions.

## SECTION 2

## NOTICE TO PROPOSER

### 2.1 Submittal Deadline

University will accept proposals submitted in response to this RFP until **3:00 p.m., Mountain Standard Prevailing Time, on Thursday, March 11, 2021**. (**Submittal Deadline**).

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

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

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

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

Submission instructions are referenced in Section 3.2 of this RFP.

### 2.2 RFP Contact Information and Questions

Interested parties may direct questions about this RFP to:

The University of Texas at El Paso
Purchasing & General Services
Kelly Hall 3rd Floor
500 W. University Ave.
El Paso, TX 79968-0505
Attn: James Trejo
E-mail: jbtrejo3@utep.edu
(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 **Monday, March 1, 2021, at 2:00 p.m., Mountain Standard Prevailing Time (Question Deadline),** or (ii) if questions relate to Historically Underutilized Businesses, in accordance with Section 2.5.

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

## 2.3 Criteria for Selection

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

Proposer is encouraged to propose terms and conditions offering the maximum benefit to University in terms of (1) service, (2) total overall cost, and (3) project management expertise. Proposers should describe all educational, state and local government discounts, as well as any other applicable discounts that may be available to University in a contract for the Services.

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

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

**2.3.1** Threshold Criteria Not Scored

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

**2.3.2 Scored Criteria**

2.3.2.1 The overall financial compensation to be paid to University by Proposer in consideration for the privilege of operating vending machines on campus, including but not limited to the following: (Proposer must specifically identify in its proposal all forms of compensation it proposes to offer University in consideration for the rights offered in this RFP.)

1. Royalty payments from vending machine sales
2. Signing Bonus
3. Scholarship, and/or
4. Guaranteed royalties to University — 40%

| | | |
|---|---|---|
| 2.3.2.2 | Reputation of the Proposer and of the Proposer's goods or services; | 15% |
| 2.3.2.3 | Proposer's exceptions to the terms and conditions set forth in **Section 4**. | 15% |
| 2.3.2.4 | Extent to which the goods or services meet the University's needs; | 10% |
| 2.3.2.5 | Proposer's past relationship with the University; | 10% |
| 2.3.2.6 | Cost of goods and services; | 10% |

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

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

## 2.4 Key Events Schedule

| | |
|---|---|
| Date RFP Issued | February 11, 2021 |
| Virtual Pre-Proposal Conference<br>(ref. **Section 2.6**) | February 19, 2021, at 11:00 A.M.<br>Mountain Standard Prevailing Time |
| Question Deadline<br>(ref. **Section 2.2**) | March 1, 2021, at 2:00 P.M.<br>Mountain Standard Prevailing Time |
| Submittal Deadline<br>(ref. **Section 2.1**) | March 11, 2021, at 3:00 P.M.<br>Mountain Standard Prevailing Time |

## 2.5 Historically Underutilized Businesses

2.5.1 All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (**HUBs**) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP, Contractor subcontracts any Work, then Contractor must make a good faith effort to utilize HUBs certified by the Procurement and Support Services Division of the Texas Comptroller of Public Accounts. Proposals that fail to comply with the requirements contained in this **Section 2.5** will constitute a material failure to comply with advertised specifications and will be rejected by University as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP. Proposer acknowledges that, if selected by University, its obligation to make a good faith effort to utilize HUBs when subcontracting any Work will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of Work by the Proposer is subject to review by University to ensure compliance with the HUB program.

2.5.2 University has reviewed this RFP in accordance with 34 TAC §20.285, and has determined that subcontracting opportunities are probable under this RFP.

2.5.3 A HUB Subcontracting Plan (**HSP**) is a required part of the proposal. The HSP will be developed and administered in accordance with University's Policy on Utilization of Historically Underutilized Businesses, attached as **APPENDIX THREE**.

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

*Questions regarding the HSP may be directed to:*

| | |
|---|---|
| *Contact:* | *Benjamin Alvarez*<br>*Director, Purchasing & General Services*<br>*HUB Coordinator* |
| *Email:* | *baalvarez@utep.edu* |

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

2.5.4 *At the same time Proposer submits its* proposal *(no later than the Submittal Deadline (ref. **Section 2.1**))*, Proposer must submit the following HUB materials (**HUB Materials**):

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

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

**2.6 Virtual Pre-Proposal Conference**

University will hold a pre-proposal conference at **11:00 am**, **Mountain Standard Prevailing Savings Time on Friday, February 19, 2021 via Microsoft Teams Webinar**. The pre-proposal conference will allow all Proposers an opportunity to ask University's representatives relevant questions and clarify provisions of this RFP.

# Microsoft Teams meeting

**To call in (audio only)**
+1 915-320-4743,,710530368# United States, El Paso
Phone Conference ID: 710 530 368#

**Please copy link below and paste to browser for meeting access:**

https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2Fl%2Fmeetup-join%2F19%3Ameeting_NWQ3OWU1NTctZTUwOC00ZmJhLWFlMzktYjI3NjQwNWVlYzVl%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%2522857c21d2-1a16-43a4-90cf-d57f3fab9d2f%2522%252c%2522Oid%2522%253a%2522b1992fed-3fe0-43eb-8d5c-539432869a77%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=23186ce5-9632-4a4b-af9f-066f67d56c78&directDl=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true

## SUBMISSION OF PROPOSAL

### 3.1 Number of Copies

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

The copy of the Proposer's proposal bearing an original signature should contain the mark "original" on the front cover of the proposal.

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

### 3.2 Submission

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

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

Submission requirements indicated in Section 3.2.1 of this RFP is required to be considered for this solicitation. Failure to comply with the electronic submittal requirements will result in disqualification of submittal.

### 3.3 Proposal Validity Period

Each proposal must state that it will remain valid for University's acceptance for a minimum of One Hundred-Ninety (190) days after the Submittal Deadline, to allow time for evaluation, selection, and any unforeseen delays.

### 3.4 Terms and Conditions

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

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

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

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

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

### 3.5 Submittal Checklist

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

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

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

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

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

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

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

## SECTION 4

## GENERAL TERMS AND CONDITIONS

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

## SECTION 5

## SPECIFICATIONS AND ADDITIONAL QUESTIONS

### 5.1 General

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

**Implementation Date**

Contractor shall be adequately staffed and able to implement the Services on or before October 1, 2021

### 5.2 Minimum Requirements

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

5.2.1 Proposer meets all objectives outlined in Section 5.4.

5.2.2 Proposer complies with the requirements for insurance described in the sample agreement (**Appendix Two**) of this RFP.

5.2.3 Proposer has experience with a similar scope of work and describes its approach to this project and University's needs.

### 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 Agreement (ref. **APPENDIX TWO**), Proposer must redline APPENDIX TWO and include the redlined **APPENDIX TWO** and explanation of any exceptions as part of its Proposal. If Proposer agrees with terms or conditions set forth in the **APPENDIX TWO**, Proposer will submit a written statement acknowledging it.

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/resources/FAQs/FAQ_Form1295.php. **The Certificate of Interested Parties must only be submitted by Contractor upon delivery to University of a signed Agreement.**

5.3.3 In its proposal, Proposer must indicate whether it will consent to include in the Agreement the "Access by Individuals with Disabilities" language that is set forth in **APPENDIX FIVE, Access by Individuals with Disabilities**. If Proposer objects to the inclusion of the "Access by Individuals with Disabilities" language in the Agreement, Proposer must, as part of its proposal, specifically identify and describe in detail all of the reasons for Proposer's objection. NOTE: A GENERAL OBJECTION IS NOT AN ACCEPTABLE RESPONSE TO THIS QUESTION.

5.3.4 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 Agreement and will be binding on Contractor.

5.3.5 Proposer's must include the following;

5.3.5.1 A listing of at least five other colleges, universities, or similar institutional entities at which Proposer is currently operating. This listing must include the names and telephone numbers of the Contract Administrator for each of those institutions.

5.3.5.2 A listing of all colleges, universities, or similar institutions (if any) that have canceled (or otherwise terminated) contracts with Proposer during the last five years. This list must include the names and telephone numbers of the institution's Contract Administrator.

5.3.6 UTS165 defines "**Information Resources**" as 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.

UTS165 defines "Data" as recorded data, regardless of form or media in which it may be recorded, which constitute the original data necessary to support the business of UT System or original observations and methods of a study and the analyses of such original data that are necessary to support research activities and validate research findings. Data includes, but is not limited to: printed records, observations and notes; electronic data; video and audio records, photographs and negatives:

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

## 5.4 Scope of Work/Requirements

Each Proposal must include information that clearly indicates that Proposer will satisfy each of the minimum qualification requirements described below in this section: (University reserves the right to include all or a portion of the components provided within the Scope of Work provided below in a final contract award per this RFP.)

Contractor will provide the following services to University:

5.4.1 Vending Machines (Minimum Requirements)

5.4.1.1 All vending and support equipment will meet the specifications established by the National Automatic Merchandising Association and National Sanitation Foundation https://www.namanow.org/voice/machine-evaluation/.

5.4.1.2 All electrically operated equipment will be installed in accordance with the standards of the National Electrical code https://www.esfi.org/resource/2020-national-electrical-code-731.

5.4.1.3 All equipment is subject to rejection at any time by the University's Vice President for Business Affairs .

5.4.1.4 Each Proposer will supply a list indicating each type and model of vending machine it proposes to install and operate under the Agreement, and will include a product brochure for each type of machine proposed for use. All machines to be operated on University's campus must be new, current production models, and must contain coin changers and dollar bill reader/changers. University encourages each Proposer to propose installation of vending card readers on vending machine at select locations and to indicate all such locations on its equipment list.

5.4.1.5 Each Proposer must offer vending machine that will provide a minimum of five selections for candy and snack products and a minimum of two selections for feminine hygiene products.

5.4.1.6 Contractor, at its expense, shall keep all equipment furnished under the Agreement in proper mechanical working order.

5.4.1.7 Contractor, at its expense, shall provide replacement machines within 48 hours for any machines that become unserviceable or otherwise fail to comply with these minimum requirements.

5.4.1.8 All equipment must accept cash and/or credit card. If the equipment accepts credit card, the contractor agrees to establish security procedures to protect cardholder data and comply with the Payment Card Industry Data Security Standard (PCI DSS). Vendor can find details of the PCI DSS at https://www.pcisecuritystandards.org/security_standards/.
Vendor must provide a hosted solution that meets the current PCI DSS requirements. No credit card data should be stored within systems located at The University of Texas at El Paso (UTEP). UTEP's network must be considered a public network. Any security measures (hardware or software) needed to meet PCI DSS through UTEP's network must be supplied by the Contractor. The Contractor must provide a letter of attestation showing compliance with the PCI DSS. UTEP will require a yearly letter of attestation showing continued compliance with PCI DSS.

5.4.1.9 **Cord-and Plug-Connected**
Cord-and plug-connected vending machines manufactured or remanufactured on or after January 1, 2005, shall include a ground-fault circuit interrupter as an integral part of the attachment plug or be located within 300 mm (12 in.) of the attachment plug. Older vending machines manufactured or remanufactured prior to January 1, 2005, shall be connected to a GFCI-protected outlet.

5.4.1.10 **Other Than Cord-and Plug-Connected**
Vending machines not utilizing a cord and plug connection shall be connected to a ground-fault circuit-interrupter protected circuit.
Informational Note: For further information, see ANSI/UL 541-2010, Standard for Refrigerated Vending Machines, or ANSI/UL 751-2010, Standard for Vending Machines.

5.4.1.11 All vending machines, regardless of age, voltage, current, or frequency shall include a groundfault circuit interrupter as an integral part of the attachment plug or be located within 300 mm (12 in.) of the attachment plug.

## 5.5 IP Vending Interface Readers (Miner Gold Card Technology)

University anticipates that during the term of the Agreement, University will require that all, or a portion of Contractor's vending machine designated by University, shall be equipped with readers to accept The University of Texas at El Paso "Miner Gold Card" as a method of payment. University expects that the "Miner Gold Card" will

entitle a cardholder to access the funds from the cardholder's debit declining-account, Miner Bucks, to purchase products through on-campus vending machines.

All vending machines so designated by University must be equipped at Contractor's expense with a card-ready reader that is able to read encoding specified by University. University currently has card stock with the following specification:

HID iCLASS CONTACTLESS SMART CARD BASE MODEL: Composite (60/40) Shrink-Wrapped in 50's
iCLASS MEMORY SIZE & ALLOCATION: 2k Bits (256 Bytes) - 2k/2 Application Areas
PROGRAMMING: Programmed
BITS: 26 bit
FORMAT NUMBER: H10301
FACILITY CODE: 94
INTERNAL CARD NUMBER RANGE: 56001
EXTERNAL CARD NUMBER RANGE: Same as Internal Number
FRONT PACKAGING: Plain White with Gloss Finish
BACK PACKAGING: Custom Artwork with Gloss Finish with Mag Stripe
MAG STRIPE COERCIVITY: Hi-Co (2750oe)
CARD NUMBERING: Inkjetted, Sequential Matching Internal / External

University is interested in proposals for vending machine services that support online vending using magnetic stripe technology that will integrate with University's existing **CBORD CSGold System**, see Appendix 8. The Contractor selected by University will be required to provide industry-standard, non-proprietary equipment for all vending readers. (www.cbord.com)

**Proposers should note the following required features and specifications concerning card reader equipment:**

5.5.1 Required Features of the IP-Vending Interface Reader:

5.5.1.1 Support Multi-Drop Bus protocol for communication and works with other MDB coin/bill MDB units.
5.5.1.2 Enable the vending machine for use by swiping of a patron magnetic stripe card.
5.5.1.3 Control, tracks and charges for vending transactions and to communicate detailed transaction information over a TCP/IP network.
5.5.1.4 Operate online real-time to process transactions with Odyssey PCS.
5.5.1.5 Provide 24 hour coin-less vending.
5.5.1.6 Work in conjunction with existing coin mechanisms and bill acceptors or can operate independently.
5.5.1.7 Easily mountable and fits into most vending machines via insertion into the bill cut out.
5.5.1.8 Endure high traffic environments.
5.5.1.9 High security construction for high traffic area.
5.5.1.10 Meet the American with Disabilities Act (ADA) requirements.
5.5.1.11 Enable Multiple Vends.
5.5.1.12 Support the ability to set min and max vending rates/price.

5.5.2 Vending Interface Reader Specifications

Magnetic Stripe:
300 to 4000 oersted magnetic stripe reader
Card Insert: Horizontal insert type style card slot with a floating read head

Magnetic Head Life:
300,000 passes

Physical Dimensions:

| | |
|---|---|
| Width: | 3.875" |
| Width Front Bezel: | 3.375" |
| Height: | 4.25" |
| Length: | 5.25" |

Technical Specifications:

| | |
|---|---|
| Network connectivity: | 10 Base-T TCP/IP Network Protocol |
| Operator display: | 2 line x 16 Segment LCD with backlight |
| Power: | 24 - 34 VDC from MDB interface |
| Harness: | 34” MDB Interface Harness with Y –Connection |

Environmental Characteristics:

| | |
|---|---|
| Operating Temperature: | 0 C to 45 C |
| Ambient Humidity: | 30% to 85% RH without condensation and frost formation |
| Mounting Location: | Indoors – away from wind, rain, sunlight and dust |

5.5.3 CBORD will provide on-site instruction to Contractor for installing and maintaining the VIRs.

Contractor‘s vending reader should have the ability to function off-line from the central debit system. All off line transactions must be captured for automatic upload to the central debit system.

Contractor's overall system must allow for reporting of sales totals from the central debit system. Sales reports must have the ability to detail sales for each individual vending machine. The reporting must also allow grouping of the report information in a variety of ways, including by location, vendor, and type of machine.

Contractor's overall system must support multiple vending providers on campus, sales reports must have the ability to break down sales for each individual vendor’s machines, while preventing one vendor from seeing sales information from other vendors.

The reader in Contractor's vending machines must display a balance of the cardholder at the end of each transaction.

Each Proposer must demonstrate the compatibility of its reader equipment with a wide variety of makes and models of vending machines.

Each Proposer shall describe any tamper-resistant qualities of its vending readers.

Each Proposer shall fully describe the annual maintenance agreement and coverage for its proposed readers. Include cost for this maintenance agreement.

Each Proposer shall fully describe the system installation and implementation support services that it will provide.

Each Proposer shall fully describe its Customer Service and Support Program, including its procedures for customers to follow up for card reader problems.

At University’s option, Contractor must be willing to participate in a disaster recovery plan by agreeing to make available all hardware and software on a temporary, as-needed basis. Each Proposer shall fully describe its disaster recovery program.

Contractor must provide a toll-free service telephone number (24 hours a day, seven days a week).

Site survey needs to be conducted for the types of readers that will be used on Candy and Snack Vending Machines. Examples of readers that may be used for vending are as mentioned above.

Contractor must maintain the “Miner Gold Card Readers” on its vending machines in excellent condition. Contractor will coordinate any training required for University employees concerning the card readers, and shall reimburse University for any costs incurred by University in connection with such training. Contractor will have trained personnel available in El Paso to repair any malfunctioning “Miner Gold Card Readers”. Contractor shall have any malfunctioning readers repaired within 24-hours after a malfunction is reported to Contractor.

The Miner Gold Card payment method will affect University’s settlement method with the Contractor. Contractor will still collect cash from the vending machines and pay a Royalty to University. However, the

Miner Gold Card payment technology will require University to pay Contractor for the purchases that are made using Miner Gold Cards. University will reimburse Contractor for those Miner Gold Card purchases minus the agreed Royalty due to University.

**5.6 Vending Machine Products**

5.6.1 Each Proposer will provide a complete list of the products it proposes to offer in vending machines. Proposer's list will include brand name, portion size, nutritional and calorie information, and proposed selling price as stated in the Pricing and Delivery Schedule (**ref. Section 6**).

5.6.2 Contractor must stock its vending machines regularly, offering for sale only those products, brands, and sizes that University has approved. Proposer will not alter the range of products, brands, or sizes it offers without University's permission.

5.6.3 Contractor will maintain fresh and sanitary products in its vending machines and will comply with state, federal, local laws and regulations concerning storage and transport of candy and snacks. Contractor will identify its packaged perishable items by means of coded markings and will deliver to University in writing the explanatory "keys" required to read Contractor's coding system.

5.6.4 Contractor will not increase the prices charged for products sold in its vending machines for a period of not less than 24 months from the effective date of the Agreement. Contractor will provide an itemized product and price list, which will be made a part of the Agreement, containing the initial sales price for each product. After the expiration of 24 months (or such longer period as Contractor may offer in its proposal to maintain the initial price schedule), if the costs that Contractor pays for its products have increased, then University may permit an increase in Contractor's sales prices. Contractor must submit written requests, along with supporting documents for price changes, to University and Contractor may not increase any sales price until University approves.

5.6.5 **NOTE**: IN VENDING LOCATIONS WHERE HIGH TEMPERATURES MAY IMPAIR THE QUALITY AND ACCEPTABILITY OF CANDY PRODUCTS, CONTRACTOR SHALL MAKE MAXIMUM USE OF NON-CHOCOLATE AND COCOA BUTTER ITEMS IN ITS VENDING MACHINES DURING WARM AND HOT WEATHER.

5.6.6 Contractor shall provide microwave ovens and condiment stands in areas adjacent to any cold case vending machines.

5.6.7 Chewing gum will not be permitted to be sold in the vending machines.

**5.7 Vending Machine Service (Required Standards of Service):**

University requires exemplary performance from its vendors who provide products and services to University students and employees. Each Proposer should describe the service and quality control procedures proposed for its Vending program. Minimum service requirements for Contractor's Vending operations are as follows:

5.7.1 Contractor will provide on-call maintenance and repair service for its machines 24-hours a day, seven days a week. Contractor will make available to University a toll-free telephone number for service calls, and will respond on-site to calls within four hours between 8:00 AM and 5:00 PM, Monday through Friday, and within 24 hours during weekends. Contractor will keep at least one on-duty supervisor available from 8:00 AM to 5:00 PM each day that University is open and at least one on-call supervisor available at other times. Contractor's representatives may enter University's campus at reasonable times to install, repair, supply, and remove the machines.

5.7.2 Contractor will maintain a program of regular preventive maintenance and replacement of worn, damaged, or malfunctioning machines. University may require Contractor to replace machines that cannot be returned to service within four working days of the service call. Replacement machines will be of a type and condition at least equal to the machines that are replaced.

5.7.3 Contractor will keep its machines and all adjacent areas neat and sanitary. Contractor will clean spills that occur while filling or cleaning its machines, clean the front of its machines each time Contractor restocks or services them, and remove packaging and waste from University's campus after each service call.

5.7.4 Contractor will inspect and restock its machines at least once a day, Monday through Friday, between 8:00 AM and 5:00 PM, unless University directs otherwise. University and Contractor may agree that reduced service and modified product selections are appropriate during summer sessions, holidays, or building shutdowns.

5.7.5 Contractor will affix to each machine a prominent notice containing instructions on how to (1) operate the machine, (2) report malfunctions, (3) comment on product quality, and (4) request refunds.

5.7.6 Contractor shall provide microwave ovens in areas adjacent to any cold case vending machines.

5.7.7 Contractor will provide to University two (2) cash funds in the amounts of $50.00 each, which shall be used by University for making refund payments available at locations on campus that University designates. Contractor shall make additional funds available to University as required to maintain each fund at a level adequate to pay refunds promptly as they are requested. Contractor will supply a written form satisfactory to University that can be used as a voucher for submitting refund claims. The form will include space for claimants to identify (1) the type of machine, (2) the machine location, (3) the amount of loss, (4) a description of how the loss occurred, (5) the date of loss, and (6) the claimant's signature.

## 5.8 Royalties on Vending Operations

Contractor will pay to University each month a royalty based on the percentage of Contractor's monthly gross sales that is specified in the Agreement. Contractor will submit all related reports on monthly operations to University along with the monthly royalty payment per Section 6.

## 5.9 Promotion and Marketing Activities

5.9.1 Contractor will work collaboratively with the University to market its services to potential Miner Gold Card holders and the University Wellness Program.

5.9.2 Each Proposers submitting a response to this RFP acknowledges that University has made no representations or guarantees as to the number of persons who will use on-campus vending machine services. Each Proposer further acknowledges that, if selected by University, its failure to achieve any minimum volume of sales shall not be grounds for termination of the Agreement.

5.9.3 Contractor shall deliver to University for review and approval all advertising, marketing, or promotional information that is specific to Contractor's operations on University's campus (in whatever form and through whatever medium) no later than 30 days prior to Contractor's intended distribution or publication. Contractor shall not distribute or publish any such information without prior written approval from University in each instance.

5.9.4 Each Proposer shall describe how its proposed vending program will be presented to the University community and shall describe any other services or features that will help promote its sales on University's campus. Each proposal shall include information on the items identified below:

5.9.4.1 Submit a well-defined marketing plan to include but not limited to marketing and sales support for University special events and promotions, specifically at new student orientation as well as other times.
5.9.4.2 Create marketing materials such as brochures, flyers, posters, banners, and similar materials, subject to University approval, for distribution to Miner Gold Card holders.
5.9.4.3 Cooperate with University Miner Gold Card Office and Wellness Program by supporting University's overall direction, understanding and working within the University's culture and dynamics.

## 5.10 Technology Access Requirements

All Proposer's are notified that the Agreement to be entered into with the Contractor selected by University shall contain the following language by which the Contractor will certify that the equipment used in its operations under the Agreement will satisfy the applicable regulatory requirements concerning access for the disabled:

5.10.1 Contractor shall comply with the following Technology Access Provision:

Contractor is not conceding that the technology provided to University under this Agreement constitutes an automated information system as defined by Section 2157.001(1), *Texas Government Code*, and used in Section 2157.005, *Texas Government Code*. However, if such technology constitutes an automated information system then, in accordance with Section 2157.005, *Texas Government Code*, Contractor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Contractor represents and warrants to University that the technology provided to University for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: (1) providing equivalent access for effective use by both visual and non-visual means; (2) presenting information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this Section, the phrase "equivalent access" means substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

5.10.2 **Effective on July 1, 2014** and thereafter, Contractor shall comply with the applicable Technology Access requirements (if any) that are set forth in 1 *Texas Administrative Code*, section 213.33, as the same may be amended.

The requirements may be viewed on the Internet at:
https://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=1&pt=10&ch=213&rl=33

**SECTION 6**

**PRICING AND DELIVERY SCHEDULE**

**Proposal of:** _____
(Proposer Name)

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

**RFP No.:** 724-2102-JBT

Ladies and Gentlemen:

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

### 6.1 Proposal Pricing Summary – RFP FINANCIAL QUOTATION FORM

Proposer's base proposal is based upon providing Vending Machine Services on University's campus, in accordance with Section 4 of this RFP (Scope of Services) for the contract years of 2021-22 through 2025-26. Projected to begin September 1st of each year to align with University's Fiscal Year.

The section below provides an outline to be completed with Proposer's offer with respect to signing bonus, product pricing, and royalty. Proposer's base bid shall be presumed to include all costs and items necessary for Proposer's to perform in accordance with the offer shown on this form, and Proposer shall fully detail and itemize each product it proposes to sell. If Proposer's response makes reference to any attached supporting documents, all detail necessary for easy reference to supporting documents shall be indicated in the proposal.

#### 6.1.1 Signing Bonus Payment

Proposer confirms that it shall pay to University the following one-time signing bonus for the initial (5) years term. The bonus check shall be included at the time the Agreement is signed:

$ _____

6.1.1.1 Proposer offers to pay to University the following one-time signing bonus for first of two options to renew the agreement. The bonus check shall be included at the time the renewal amendment is signed:

$ _____

6.1.1.2 Proposer offers to pay to University the following one-time signing bonus for second of two options to renew the agreement. The bonus check shall be included at the time the renewal amendment is signed:

$ _____

**Candy, Snack, and Feminine Hygiene Products Vending Machine Service**

**(1.) Base Bid: Itemized Royalty and Guarantee (Based on Current Price)**

| Product Category | Portion Size | Vend Price | Royalty to University |
|---|---|---|---|
| Candy | _____ | $ _____ | _____ % |
| Nuts/trail mix/dry fruit | _____ | $ _____ | _____ % |
| Cookies/Crackers | _____ | $ _____ | _____ % |
| Snacks/Chips | _____ | $ _____ | _____ % |
| Snacks/Chips (baked) | _____ | $ _____ | _____ % |

| | | | |
|---|---|---|---|
| Nutritional bars | _____ | $_____ | _____% |
| Pastry | _____ | $_____ | _____% |
| Mints | _____ | $_____ | _____% |
| Hot coffee | _____ | $_____ | _____% |
| Hot Cocoa | _____ | $_____ | _____% |
| Chicken Soup | _____ | $_____ | _____% |
| Fat free/Low-fat Yogurt | _____ | $_____ | _____% |
| Fruit cups (in own juice) | _____ | $_____ | _____% |
| Reduced fat cheese sticks | _____ | $_____ | _____% |
| Low-fat/whole grain cereal | _____ | $_____ | _____% |
| 100 calorie snack packs | _____ | $_____ | _____% |
| Fat free or low fat milk | _____ | $_____ | _____% |

Proposer shall attach a complete detailed list of all items it proposes to make available for sale in its vending machines on University's campus, including brand name, portion size and selling price.

Proposer offers a guaranteed minimum royalty to University in the amount of $_____per year on all products referred to in Section 6.1 1 (1).

**6.1.2 Option: Proposer's Scholarship Fees:**

Proposer confirms that it shall pay to University an Annual Scholarship Fee for the Exclusive privilege of operating snack vending machines on campus as follows:

Option I: Five (5) year initial Term with the option of up to Two (2) additional years:

_____($_____) Dollars per year.

**(2.) Alternate Proposal: Itemized Royalty and Guarantee (Other Than Current Price)**

| **Product Category** | **Portion Size** | **Vend Price** | **Royalty to University** |
|---|---|---|---|
| Candy | _____ | $_____ | _____% |
| Nuts/trail mix/dry fruit | _____ | $_____ | _____% |
| Cookies/Crackers | _____ | $_____ | _____% |
| Snacks/Chips | _____ | $_____ | _____% |
| Snacks/Chips (baked) | _____ | $_____ | _____% |
| Nutritional bars | _____ | $_____ | _____% |
| Pastry | _____ | $_____ | _____% |
| Mints | _____ | $_____ | _____% |
| Hot coffee | _____ | $_____ | _____% |

| | | | |
|---|---|---|---|
| Hot Cocoa | _____ | $_____ | _____% |
| Chicken Soup | _____ | $_____ | _____% |
| Fat free/low-fat Yogurt | _____ | $_____ | _____% |
| Fruit cups (in own juice) | _____ | $_____ | _____% |
| Reduced fat cheese sticks | _____ | $_____ | _____% |
| Low-fat/whole grain cereal | _____ | $_____ | _____% |
| 100 calorie snack packs | _____ | $_____ | _____% |
| Fat free or low fat milk | _____ | $_____ | _____% |

Proposer offers a guaranteed minimum royalty to University in the amount of $_____per year on all products referred to in Section 6.1 1 (2).

**6.1.4 Option: Proposer's Scholarship Fees:**

Proposer confirms that it shall pay to University an Annual Scholarship Fee for the Exclusive privilege of operating Snack vending machines on campus as follows:

Option 2: Five (5) year initial Term with the option of up to Two (2) additional years:

_____($_____) Dollars per year.

**(3.) Base Bid: Itemized Royalty and Guarantee (Based on Current Price)**

| **Product Category** | **Size** | **Vend Price** | **Royalty to University** |
|---|---|---|---|
| Feminine Napkins | _____ | $_____ | _____% |
| Tampon | _____ | $_____ | _____% |

Proposer offers a guaranteed minimum royalty to University in the amount of $_____per year on all products referred to in Section 6.1 1 (3).

**(4.) Alternate Proposal: Itemized Royalty and Guarantee (Other Than Current Price)**

| Product Category | Size | Vend Price | Royalty to University |
|---|---|---|---|
| Feminine Napkins | _____ | $_____ | _____% |
| Tampon | _____ | $_____ | _____% |

Proposer shall attach a complete detailed list of all items it proposes to make available for sale in its vending machines on University's campus, including brand name, portion size and selling price.

Proposer offers a guaranteed minimum royalty to University in the amount of $_____per year on all products referred to in Section 6.1 1(4).

Proposers must complete and submit this Form in its entirety. Proposers are encouraged to provide alternate compensation plans to University for review. Alternate plans will not be reviewed by University unless this Quotation Form has been completed and submitted to University. Proposers may submit additional compensation forms that propose a longer contract period.

**6.2 Delivery Schedule**

COMMENCEMENT OF SERVICE, INSTALLATION OF EQUIPMENT, AND PHASE-IN:
Contractor's installation of machines and commencement of services under the Agreement shall begin on or about August 1, 2021. No later than ten calendar days prior to that date, Contractor will submit a phase-in plan to University for approval. The phase-in plan will provide timely installation of machines, as required by University. Contractor shall install all machines not later than 10 calendar days following the commencement date of services under the Agreement. The phase-in plan shall provide the following information:

Number of Machines to be installed
Type of Machine
Manufacturer and Model Number
Year Manufactured or Rebuilt
Installation Location of each Machine
Installation Date for each Machine

PHASE-OUT and CHANGE OVER PERIOD:

6.2.1.1 Upon the expiration or earlier termination of the Agreement, the 10-day period following such expiration or termination is a phase-out and change over period during which Contractor shall continue operations and remove machines to correspond to the phase-in of a successor operator as directed by University to provide continuity of vending machine service on University's campus.

6.2.1.2 Contractor shall remove all machines within the 10-day phase-out and change over period as approved by University. All terms and conditions of the Agreement shall apply to operations and sales during the phase-out and change over period; however, the period of change over shall not be construed as a renewal of the term of the Agreement.

**6.3 Discounts**

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

_____

## 6.4 Payment Terms

University's standard payment terms are "net 30 days" as mandated by the *Texas Prompt Payment Act* (ref. Chapter 2251, *Government Code*).

Indicate below the prompt payment discount that Proposer offers:

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

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

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

Respectfully submitted,

**Proposer:** _____

**By:** _____
(Authorized Signature for Proposer)

**Name:** _____

**Title:** _____

**Date:** _____

**APPENDIX ONE**

**PROPOSAL REQUIREMENTS**

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## SECTION 1

## GENERAL INFORMATION

### 1.1 Purpose

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

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

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

### 1.2 Inquiries and Interpretations

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

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

Any interested party that receives this RFP by means other than directly from University is responsible for notifying University that it has received an RFP package, and should provide its name, address, telephone and facsimile (**FAX**) numbers, and email address, to University, so that if University issues Addenda to this RFP or provides written answers to questions, that information can be provided to that party. Proposers are required to acknowledge the Addenda documents in Sourcing Manager at the Sourcing Manager Internet address at (https://adminapps.utep.edu/sourcing/).

### 1.3 Public Information

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

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

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

### 1.4 Type of Agreement

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

## 1.5 Proposal Evaluation Process

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

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

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

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

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

## 1.6 Proposer's Acceptance of RFP Terms

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

## 1.7 Solicitation for Proposal and Proposal Preparation Costs

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

## 1.8 Proposal Requirements and General Instructions

1.8.1 Proposer should carefully read the information contained herein and submit a complete proposal in response to all requirements and questions as directed.

1.8.2 Proposals and any other information submitted by Proposer in response to this RFP will become the property of University.

1.8.3 University will not provide compensation to Proposer for any expenses incurred by the Proposer for proposal preparation or for demonstrations or oral presentations that may be made by Proposer. Proposer submits its proposal at its own risk and expense.

1.8.4 Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFP in any way; or (iii) contain irregularities of any kind, are subject to disqualification by University, at University's sole discretion.

1.8.5 Proposals should be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet the requirements and specifications of this RFP. Emphasis should be on completeness, clarity of content, and responsiveness to the requirements and specifications of this RFP.

1.8.6 University makes no warranty or guarantee that an award will be made as a result of this RFP. University reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP or the Agreement when deemed to be in University's best interest. University reserves the right to seek clarification from any Proposer concerning any item contained in its proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to University, at University's sole discretion. Representations made by Proposer within its proposal will be binding on Proposer.

1.8.7 Any proposal that fails to comply with the requirements contained in this RFP may be rejected by University, in University's sole discretion.

## 1.9 Preparation and Submittal Instructions

1.9.1 Specifications and Additional Questions

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

1.9.2 Execution of Offer

Proposer must complete, sign and return the attached Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) as part of its proposal. The Execution of Offer must be signed by a representative of Proposer duly authorized to bind the Proposer to its proposal. Any proposal received without a completed and signed Execution of Offer may be rejected by University, in its sole discretion. Proposers shall acknowledge the attributes for the documents requested in Sections 3.4 (the "Terms and Conditions") and 3.5 (the "Submittal Checklist") of this RFP in Sourcing Manager at the Sourcing Manager Internet address at (https://adminapps.utep.edu/sourcing/.

1.9.3 Pricing and Delivery Schedule

Proposer must complete and return the Pricing and Delivery Schedule (ref. **Section 6**), as part of its proposal. In the Pricing and Delivery Schedule, the Proposer should describe in detail (a) the total fees for the entire scope of Work; and (b) the method by which the fees are calculated. Proposer shall also enter pricing information in Sourcing Manager at the Sourcing Manager Internet address at (https://adminapps.utep.edu/sourcing/). The fees must be inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit.

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

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

1.9.4 Proposer's General Questionnaire

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

1.9.5 Addenda Checklist

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

1.9.6 Submission

*Proposer should submit all proposal materials as instructed in* ***Section 3***. RFP No. (ref. **Title Page**) and Submittal Deadline (ref. **Section 2.1**) should be clearly shown (1) in the Subject line of any email transmitting the proposal, the name and the return address of the Proposer should be clearly visible in any email. Proposers are required to acknowledge the attributes for the documents requested in Sections 3.4 (the "Terms and Conditions") and 3.5 (the "Submittal Checklist") as well as supply pricing for this RFP in Sourcing Manager at the Sourcing Manager Internet address at (https://adminapps.utep.edu/sourcing/

Proposer must also submit the HUB Subcontracting Plan (also called the HSP) as required by **Section 2.5**

University will not under any circumstances consider a proposal that is received after the Submittal Deadline or which is not accompanied by the HSP as required by **Section 2.5**. University will not accept proposals submitted by telephone or FAX transmission or email.

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

## SECTION 2

## EXECUTION OF OFFER

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

2.1 **Representations and Warranties.** Proposer represents, warrants, certifies, acknowledges, and agrees as follows:

2.1.1 Proposer will furnish Work to University and comply with all terms, conditions, requirements and specifications set forth in this RFP and any resulting Agreement.

2.1.2 This RFP is a solicitation for a proposal and is not a contract or an offer to contract Submission of a proposal by Proposer in response to this RFP will not create a contract between University and Proposer. University has made no representation or warranty, written or oral, that one or more contracts with University will be awarded under this RFP. Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.

2.1.3 Proposer is a reputable company that is lawfully and regularly engaged in providing Work.

2.1.4 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform Work.

2.1.5 Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances relating to performance of Work.

2.1.6 Proposer understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in the Agreement under which Proposer will be required to operate.

2.1.7 Proposer will not delegate any of its duties or responsibilities under this RFP or the Agreement to any sub-contractor, except as expressly provided in the Agreement.

2.1.8 Proposer will maintain any insurance coverage required by the Agreement during the entire term.

2.1.9 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. University will rely on such statements, information and representations in selecting Contractor. If selected by University, Proposer will notify University immediately of any material change in any matters with regard to which Proposer has made a statement or representation or provided information.

2.1.10 PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, UT SYSTEM, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF PROPOSER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROPOSER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.

2.1.11 Pursuant to §§2107.008 and 2252.903, *Government Code*, any payments owing to Proposer under the Agreement may be applied directly to any debt or delinquency that Proposer owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until such debt or delinquency is paid in full.

2.1.12 Any terms, conditions, or documents attached to or referenced in Proposer's proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP, and (b) do not place any requirements on University that are not set forth in this RFP. Submission of a proposal is Proposer's good faith intent to enter into the Agreement with University as specified in this RFP and that Proposer's intent is not contingent upon University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.

2.1.13 Pursuant to Chapter 2271, *Texas Government Code*, Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

2.1.14 Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, Proposer certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.

**2.2 No Benefit to Public Servants.** Proposer has not given or offered to give, nor does Proposer intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting Agreement, and Proposer may be removed from all proposer lists at University.

**2.3 Tax Certification.** Proposer is not currently delinquent in the payment of any taxes due under Chapter 171, *Tax Code*, or Proposer is exempt from the payment of those taxes, or Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at University's option, may result in termination of any resulting Agreement.

**2.4 Antitrust Certification.** Neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, nor anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in §15.01 et seq., *Business and Commerce Code*, or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.

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

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

**2.7 Relationship Certifications.**

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

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

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

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

**2.11 Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act Certification.** If Proposer will sell or lease computer equipment to University under any Agreement resulting from this RFP then, pursuant to §361.965(c), *Health & Safety Code*, Proposer is in compliance with the

Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in Chapter 361, Subchapter Y, *Health & Safety Code*, and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in 30 TAC Chapter 328. §361.952(2), *Health & Safety Code*, states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term "computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.

**2.12 Conflict of Interest Certification.**

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

**2.13 Proposer 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.: 724-2102-JBT

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

**Submitted and Certified By:**

_____
(Proposer Institution's Name)

_____
(Signature of Duly Authorized Representative)

_____
(Printed Name/Title)

_____
(Date Signed)

_____
(Proposer's Street Address)

_____
(City, State, Zip Code)

_____
(Telephone Number)

_____
(FAX Number)

## SECTION 3

## PROPOSER'S GENERAL QUESTIONNAIRE

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

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

### 3.1 Proposer Profile

3.1.1 Legal name of Proposer Company:

_____

Address of principal place of business:

_____

_____

_____

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

_____

_____

_____

Number of years in Business: _____

State of incorporation: _____

Number of Employees: _____

Annual Revenues Volume: _____

Name of Parent Corporation, if any _____

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

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

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

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

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

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

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

3.1.8 Does any relationship exist (whether by family kinship, business association, capital funding agreement, or any other such relationship) between Proposer and any employee of University? If yes, Proposer will explain.

3.1.9 Proposer will provide the name and Social Security Number for each person having at least 25% ownership interest in Proposer. This disclosure is mandatory pursuant to §231.006, *Family Code*, and will be used for the purpose of determining whether an owner of Proposer with an ownership interest of at least 25% is more than 30 days delinquent in paying child support. Further disclosure of this information is governed by the *Texas Public Information Act* (ref. Chapter 552, *Government Code*), and other applicable law.

## 3.2 Approach to Work

3.2.1 Proposer will provide a statement of the Proposer's service approach and will describe any unique benefits to University from doing business with Proposer. Proposer will briefly describe its approach for each of the required services identified in **Section 5.4** Scope of Work of this RFP.

3.2.2 Proposer will provide an estimate of the earliest starting date for services following execution of the Agreement.

3.2.3 Proposer will submit a work plan with key dates and milestones. The work plan should include:

3.2.3.1 Identification of tasks to be performed;

3.2.3.2 Time frames to perform the identified tasks;

3.2.3.3 Project management methodology;

3.2.3.4 Implementation strategy; and

3.2.3.5 The expected time frame in which the services would be implemented.

3.2.4 Proposer will describe the types of reports or other written documents Proposer will provide (if any) and the frequency of reporting, if more frequent than required in this RFP. Proposer will include samples of reports and documents if appropriate.

## 3.3 General Requirements

3.3.1 Proposer will provide summary resumes for its proposed key personnel who will be providing services under the Agreement with University, including their specific experiences with similar service projects, and number of years of employment with Proposer.

3.3.2 Proposer will describe any difficulties it anticipates in performing its duties under the Agreement with University and how Proposer plans to manage these difficulties. Proposer will describe the assistance it will require from University.

### 3.4 Service Support

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

### 3.5 Quality Assurance

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

### 3.6 Miscellaneous

3.6.1 Proposer will provide a list of any additional services or benefits not otherwise identified in this RFP that Proposer would propose to provide to University. Additional services or benefits must be directly related to the goods and services solicited under this RFP.

3.6.2 Proposer will provide details describing any unique or special services or benefits offered or advantages to be gained by University from doing business with Proposer. Additional services or benefits must be directly related to the goods and services solicited under this RFP.

3.6.3 Does Proposer have a contingency plan or disaster recovery plan in the event of a disaster? If so, then Proposer will provide a copy of the plan.

**SECTION 4**

**ADDENDA CHECKLIST**

**Proposal of:** _____
(Proposer Name)

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

**RFP No.: 724-2102-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**

**AGREEMENT**

**VENDING MACHINE SERVICES CONTRACT**

**This VENDING MACHINE SERVICES CONTRACT (Agreement) is entered into effective as of _____, 20____ (Effective Date) by and between THE UNIVERSITY OF TEXAS _____ (University), an agency and institution of higher education authorized by the laws and Constitution of the State of Texas, and _____ (Contractor), a _____.**

RECITALS

University desires certain products and services be made available on the University's campus (**Campus**) by means of vending machines for the benefit and convenience of its students, faculty, staff and visitors;

Contractor represents that it has the knowledge, ability, equipment, and personnel to conduct vending machine operations on Campus; and

University, in reliance on Contractor's representations, is willing to contract with Contractor on the terms and conditions of this Agreement.

For and in consideration of the mutual benefits and covenants contained in this Agreement, the parties agree as follows:

**Section 1.**

**TERM AND EXTENSION**

**The term of this Agreement (**Term**) will commence on the Effective Date and expire on _____, 20_____, unless earlier terminated pursuant to the terms and conditions of this Agreement.**

**University shall have the right at its option to renew the term of this Agreement for up to two (2) additional one-year periods, on the same terms and conditions stated herein. If University desires to exercise its option to renew, then University shall give written notice to Contractor not less than sixty (60) days prior to the expiration of the original Term or the subsequent renewal term. Any renewal of this Agreement shall be documented in the form of a written amendment and signed by authorized representatives of University and Contractor.**

**Section 2.**

## CONTRACTOR'S OBLIGATIONS

2.1 Preparation Activities; Schedule. Contractor's activities (**Preparation Activities**) to be performed in preparation to provide vending machine operations on Campus and the related schedule for performance of the Preparation Activities are set forth in **Exhibit A** attached and incorporated for all purposes.

2.2 Commencement of Work. Beginning on _____, 20___, Contractor will, in accordance with the terms and conditions of this Agreement, commence performance of vending machine operations at Campus locations (collectively, **Locations**) more particularly identified in **Exhibit B** attached and incorporated for all purposes, through Contractor's vending machines and related equipment (collectively, **Equipment**) dispensing the products (collectively, **Products**) listed in **Exhibit C** attached and incorporated for all purposes. The Preparation Activities, vending machine operations and all other services, duties and obligations required to be performed by Contractor under this Agreement will sometimes be collectively referred to as "**Work**."

2.3 Limited Access; Location License. Contractor, its employees, representatives, agents, and subcontractors, will have the right to use and access only the Locations to perform Work and will have no right to use or access any other University facilities. University will permit Contractor to use the Locations in accordance with the license contained in this Section. University licenses the Locations in their current, "as is" condition to Contractor for use by Contractor and its employees, representatives, agents, and subcontractors in the performance of Work and for no other purpose. This is a non-exclusive license to use the Locations. University may enter the Locations at any time for any reason. No unlawful activities will be permitted in the use of the Locations. Contractor will comply with all applicable federal, state and local laws, rules, regulations, ordinances and orders (collectively, **Applicable Laws**), as well as the Rules and Regulations of the Board of Regents of The University of Texas System, the Administrative Rules of The University of Texas System (**UT System**) and the institutional rules and regulations and policies of the University (collectively, **University Rules**), in connection with the use of the Locations. Contractor will cause all of its employees, representatives, agents, and subcontractors to observe and comply with all Applicable Laws and University Rules.

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

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

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

Contractor has inspected the Locations and agrees that the Locations are sufficiently equipped for Contractor to provide Work in accordance with the terms and conditions of this Agreement.

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

UNIVERSITY WILL NOT BE LIABLE TO CONTRACTOR OR CONTRACTOR'S EMPLOYEES, REPRESENTATIVES, AGENTS, SUBCONTRACTORS, GUESTS OR INVITEES (COLLECTIVELY, **CONTRACTOR PARTIES**), FOR ANY LOSS, EXPENSE, OR DAMAGE, EITHER TO PERSON OR PROPERTY SUSTAINED BY REASON OF ANY CONDITION OF LOCATIONS, CAMPUS OR ADJOINING GROUNDS OR FACILITIES, OR DUE TO ANY ACT OF ANY EMPLOYEE, REPRESENTATIVE, AGENT, SUBCONTRACTOR, GUEST OR INVITEE OF UNIVERSITY, OR THE ACT OF ANY OTHER PERSON WHATSOEVER. UNIVERSITY, ITS EMPLOYEES, REPRESENTATIVES, AGENTS, SUBCONTRACTORS, GUESTS AND INVITEES WILL NOT BE LIABLE FOR, AND CONTRACTOR WAIVES, ALL CLAIMS FOR DAMAGE TO PERSON OR PROPERTY SUSTAINED BY ANY CONTRACTOR PARTIES, RESULTING FROM ANY ACCIDENT OR OCCURRENCE IN OR UPON LOCATIONS, CAMPUS OR ADJOINING GROUNDS OR FACILITIES. CONTRACTOR

WILL PAY ON DEMAND UNIVERSITY'S EXPENSES INCURRED IN ENFORCING ANY OBLIGATION OF CONTRACTOR UNDER THIS LICENSE.

2.4 Change in Locations. The Locations may be changed from time to time upon written agreement of the parties documented through an amendment to this Agreement in accordance with **Section 13**.

2.5 Products.

2.5.1 Products Vended. Contractor will offer for sale only Products that University has approved as to brand, size, sales price and royalties.

2.5.2 Applicable Laws; Product Standards; Perishable Products. Contractor will ensure that all Products will conform in all respects to Applicable Laws relating to the standards or specifications of those Products. All Products intended for human consumption will be fresh and suitable for human consumption in all respects. Contractor will identify perishable Products by means of coded markings with explanatory "keys" required to read Contractor's coding system. On the Effective Date, Contractor will deliver to University a written report with a list of all coded markings and explanatory "keys." Contractor will deliver to University an updated version of that report within five (5) days after Contractor changes the coding system or any explanatory "key."

2.5.3 Sales Prices for Products. Contractor will not increase the sales prices charged for Products above the sales prices designated in **Exhibit C**. University and Contractor may, by mutual agreement, adjust Product sales prices through an amendment to this Agreement in accordance with **Section 13**.

2.5.4 Change in Products. If it becomes desirable to change the Products to be vended by Contractor, then the Products to be deleted, the Products to be added and associated sales prices, royalties, location and type of vending machine, will be negotiated between Contractor and University and documented through an amendment to this Agreement in accordance with **Section 13**.

2.6 Equipment.

2.6.1 Type of Equipment; Compliance with Applicable Laws. Contractor will provide, install and operate all Equipment. Equipment operated on Campus by Contractor will be new or like-new models, will contain coin changers and dollar bill reader/changers, and will be of a size and type acceptable to University. University and Contractor agree to cooperate in implementing a phase-in of Equipment with credit card and debit card reader capability, at a rate to be mutually agreed upon between University and Contractor. Contractor will operate and maintain credit card and debit card readers on all Equipment. All Equipment will be installed and operated in conformity with Applicable Laws and University Rules.

2.6.2 On-Call Service. Contractor will provide on-call maintenance and repair service for Equipment twenty-four (24) hours a day, seven (7) days a week, at no cost to University. Contractor will make available to University a toll-free telephone number for service calls, and will respond with service technician on-site within four (4) hours after a service call placed between 7:30 AM and 5:30 PM, Monday through Friday, except holidays (collectively, **working days** and each a **working day**), and within twenty-four (24) hours after a service call placed at all other times. Contractor will keep at least one on-duty supervisor available each working day, and at least one on-call supervisor available at all other times.

2.6.3 Maintaining Equipment. Contractor will service all Equipment as often as is necessary to keep all Equipment properly supplied and in good working order. Contractor will maintain a program of regular preventive maintenance and replacement of worn, damaged, or malfunctioning Equipment. University may require Contractor to replace Equipment that cannot be returned to service within four (4) working days after a service call is placed. Replacement equipment will be of a type and condition at least equal to the type and condition of Equipment being replaced. Contractor will keep all Equipment in a neat and sanitary condition. Contractor will clean all spills that occur while filling, cleaning, or maintaining Equipment, clean Equipment each time Contractor restocks or services Equipment, and remove packaging and waste from Campus after each service call. Contractor will cooperate with University to promptly remedy any sanitary problems related to Equipment.

2.6.4 Inspecting and Restocking Equipment. Contractor will inspect and restock Equipment at least once each working day, unless University directs otherwise.

2.6.5 Operating Notices. Contractor will affix to all Equipment a prominent notice containing instructions on how to (1) operate Equipment, (2) report malfunctions, (3) comment on Product quality, and (4) request refunds.

2.7 Refunds. Contractor will provide University up to _____ three (3) separate cash funds in the amount of _____ $_____ each, which will be used by University for making refund payments available at Campus locations designated by University. Contractor will make additional funds available to University as required to maintain each fund at a level adequate to pay refunds promptly upon submission of a refund claim. Contractor will supply a written form, mutually agreeable to both parties, to be used as a voucher for submitting refund claims. The form will include space for claimants to identify (1) the type of Equipment, (2) the Location, (3) the amount of the loss, (4) a description of how the loss occurred, (5) the date of the loss, (6) the claimant's name and signature, and (7) the date of the refund claim.

2.8 Auxiliary Enterprise.
Contractor, at its sole cost and expense, will comply with all requirements of Subchapter C, Chapter 2252, *Texas Government Code*, including the provision of financial statements, payment statements derived from sales tax reports, and bonds.

2.8.1 Financial Statement. In accordance with §2252.062, *Texas Government Code*, Contractor will submit to University on or before the Effective Date, two (2) copies of Contractor's most recent financial statement prepared by a certified public accountant on the Effective Date.

2.8.2 Payment Statement. In accordance with §2252.063, *Texas Government Code*, Contractor will submit to University, no later than the 15th day after the end of each contract year, an annual payment statement derived from all of Contractor's sales tax reports for its operations during the preceding contract year. The annual payment statement must be certified by a certified public accountant licensed in the State of Texas. "**Contract year**" means that period of time beginning on the Effective Date and ending _____, 20____ and each twelve (12) month period thereafter, during the term of this Agreement.

2.8.3 Performance Bond. In accordance with §2252.064, *Texas Government Code*, Contractor will provide University with a performance bond for each contract year during the term of this Agreement. The amount of the performance bond for the first contract year during the term of this Agreement will be equal to one hundred thousand dollars (**$100,000**). Thereafter, the amount of the performance bond will be adjusted at the beginning of each contract year to $100,000. The performance bond will be issued by a surety company authorized to do business in the State of Texas and acceptable to University in all respects. The performance bond will be made payable to University and conditioned upon Contractor's prompt and faithful performance of work.

2.9 Costs of Operation. Contractor will pay all costs for installing, operating, stocking, servicing, and replacing the Equipment; provided, however, subject to **Section 2.3**, University will provide Contractor with electricity and water for operation of Equipment on Campus. University will not be responsible for any money shortages that result from theft, burglary, inoperable or malfunctioning Equipment, or any other cause.

2.10 Energy-Saving; Energy Management. Pursuant to §2165.058, *Texas Government Code*:

2.10.1 Internal Energy Saving or Management Device. Contractor will activate and maintain any internal energy saving or energy-management device or option that is already part of or contained in the Equipment.

2.10.2 External Energy Saving or Management Device. Contractor will use an external energy-saving or energy-management device in all Equipment that (a) operates with a compressor, and (b) does not have an activated and operational internal energy-saving or energy-management device or option.

2.10.3 Expenses. Contractor is responsible for any and all expenses associated with the acquisition, installation, or maintenance of all energy-saving devices required by this Section.

2.10.4 Exception. This **Section 2.10** does not apply to any Equipment that contains a perishable food product, as defined by §96.001, *Texas Civil Practice and Remedies Code*.

2.11 Signs. Contractor will not post signs or posters at the Locations or elsewhere on Campus. Contractor may only engage in marketing or promotional activity on Campus, that in each instance, (a) fully complies with Applicable Laws and University Rules, (b) has received University's advance written approval, and (c) qualifies as "use or acknowledgement" as defined in Treasury Regulations 1.513-4(c)(iv).

2.12 Student Evaluation. Contractor will comply with requirements of §51.945, *Texas Education Code*, and all University Rules regarding students' involvement in the evaluation of the performance of Contractor, by periodically holding meetings or forums to provide University's students with a reasonable opportunity to discuss the performance of Contractor. Contractor will obtain University's prior written approval concerning the date, time and location for each meeting or forum at least thirty (30) days in advance.

2.13 University's Right to Refuse Entry and Eject; Identification Badges; Background Checks; Certification.

2.13.1 Right to Refuse Entry and Eject. University has the right to (a) require identification from any person on University's Campus, (b) refuse entry to persons having no legitimate business on Campus, and (c) eject any undesirable person refusing to leave peaceably on request. Contractor will cooperate with all authorized University representatives in the exercise of University's rights described in this Section.

2.13.2 Identification Badge. Contractor will provide each of Contractor's employees, representatives, agents and subcontractors with an identification badge and will cause each employee, representative, agent and subcontractor to prominently display the badge on his or her person at all times while on Campus.

2.13.3 Background Check. Each individual who is assigned to perform any of Contractor's duties and obligations under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor and previously approved by University in writing. Contractor is responsible for the performance of all individuals performing Work under this Agreement. Prior to commencing any Work on Campus, Contractor will at its expense (a) provide University with a list ("**List**") of all individuals who may be assigned to perform Work, and (b) have an appropriate criminal background screening performed concerning each individual. Contractor will determine on a case-by-case basis whether each individual is qualified to provide Work. Contractor will not knowingly assign any individual to provide Work who has a history of criminal conduct unacceptable for a university campus, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform Work.

2.13.4 Certification. Prior to commencing any Work under this Agreement, Contractor will provide University a letter signed by an authorized representative of Contractor certifying compliance with **Section 2.13.3**. Contractor will provide University with an updated certification letter each time there is a change in the individuals assigned to perform Work.

**Section 3.**

**ROYALTY PAYMENTS, RECORDS AND REPORTS**

3.1 Royalty. Contractor will pay University a royalty (**Royalty**) on gross revenue generated by Work, all as more particularly provided in **Exhibit D** attached and incorporated for all purposes. The term "**gross revenue**" means gross revenue before exclusion of applicable sales taxes.

3.2 Payment and Report. Contractor will pay University the Royalty on or before the 10th day of the month that follows the month in which the Royalty was earned. Contractor will make all Royalty checks payable to "The University of Texas_____," and will deliver the monthly payments to University's _____, accompanied by a written report for the preceding month, showing the Royalty due and the dollar amount of gross revenue (a) from each piece of Equipment, and (b) from each Location. The report will also contain a summary showing all monthly and year-to-date gross revenue generated by Contractor as a result of Work.

3.3 Accurate Records. Contractor will keep accurate records of all sales on Campus. Contractor will make all records related to the Work available to University upon written request during the Term of this Agreement and for up to four (4) years after the expiration or termination of this Agreement. Contractor will permit authorized representatives of University to accompany Contractor's employees during cash collection and counting activities and to randomly examine the receipts of Equipment operated by Contractor.

3.4 Form of Reports. All reports required or given under this Agreement will be presented in forms satisfactory to University in all respects.

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

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

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

## Section 4.

## LICENSES, TAXES, APPLICABLE LAWS AND UNIVERSITY RULES

4.1 Licenses and Taxes. Contractor will obtain, maintain in effect, and pay the cost of all licenses, permits, certifications, and inspections required in connection with Contractor's performance of Work. Contractor will pay all taxes (including sales, excise and payroll taxes), payroll deductions, employee benefits, fines, penalties, or other payments required by Applicable Laws in connection with Contractor's performance of Work. Contractor will file proper sales tax returns with and remit sales tax payments to the Texas Comptroller of Public Accounts.

4.2 Applicable Laws and University Rules. Contractor will comply with, and will cause its employees, representatives, agents, and subcontractors to comply with, all Applicable Laws and University Rules.

4.3 Health and Safety Inspections. **CONTRACTOR WILL PROVIDE UNIVERSITY WITH COPIES OF ALL HEALTH AND SAFETY INSPECTION REPORTS RELATED TO THE WORK IN ANY WAY WITHIN _____ (____) THREE (3) DAYS AFTER CONTRACTOR RECEIVES THE REPORTS.**

4.4 Remedies. In the event University reasonably believes that Contractor is not in compliance with Applicable Laws and reasonably determines that a violation of Applicable Laws creates an imminent health hazard or immediate threat to the health and safety of University's Campus community or the public, University may immediately (a) perform any cleaning or other services deemed necessary by University (Contractor will reimburse University for all reasonable costs, including overtime costs.), (b) report Contractor's non-compliance with Applicable Laws to any governmental body or authority, and (c) *at University's option*, (i) require Contractor to cure the violation within a timeframe that is acceptable to University, or (ii) suspend Contractor's performance of Work, and/or (iii) terminate this Agreement *without notice or opportunity to cure*. Upon receipt of written notice of suspension or termination of this Agreement, Contractor will immediately cease performance of Work under this Agreement.

**Section 5.**

**INSURANCE**

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

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

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

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

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

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

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

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

5.1.4 Umbrella/Excess Liability Insurance with limits of not less than $2,000,000 per occurrence and aggregate with a deductible of no more than $10,000. The Umbrella/Excess Liability policy will be excess over and at least as broad as the underlying coverage as required under Sections 5.1.1 Employer's Liability; 5.1.2 Commercial General Liability; 5.1.3 Business Auto Liability. Inception and expiration dates will be the same as the underlying policies. Drop down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.

5.1.5 Professional Liability (Errors & Omissions) Insurance with limits of not less than $1,000,000 each occurrence, $3,000,000 aggregate. Such insurance will cover all Work performed by or on behalf of Contractor and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Contractor agrees to purchase an Extended Reporting Period Endorsement, effective twenty-four (24) months after the expiration or cancellation of the policy. No Professional Liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least twenty-four (24) months after the expiration or termination of this Agreement for any reason.

5.1.6 Contractor's Employee Dishonesty Insurance will be endorsed with a Client's Property Endorsement (or equivalent) to protect the assets and property of University with limits of not less than $500,000 **and** $1,000,000 per claim. If Contractor has property of University in its care, custody or control away from University's premises, Contractor will provide bailee coverage for the replacement cost of the property. Contractor's Employee Dishonesty policy will name University as Loss Payee.

5.1.7 Directors' and Officers' Liability Insurance with limits of not less than $1,000,000 per claim. The coverage will be continuous for the duration of this Agreement and for not less than twenty-four (24) months following the expiration or termination of this Agreement.

5.2 Contractor will deliver to University:

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

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

5.2.1.2 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System**,** The University of Texas System and University. ***All insurance policies*** will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas 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 5**.

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

5.2.1.4 Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following University contact:

Name:
Address:
Facsimile Number:
Email Address:

5.3 Contractor's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by University or the University of Texas System. Contractor's or subcontractor's insurance will be kept in force until all Work has been fully performed and accepted by University in writing, except as provided in this **Section 5.3**.

5.3.1 Professional Liability Insurance coverage written on a claims-made basis requires Contractor to purchase an Extended Reporting Period Endorsement, effective for twenty-four (24) months after the expiration or cancellation of the policy.

5.3.2 Directors and Officers Liability Insurance coverage written on a claims-made basis requires Contractor to purchase an Extended Reporting Period Endorsement, effective for twenty-four (24) months after the expiration or cancellation of the policy.

## Section 6.

## INDEMNIFICATION

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WILL INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY AND UT SYSTEM, AND THEIR RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY, **INDEMNITEES**) FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY, **CLAIMS**) BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM CONTRACTOR'S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR, ANYONE DIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

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

## Section 7.

## REPRESENTATIONS AND WARRANTIES

7.1 Organization and Authority. Contractor represents it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

7.2 Tax Certification. If Contractor is a taxable entity as defined by Chapter 171, *Texas Tax Code* (Chapter 171), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that it is exempt from the payment of those taxes, or that it is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

7.3 Payment of Debt or Delinquency to the State. Pursuant to §§2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

7.4 Texas Family Code Child Support Certification. Pursuant to §231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

7.5 No Conflict. Contractor has not entered into, and during the Term of this Agreement will not enter into, any other agreements that would conflict with Contractor's obligations under this Agreement or prevent it from fully complying with the provisions of this Agreement.

7.6 Undocumented Workers. The *Immigration and Nationality Act* (8 *United States Code* 1324a) (**Immigration Act**) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form (**I-9 Form**) as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by Applicable Laws, University may terminate this Agreement in accordance with **Section 10**. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

7.7 Contractor Certification regarding Boycotting Israel. Pursuant to Chapter 2270, *Texas Government Code*, Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

7.8 Contractor Certification regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Section 8.**

## RELATIONSHIP OF PARTIES

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venturer, or agent of University. Contractor will not bind nor attempt to bind University to any agreement or contract. As an independent contractor, Contractor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any kind, including workers' compensation insurance.

**Section 9.**

**NOTICES**

Except as otherwise provided in this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via registered or certified mail, overnight courier, confirmed facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below), and notice will be deemed given (i) if mailed, when deposited, postage prepaid, in the United States mail, (ii) if sent by overnight courier, one business day after delivery to the courier, (iii) if sent by facsimile (to the extent a facsimile number is set forth below), when transmitted, and (iv) if sent by email (to the extent an email address is set forth below), when received:

If to University: _____
_____
_____
_____
Fax: _____
Email: _____
Attention: _____

*with copy to:* _____
_____
_____
Fax: _____
Email: _____
Attention: _____

If to Contractor: _____
_____
_____
Fax: _____
Email: _____
Attention: _____

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

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

_____
_____
_____
_____
_____
Attention:_____
Fax: _____
Email: _____

*with copy to:* _____
_____
_____
_____
_____
Attention:_____
Fax: _____
Email: _____

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

## Section 10.

## DEFAULT AND TERMINATION

10.1 Termination Without Cause. This Agreement may be terminated by University *without cause* by giving Contractor not less than _____ (___) forty-five (45) days written notice of University's intention to terminate this Agreement as of a specified date. In the event this Agreement is terminated by University before the end of the then current contract year, the Royalty will be paid by Contractor to University (on a pro-rata basis through the effective date of termination) in accordance with Section 3 of this Agreement.

10.2 Termination for Default. Except as provided in **Section 4.4**, in the event of a material failure by a party to this Agreement to perform in accordance with the terms of this Agreement (**default**), the other party may terminate this Agreement upon _____ (___), thirty (30) days' written notice of termination setting forth the nature of the default; provided, that, the default is through no fault of the terminating party. Termination will not be effective if the default is fully cured prior to the end of the _____ thirty (30) day period. If Contractor fails to cure any default within ____ thirty (30) days after receiving written notice of default, University will be entitled (but will not be obligated) to cure the default and will have the right, at University's option, to collect any and all reasonable expenses incurred in connection with the curative actions from Contractor or to set off the expenses against any amounts due to Contractor under this Agreement.

10.3 No Release of Liability. Termination of this Agreement under **Sections 4.4, 10.1** or **10.2** will not relieve Contractor or any of its employees, representatives, agents, or subcontractors from liability for any default under the terms of this Agreement or any other act or omission.

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

10.5 Continuing Obligations. The expiration or termination of this Agreement will not relieve either party of any obligations under this Agreement that by their nature survive expiration or termination.

**Section 11.**

**NO OTHER RIGHTS**

Except as expressly granted in this Agreement, nothing in this Agreement is intended to entitle either party to claim any right, title or interest in, or right to use, the name of the other party, the name or existence of any property or facility owned by the other party (or any portion thereof), or any other names, designs, logos, symbols, trademarks, service marks, representations or other identification of the other party.

## Section 12.

## ASSIGNMENT AND SUBCONTRACTING

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

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

12.2.1 Changes to the HSP. If at any time during the term of this Agreement, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with 34 TAC §20.285; (b) the changes must be reviewed and approved by University; and (c) if University approves changes to the HSP, this Agreement must be amended in accordance with **Section 13** to replace the HSP with the revised subcontracting plan.

12.2.2 Expansion of Work. If University expands the scope of Work through a change order or any other amendment, University will determine if the additional Work contain probable subcontracting opportunities *not* identified in the initial solicitation for Work. If University determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34 TAC §20.285 before (a) this Agreement may be amended to include the additional Work; and (b) Contractor may perform the additional Work. If Contractor subcontracts any of the additional subcontracting opportunities identified by University without prior authorization and without complying with 34 TAC §20.285, Contractor will be deemed to be in default of this Agreement under **Section 10** and will be subject to any remedial actions provided by Texas law including Chapter 2161, *Texas Government Code*, and 34 TAC §20.285. University may report nonperformance under this Agreement to SPSS in accordance with Texas law, including 34 TAC §20.285(g)(5), §20.585 and 20.586.

**Section 13.**

## MERGER AND AMENDMENT

This Agreement (including the Exhibits) constitutes the entire agreement between the parties and supersedes any existing rights in prior contracts between the parties with regard to the subject matter of this Agreement. No prior or contemporaneous agreement, oral or written, will be effective to vary the terms or conditions of this Agreement. No amendment to this Agreement will be effective unless reduced to writing and signed by an authorized representative of each party.

**Section 14.**

**BREACH OF CONTRACT CLAIMS**

To the extent that Chapter 2260, *Texas Government Code*, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief business officer of University will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims. The parties specifically agree that (a) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit; and (b) University has not waived its right to seek redress in the courts.

## Section 15.

## GENERAL PROVISIONS

15.1 Approvals. Except as otherwise specified in this Agreement, in every circumstance in which an approval or consent from University is required under this Agreement, Contractor will obtain that approval or consent from the University's chief business officer.

15.2 Venue; Governing Law. El Paso County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions, all rights and obligations of the parties, and all claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.

15.3 Time for Performance. Time is of the essence with regard to this Agreement and Contractor's performance of Work. Contractor will complete all Preparation Activities, commence delivery of Work and perform Work to the satisfaction of University in accordance with the schedules, deadlines and other terms and conditions set forth in this Agreement. University will have no obligation to accept late performance or to waive timely performance by Contractor.

15.4 University's Right to Audit. At any time during the Term of this Agreement and for a period of four (4) years after the termination or expiration of this Agreement, University or a duly authorized representative of University, UT System, or the State of Texas, at its expense, will have the right to audit Contractor's records and books relevant to all services provided under this Agreement. In the event an audit reveals any errors or underpayments to University, Contractor will pay to University the full amount of the underpayments within thirty (30) days after being notified in writing of the audit findings.

15.5 Force Majeure. Neither party will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character.

15.6 Ethics Matters, No Financial Interest. Contractor and its employees, representatives, agents, and subcontractors have read and understand University's Conflicts of Interest Policy available at https://www.utep.edu/compliance/conflicts-of-interest/index.html, University's Standards of Conduct Guide available at https://www.utep.edu/compliance/, and applicable state ethics laws and rules available at https://www.utsystem.edu/offices/systemwide-compliance/ethics. Neither Contractor nor its employees, representatives, agents, or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, provisions described by University's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

Further, Contractor agrees to comply with §2252.908, Texas Government Code (Disclosure of Interested Parties Statute), and 1 TAC §§46.1 through 46.5 (Disclosure of Interested Parties Regulations), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC and University with information required on the form promulgated by TEC. Contractors may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html.

15.7 Severability; Titles. In case any provision of this Agreement is, for any reason, held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included in this Agreement. Captions and titles of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

15.8 Loss of Funding. University's performance of its duties and obligations under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (**Legislature**) and/or allocation of funds by the Board of Regents of The University of Texas System (**Board**). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.

15.9 Limitations. THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, **LIMITATIONS**), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

15.10 Confidentiality and Safeguarding of University Records; Press Releases; Public Information. Under this Agreement, Contractor may (a) create, (b) receive from or on behalf of University, or (c) have access to, records or record systems (collectively, **University Records**). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws, including the Gramm-Leach-Bliley Act (Public Law No: 106-102) and the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (**FERPA**). If University Records are subject to FERPA, (a) University designates Contractor as a University official with a legitimate educational interest in University Records, and (b) Contractor acknowledges that its improper disclosure or redisclosure of personally identifiable information from University Records will result in Contractor's exclusion from eligibility to contract with University for at least five (5) years. Contractor represents, warrants, and agrees that it will: (a) hold University Records in strict confidence and will not use or disclose University Records except as (i) permitted or required by this Agreement, (ii) required by Applicable Laws, or (iii) otherwise authorized by University in writing; (b) safeguard University Records according to reasonable administrative, physical and technical standards (such as standards established by (i) the National Institute of Standards and Technology and (ii) the Center for Internet Security, as well as the Payment Card Industry Data Security Standards) that are no less rigorous than the standards by which Contractor protects its own confidential information; (c) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all Applicable Laws, including FERPA and the Gramm-Leach Bliley Act, and the terms of this Agreement; and (d) comply with University Rules regarding access to and use of University's computer systems. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.

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

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

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

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

15.10.5 Public Information. University strictly adheres to all statutes, court decisions and opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* (**TPIA**), Chapter 552, *Texas Government Code*. In accordance with §552.002 of TPIA and §2252.907, *Texas Government Code*, and at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from

disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public**.**

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

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

15.11 Cybersecurity Training Program. Pursuant to Section 2054.5192, *Texas Government Code*, Contractor and its subcontractors, officers, and employees must complete a cybersecurity training program certified under Section 2054.519, *Texas Government Code* and selected by the University. The cybersecurity training program must be completed by Contractor and its subcontractors, officers, and employees during the term and any renewal period of this Agreement. Contractor shall verify completion of the program to the University.

## SECTION 16.

### ACCESS BY INDIVIDUALS WITH DISABILITIES

Contractor represents and warrants (**Accessibility Warranty**) that, at all times during the Term, the Equipment will comply with (a) all applicable requirements of the Americans with Disabilities Act, and (b) the applicable standards/specifications set forth in 1 TAC §213.33.

**SECTION 17.**

**BOARD APPROVAL**

This Agreement is not effective or binding until approved by the Board.

University and Contractor have caused their authorized representatives to execute and deliver this Agreement to be effective as of the Effective Date.

| **CONTRACTOR** | **THE UNIVERSITY OF TEXAS AT EL PASO** |
|---|---|
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| Date Signed: _____ | Date Signed: _____ |

**Attachments:**

**Exhibit A – Preparation Activities and Schedule (TBD)**
**Exhibit B – Tentative Campus Locations for Equipment (Included)**
**Exhibit C – Products and Sales Prices (TBD)**
**Exhibit D – Vending Royalty Schedule (TBD)**
**Exhibit E – HUB Subcontracting Plan**
**Exhibit F – 20-21 Academic Calendar for University**
**Exhibit G – Estimated Snack Vending Sales**

# EXHIBIT A

## PREPARATION ACTIVITIES AND SCHEDULE

**EXHIBIT B**

**TENTATIVE CAMPUS LOCATIONS FOR EQUIPMENT**

| NUMBER ON MAP | BUILDING NAME |
|---|---|
| 104 | Academic Advising Center |
| 38 | Administration Bldg |
| 1 | Administration Bldg |
| 55 | Bell Hall |
| 16 | Bioscience Research Center |
| 29 | Burges Hall |
| 109 | Business Administration Bldg |
| 109 | Business Administration Bldg |
| 96 | Campbell Bldg |
| 200-C | Classroom Bldg |
| 18 | Cotton Memorial |
| 47 | Education Bldg |
| 47 | Education Bldg |
| 47 | Education Bldg |
| 36 | Facilities Services |
| 36 | Facilities Services |
| 57 | Facilities Services |
| 80 | Fox Fine Arts Center |
| 80 | Fox Fine Arts Center |
| 35 | Geological Sciences Building |
| 255 | Health Science And Nursing Bldg |
| 30 | Hudspeth Hall |
| 50 | Kelly Hall |
| 22 | Larry K Durham Sports Center |
| 8 | Liberal Arts Bldg |
| 8 | Liberal Arts Bldg |
| 8 | Liberal Arts Bldg |
| 8 | Liberal Arts Bldg |
| 201 | Memorial Gym |
| 38 | Mike Loya Academic Services Bldg |
| 38 | Mike Loya Academic Services Bldg |
| 94 | Miner Village Student Housing |
| 32 | Miners Hall |
| 9 | Old Main |
| 98 | Physical Science |
| 61 | Psychology Bldg |
| 99 | Undergraduate Learning Center |
| 99 | Undergraduate Learning Center |
| 99 | Undergraduate Learning Center |
| 99 | Undergraduate Learning Center |
| 111 | University Library |
| 113-P | University Police |
| 254 | University Ticket Center |

## EXHIBIT C

### PRODUCTS AND PRODUCT PRICING LIST

| PRODUCTS | CASE/PACK | PRICE PER CASE/PACK |
|---|---|---|
| _____oz. | ___ | $_____ |
| _____oz. | ___ | $_____ |
| _____ | ___ | $_____ |
| _____ | ___ | $_____ |

# EXHIBIT D

## VENDING ROYALTY SCHEDULE

# EXHIBIT E

## HUB SUBCONTRACTING PLAN

## EXHIBIT F

### 2020-2021 ACADEMIC CALENDAR FOR UNIVERSITY

A COPY OF THE UNIVERSITY'S ACADEMIC CALENDAR MAY BE OBTAINED AT THE UNIVERSITY WEB ADDRESS PROVIDED HERE;

HTTPS://WWW.UTEP.EDU/STUDENT-AFFAIRS/REGISTRAR/ACADEMIC%20CALENDARS/ACADEMIC-CALENDAR.HTML

## EXHIBIT G

### ESTIMATED SNACK VENDING SALES

| FISCAL YEAR SALES (SEPTEMBER – AUGUST) | ESTIMATED SALES |
|---|---|
| 2018 | $ 305,071 |
| 2019 | $ 288,006 |
| 2020 (6 MONTH PERIOD) | $ 143,460 |

## APPENDIX THREE

## HUB SUBCONTRACTING PLAN

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

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

For more information about Sourcing Manager, Proposer may review FAQ's and the Solicitation Manual at www.sourcingmanager.utep.edu.

## APPENDIX FOUR

## CAMPUS MAP

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



## APPENDIX FIVE

## ACCESS BY INDIVIDUALS WITH DISABILITIES

**Access by Individuals with Disabilities:** Contractor represents and warrants (**EIR Accessibility Warranty**) the electronic and information resources and all associated information, documentation, and support Contractor provides to University under this Agreement (**EIRs**) comply with applicable requirements in 1 TAC Chapter 213 and 1 TAC §206.70 (ref. Subchapter M, Chapter 2054, *Texas Government Code*). To the extent Contractor becomes aware the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. If Contractor fails or is unable to do so, University may terminate this Agreement and, within thirty (30) days after termination, Contractor will refund to University all amounts University paid under this Agreement. Contractor will provide all assistance and cooperation necessary for performance and documentation of accessibility testing, planning, and execution criteria conducted by University or University's third party testing resources, as required by 1 TAC §213.38(g).

## APPENDIX SIX

## ELECTRONIC AND INFORMATION RESOURCES (EIR) ENVIRONMENT SPECIFICATIONS

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

University is primarily a **Microsoft** products environment.

### Basic Specifications

1. If the EIR will be hosted by University, please describe the overall environment requirements for the EIR (size the requirements to support the number of concurrent users, the number of licenses and the input/output generated by the application as requested in the application requirements).

    A. Hardware: If Proposer will provide hardware, does the hardware have multiple hard drives utilizing a redundant RAID configuration for fault tolerance? Are redundant servers included as well?
    B. Operating System and Version:
    C. Web Server: Is a web server required? If so, what web application is required (Apache or IIS)? What version? Are add-ins required?
    D. Application Server:
    E. Database:
    F. Other Requirements: Are any other hardware or software components required?
    G. Assumptions: List any assumptions made as part of the identification of these environment requirements.
    H. Storage: What are the space/storage requirements of this implementation?
    I. Users: What is the maximum number of users this configuration will support?
    J. Clustering: How does the EIR handle clustering over multiple servers?
    K. Virtual Server Environment: Can the EIR be run in a virtual server environment?

2. If the EIR will be hosted by Proposer, describe in detail what the hosted solution includes, and address, specifically, the following issues:

    A. Describe the audit standards of the physical security of the facility; and
    B. Indicate whether Proposer is willing to allow an audit by University or its representative.

3. If the user and administrative interfaces for the EIR are web-based, do the interfaces support Firefox on Mac as well as Windows and Safari on the Macintosh?

4. If the EIR requires special client software, what are the environment requirements for that client software?

5. Manpower Requirements: Who will operate and maintain the EIR? Will additional University full time employees (FTEs) be required? Will special training on the EIR be required by Proposer's technical staff? What is the estimated cost of required training.

6. Upgrades and Patches: Describe Proposer's strategy regarding EIR upgrades and patches for both the server and, if applicable, the client software. Included Proposer's typical release schedule, recommended processes, estimated outage and plans for next version/major upgrade.

### Security

1. Has the EIR been tested for application security vulnerabilities? For example, has the EIR been evaluated against the Open Web Application Security Project (**OWASP**) Top 10 list that includes flaws like cross site scripting and SQL injection? If so, please provide the scan results and specify the tool used. University will not take final delivery of the EIR if University determines there are serious vulnerabilities within the EIR.

2. Which party, Proposer or University, will be responsible for maintaining critical EIR application security updates?

3. If the EIR is hosted, indicate whether Proposer's will permit University to conduct a penetration test on University's instance of the EIR.

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

## Integration

1. Is the EIR authentication Security Assertion Markup Language (**SAML**) compliant? Has Proposer ever implemented the EIR with Shibboleth authentication? If not, does the EIR integrate with Active Directory? Does the EIR support TLS connections to this directory service?

2. Does the EIR rely on Active Directory for group management and authorization or does the EIR maintain a local authorization/group database?

3. What logging capabilities does the EIR have? If this is a hosted EIR solution, will University have access to implement logging with University's standard logging and monitoring tools, RSA's Envision?

4. Does the EIR have an application programming interface (**API**) that enables us to incorporate it with other applications run by the University? If so, is the API .Net based? Web Services-based? Other?

5. Will University have access to the EIR source code? If so, will the EIR license permit University to make modifications to the source code? Will University's modifications be protected in future upgrades?

6. Will Proposer place the EIR source code in escrow with an escrow agent so that if Proposer is no longer in business or Proposer has discontinued support, the EIR source code will be available to University.

## Accessibility Information

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

1. Accessibility information for the electronic and information resources (**EIR**)[1] products or services 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 products and services. Such evidence may include, but is not limited to, Proposer's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results.

[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 SEVEN

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

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

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

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

### General Protection of University Records

1. Describe the security features incorporated into Information Resources (ref. **Section 5.3.4**) to be provided or used by Proposer pursuant to this RFP.

2. List all products, including imbedded products that are a part of Information Resources and the corresponding owner of each product.

3. Describe any assumptions made by Proposer in its proposal regarding information security outside those already listed in the proposal.

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

4. Describe the monitoring procedures and tools used for monitoring the integrity and availability of all products interacting with Information Resources, including procedures and tools used to, detect security incidents and to ensure timely remediation.

5. Describe the physical access controls used to limit access to Proposer's data center and network components.

6. What procedures and best practices does Proposer follow to harden all systems that would interact with Information Resources, including any systems that would hold or process University Records, or from which University Records may be accessed?

7. What technical security measures does the Proposer take to detect and prevent unintentional, accidental and intentional corruption or loss of University Records?

8. Will the Proposer agree to a vulnerability scan by University of the web portal application that would interact with Information Resources, including any systems that would hold or process University Records, or from which University Records may be accessed? If Proposer objects, explain basis for the objection to a vulnerability scan.

9. Describe processes Proposer will use to provide University assurance that the web portal and all systems that would hold or process University Records can provide adequate security of University Records.

10. Does Proposer have a data backup and recovery plan supported by policies and procedures, in place for Information Resources? If yes, briefly describe the plan, including scope and frequency of backups, and how often the plan is updated. If no, describe what alternative methodology Proposer uses to ensure the restoration and availability of University Records.

11. Does Proposer encrypt backups of University Records? If yes, describe the methods used by Proposer to encrypt backup data. If no, what alternative safeguards does Proposer use to protect backups against unauthorized access?

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

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

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

**Access Control**

1. How will users gain access (i.e., log in) to Information Resources?

2. Do Information Resources provide the capability to use local credentials (i.e., federated authentication) for user authentication and login? If yes, describe how Information Resources provide that capability.

3. Do Information Resources allow for multiple security levels of access based on affiliation (e.g., staff, faculty, and student) and roles (e.g., system administrators, analysts, and information consumers), and organizational unit (e.g., college, school, or department? If yes, describe how Information Resources provide for multiple security levels of access.

4. Do Information Resources provide the capability to limit user activity based on user affiliation, role, and/or organizational unit (i.e., who can create records, delete records, create and save reports, run reports only, etc.)? If yes, describe how Information Resources provide that capability. If no, describe what alternative functionality is provided to ensure that users have need-to-know based access to Information Resources.

5. Do Information Resources manage administrator access permissions at the virtual system level? If yes, describe how this is done.

6. Describe Proposer's password policy including password strength, password generation procedures, password storage specifications, and frequency of password changes. If passwords are not used for authentication or if multi-factor authentication is used to Information Resources, describe what alternative or additional controls are used to manage user access.

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

7. What administrative safeguards and best practices does Proposer have in place to vet Proposer's and third-parties' staff members that would have access to the environment hosting University Records to ensure need-to-know-based access?

8. What procedures and best practices does Proposer have in place to ensure that user credentials are updated and terminated as required by changes in role and employment status?

9. Describe Proposer's password policy including password strength, password generation procedures, and frequency of password changes. If passwords are not used for authentication or if multi-factor authentication is used to Information Resources, describe what alternative or additional controls are used to manage user access.

**Use of Data**

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

1. What administrative safeguards and best practices does Proposer have in place to vet Proposer's and third-parties' staff members that have access to the environment hosting all systems that would hold or process University Records, or from which University Records may be accessed, to ensure that University Records will not be accessed or used in an unauthorized manner?

2. What safeguards does Proposer have in place to segregate University Records from system data and other customer data and/or as applicable, to separate specific University data, such as HIPAA and FERPA protected data, from University Records that are not subject to such protection, to prevent accidental and unauthorized access to University Records ?

3. What safeguards does Proposer have in place to prevent the unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access, or disclosure of University Records?

4. What procedures and safeguards does Proposer have in place for sanitizing and disposing of University Records according to prescribed retention schedules or following the conclusion of a project or termination of a contract to render University Records unrecoverable and prevent accidental and unauthorized access to University Records? Describe the degree to which sanitizing and disposal processes addresses University data that may be contained within backup systems. If University data contained in backup systems is not fully sanitized, describe processes in place that would prevent subsequent restoration of backed-up University data.

**Data Transmission**

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

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

2. How does data flow between University and Information Resources? If connecting via a private circuit, describe what security features are incorporated into the private circuit. If connecting via a public network (e.g., the Internet), describe the way Proposer will safeguard University Records.

3. Do Information Resources secure data transmission between University and Proposer? If yes, describe how Proposer provides that security. If no, what alternative safeguards are used to protect University Records in transit?

**Notification of Security Incidents**

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

1. Describe Proposer's procedures to isolate or disable all systems that interact with Information Resources in the event a security breach is identified, including any systems that would hold or process University Records, or from which University Records may be accessed.

2. What procedures, methodology, and timetables does Proposer have in place to detect information security breaches and notify University and other customers? Include Proposer's definition of security breach.

3. Describe the procedures and methodology Proposer has in place to detect information security breaches, including unauthorized access by Proposer's and subcontractor's own employees and agents and provide required notifications in a manner that meets the requirements of the state breach notification law.

**Compliance with Applicable Legal & Regulatory Requirements**

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

1. Describe the procedures and methodology Proposer has in place to retain, preserve, backup, delete, and search data in a manner that meets the requirements of state and federal electronic discovery rules, including how and in what format University Records are kept and what tools are available to University to access University Records.

2. Describe the safeguards Proposer has in place to ensure that systems (including any systems that would hold or process University Records, or from which University Records may be accessed) that interact with Information Resources reside within the United States of America. If no such controls, describe Proposer's processes for ensuring that data is protected in compliance with all applicable US federal and state requirements, including export control.

3. List and describe any regulatory or legal actions taken against Proposer for security or privacy violations or security breaches or incidents, including the final outcome.

**APPENDIX EIGHT**

**CBORD Vending Readers**

Benefits of Value Plus

Vending Readers

- Flexible support for magnetic stripe, contactless, CBORD Mobile ID,™ and Near Field Communication credentials
- Convenient and cost effective with flexible formats to fit any environment
- Multi-drop configuration reduces costs and simplifies expansion

# For Colleges and Universities

CBORD®'s Value Plus vending readers for CS Gold® deliver the ultimate in reliability and flexible installation. Available in magnetic stripe or contactless formats, these versatile readers are easily tailored to fit your environment. Combine this with a convenient, cost-effective installation and you have cutting-edge solutions ready to meet your needs today and tomorrow.

## Surface or Bill Acceptor Mounts

CBORD's Value Plus line of readers offers configurations for vending machines with or without bill acceptor openings. The surface mount version is a one-piece solution with a small footprint— it requires only 23 square inches on the face of the machine.

## Support for the Latest Credentials

The Value Plus family of readers supports magnetic stripe technology and a wide variety of contactless credentials (iCLASS® will be supported at a future date). The surface mount configuration currently supports magnetic stripe (contactless support will be added in the future), while the bill acceptor mount configuration supports aptiQ and Near Field Communication formats from CBORD.

## Value Plus Vending Readers for CS Gold®




In addition, the Value Plus readers support vending sales transactions using the CBORD Mobile ID™ smartphone app for Apple or Android phones. This convenient app communicates with CS Gold in real time to verify privileges or debit funds from the appropriate account without presenting a card.

## Multi-Drop Configuration

Other vending readers require dedicated network cable drops to communicate with the host server platform. The Value Plus readers' cost-saving multi-drop configuration allows up to five consecutive readers to be cascaded to a single reader, requiring only a single IP connection. This configuration:

- Reduces the cost of individual network drops to each machine
- Reduces monthly IP costs associated with multiple dedicated drops
- Simplifies the addition of new vending machines
- Simplifies troubleshooting by pinpointing a single IP address

| Specification | Description |
|---|---|
| Operating Environment | Indoors |
| Operating Temperature | 32° – 122° F (0° – 50° C) |
| Operating Humidity | 0 to 90% RH, non-condensing |
| Voltage Input | 24V DC nom. (37.5V DC max.), supplied by MDB bus |
| Mounting Dimensions: Bill Validator Mount | 3.4" W × 4.28" H standard bill acceptor opening |
| Mounting Dimensions: Surface Mount | 4.4" W × 5.25" H |
| CS Gold versions | 5.0.33 or higher, or 6.0.6 or higher |

Comprehensive Solutions. Innovative Products. Dedicated Service.

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