REQUEST FOR PROPOSAL

by

The University of Texas at El Paso

for

Selection of a Vendor to Provide

Planning and Scheduling Software

RFP No. 724-2204-SF

Submittal Deadline: January 25, 2022

Issued: November 18, 2021

REQUEST FOR PROPOSAL

TABLE OF CONTENTS

SECTION 1: INTRODUCTION 3

SECTION 2: NOTICE TO PROPOSER 4

SECTION 3: SUBMISSION OF PROPOSAL 7

SECTION 4: TERMS AND CONDITIONS 9

SECTION 5: SPECIFICATIONS AND ADDITIONAL QUESTIONS 10

SECTION 6: PRICING AND DELIVERY SCHEDULE 12

Attachments:

APPENDIX ONE: PROPOSAL REQUIREMENTS

APPENDIX TWO: AGREEMENT

APPENDIX THREE: HUB SUBCONTRACTING PLAN

APPENDIX FOUR: CAMPUS MAP

APPENDIX FIVE: ACCESS BY INDIVIDUALS WITH DISABILITIES

APPENDIX SIX: ELECTRONIC AND INFORMATION RESOURCES ENVIRONMENT SPECIFICATIONS

APPENDIX SEVEN: SECURITY CHARACTERISTICS AND FUNCTIONALITY OF CONTRACTOR'S INFORMATION RESOURCES

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 to assist the University in providing a planning and scheduling software. This shall be in accordance with the terms, conditions and requirements set forth in this RFP. The University's academic departments are to utilize the platform to help coordinate academic events, resource scheduling functions, and predictive course scheduling/demand functions.

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

1.3 Objective of Request for Proposal

The University of Texas at El Paso (**University**) is soliciting proposals from qualified vendors to perform work (**Work**) more specifically described in **Section 5.4** (Scope of Work) of this Request for Proposal (**RFP**), including a platform to assist the University with course scheduling.

1.4 Group Purchase Authority

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

SECTION 2

NOTICE TO PROPOSER

2.1 Submittal Deadline

University will accept proposals submitted in response to this RFP until **3:00 p.m., Mountain Standard Prevailing Time, on Tuesday, January 25, 2022. (Submittal Deadline).**

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

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

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

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

Submission instructions are referenced in Section 3.2 of this RFP.

2.2 RFP Contact Information and Questions

Interested parties may direct questions about this RFP to:

The University of Texas at El Paso
Purchasing & General Services
Kelly Hall 3rd Floor
500 W. University Ave.
El Paso, TX 79968-0505
Attn: Sofia Fons
Fax: 915-747-5932
Email: sfons@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 ***December 15, 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. **Contractor** means the successful Proposer under this RFP.

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

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

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

2.3.1 Threshold Criteria Not Scored

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

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

2.3.2 Scored Criteria

2.3.2.1 Cost of goods and services;	25%
2.3.2.2 Extent to which the goods or services meet the University's needs;	25%
2.3.2.3 Total long-term cost to the University of acquiring the Proposer's goods or services	15%
2.3.2.4 Reputation of the Proposer and of the Proposer's goods or services;	10%
2.3.2.5 Quality of the Proposer's goods or services;	10%
2.3.2.6 Proposer's exceptions to the terms and conditions set forth in **Section 4**.	10%
2.3.2.7 Proposer's past relationship with the University;	5%

2.4 Key Events Schedule

Date RFP Issued	November 18, 2021
Question Deadline (ref. **Section 2.2**)	December 15, 2021, at 2:00 p.m. Mountain Standard Prevailing Time
Submittal Deadline	January 25, 2022, at 3:00 p.m. Mountain Standard Prevailing Time (ref. **Section 2.1**)

2.5 Historically Underutilized Businesses

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

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

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

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

Questions regarding the HSP may be directed to:

Contact:	*Benjamin Alvarez* *Director, Purchasing & General Services* *HUB Coordinator*
Phone:	*915-747-5456*
Email:	*baalvarez@utep.edu*

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

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

(a) **One (1) complete 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.

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

SECTION 3

SUBMISSION OF PROPOSAL

3.1 Number of Copies

Proposer must submit (a) *one (1) complete electronic 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 paper copy of the proposal.

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

3.2 Submission

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

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

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

3.3 Proposal Validity Period

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

3.4 Terms and Conditions

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

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

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

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

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

3.5 Submittal Checklist

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

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

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

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

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

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

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

SECTION 4

GENERAL TERMS AND CONDITIONS

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

SECTION 5

SPECIFICATIONS AND ADDITIONAL QUESTIONS

5.1 General

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

5.2 Minimum Requirements

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

5.2.1 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 **APPENDIX TWO**), Proposer must submit a list of the exceptions.

5.3.2 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.

5.3.3 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.

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

5.4 Scope of Work

Contractor will provide the following services to University:

5.4.1 **Services**

5.4.1.1 The Licensor will provide software to facilitate the scheduling of courses, events, and predictive course schedule/demand functionality. This software will include the capabilities listed below in accordance with the terms of this Agreement:

Licensor's software capabilities.

5.4.2 **Software Capabilities**

5.4.2.1 Schedule Import

5.4.2.1.1 Software will connect with University's Banner system to import the set schedule for room assignments.

5.4.2.1.2 Software will use the room optimizer to ensure that all spaces in the University are used at the best of its capacity.

5.4.2.2 Schedule Export

5.4.2.2.1 Software will work in sync with Banner for official room assignments and changes.

5.4.3 **Reports**

5.4.3.1 Software should offer the capability of generating reports with the following data:

5.4.3.1.1 Course offering analysis: to include double bookings, low enrollment courses, overbooked rooms (sections).

5.4.3.1.2 Daily grids of rooms/building used for specific dates.

5.4.3.1.3 Room utilization: schedule by day and time by room, by building, for specific dates.

5.4.3.1.4 Course Demand: to include recommendations for building future term schedules.

5.4.4 **Technical Support**

5.4.4.1 Licensor will provide technical support through its portal. Licensor will offer the capability of creating specific cases and will contact University to troubleshoot any technical problems.

5.4.5 Not exclusive

This Agreement is not exclusive, and University may engage vendors or use its own employees to fulfill License needs.

5.4.6 **University's obligations**

University will grant Licensor access to the University database.

SECTION 6

PRICING AND DELIVERY SCHEDULE

Proposal of: _____
(Proposer Name)

To: The University of Texas at El Paso

RFP No.: 724-2204-SF

Ladies and Gentlemen:

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

6.1 Term of Agreement

University anticipates that the term of the Agreement may be up to three (3) years with the initial term of the Agreement proposed to begin on April, 2022, and proposed to expire on March, 2025. University may elect to renew the Agreement for up to two (2) additional one (1) year terms.

6.2 Submit Pricing for Work and Expenses.
Proposers are encouraged to submit pricing options

_____

_____

_____

6.3 Discounts

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

_____

_____

6.4 Schedule for Completion of Tasks and Submittal of Deliverables

_____

_____

6.5 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

TABLE OF CONTENTS

SECTION 1: GENERAL INFORMATION 15

SECTION 2: EXECUTION OF OFFER 18

SECTION 3: PROPOSER'S GENERAL QUESTIONNAIRE 21

SECTION 4: ADDENDA CHECKLIST 23

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. 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. 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/.

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**). In addition, the name and the return address of the Proposer should be clearly visible in any electronic response. Proposers shall acknowledge the attributes for the documents requested in Sections 3.4 (the "Terms and Conditions") and 3.5 (the "Submittal Checklist") of this RFP in Sourcing Manager at the Sourcing Manager Internet address at (https://adminapps.utep.edu/sourcing/).

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

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

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

SECTION 2

EXECUTION OF OFFER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.1.15 Pursuant to Chapter 2274, *Texas Government Code (enacted by SB 19, 87th Texas Legislature, Regular Session (2021))*,, Proposer verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of any contract or agreement resulting from this RFP against a firearm entity or firearm trade association. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this verification is inaccurate.

2.1.16 Pursuant to Chapter 2274, *Texas Government Code (enacted by SB 13, 87th Texas Legislature, Regular Session (2021))*, Proposer verifies (1) it does not boycott energy companies and (2) it will not boycott energy companies during the term of any contract or agreement resulting from this RFP. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this verification is inaccurate.

2.1.17 Pursuant to Section 161.0085, *Texas Health and Safety Code (enacted by SB 968, 87th Texas Legislature, Regular Session (2021))*, Proposer certifies that it does not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-

transmission recovery on entry to, to gain access to, or to receive service from Proposer's business. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.

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

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

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

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

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

2.7 **Relationship Certifications.**

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

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

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

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

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

2.12 **Conflict of Interest Certification.**

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

2.13 **Proposer Certification Relating to Critical Infrastructure**. Pursuant to Chapter 2274, *Texas Government Code (enacted by SB 2116, 87th Texas Legislature, Regular Session (2021)*, Proposer certifies (A) it is neither owned by nor is the majority of stock or other ownership interest of the Proposer held or controlled by (i) individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2274.0103 of the *Texas Government Code* (a "designated country") or (ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; and (B) it is not headquartered in China, Iran, North Korea, Russia, or a designated country. Proposer understands that the prohibitions set forth in the preceding sentence apply regardless of whether (1) Proposer's or its parent company's securities are publicly traded or (2) Proposer or its parent company is listed on a public stock exchange as either (a) a Chinese, Iranian, North

Korean, or Russian company or (b) a company of a designated country. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.

2.14 **Proposer Compliance and Certification Relating to Cloud Computing Services**. Section 2054.0593 of the *Texas Government Code (enacted by SB 475, 87th Texas Legislature, Regular Session (2021)* requires the Texas Department of Information Resources (DIR) to establish and implement a state risk and authorization management program to provide a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services that process the data of Texas state agencies. DIR by rule shall prescribe (1) the categories and characteristics of cloud computing services subject to the state risk and authorization management program and (2) the requirements for certification through the program of vendors that provide cloud computing services. DIR shall evaluate vendors to determine whether a vendor qualifies for a certification issued by DIR reflecting compliance with program requirements. Texas state agencies must ensure that each contract for cloud computing services that the agency enters into or renews on or after January 1, 2022, complies with Section 2054.0593.

As a result, Proposer certifies that if selected it will comply with the requirements of such a state risk and authorization management program and maintain program compliance and certification throughout the term of any contract or agreement resulting from this RFP. Proposer understands and agrees that the University may not enter into or renew any contract or agreement resulting from this RFP with Proposer to purchase cloud computing services for the University that are subject to the state risk and authorization management program unless the Proposer demonstrates compliance with program requirements. Proposer acknowledges that any contract or agreement resulting from this RFP may be terminated and payment withheld if Proposer does not comply with this Section.

2.15 **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.: 724-2204-SF

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.: 724-2204-SF

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

AGREEMENT BETWEEN UNIVERSITY AND CONTRACTOR

This Agreement between University and Contractor (**Agreement**) is made and entered into effective as of _____, 20____ (**Effective Date**), by and between **The University of Texas at El Paso**, an agency and institution of higher education established under the laws of the State of Texas (**University**), and_____, a _____ (**Contractor**)**.**

University and Contractor hereby agree as follows:

1. Scope of Work.

1.1 Contractor will perform the scope of the work (**Work**) in **Exhibit A**, Scope of Work, to the satisfaction of University and in accordance with the schedule (**Schedule**) for Work in **Exhibit B**, Schedule. Time is of the essence in connection with this Agreement. University will have no obligation to accept late performance or waive timely performance by Contractor.

1.2 Contractor will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local, laws, statutes, regulations and ordinances (collectively, **Applicable Laws**), for the performance of Work.

1.3 Upon execution of this Agreement, all services previously performed by Contractor on behalf of University and included in the description of Work, will become a part of Work and will be subject to the terms and conditions of this Agreement.

2. The Project.

The Work will be provided in connection with **Planning and Scheduling Software RFP 724-2204-SF** and all other related, necessary, and appropriate services (**Project**).

3. Time for Commencement and Completion.

The term (**Initial Term**) of this Agreement will begin on the Effective Date and expire on March, 2025. University will have the option to renew this Agreement for two (2) additional one (1) year terms (each a **Renewal Term**). The Initial Term and each Renewal Term are collectively referred to as the **Term**.

4. Contractor's Obligations.

4.1 Contractor will perform Work in compliance with (a) all Applicable Laws, and (b) the Board of Regents of The University of Texas System *Rules and Regulations* (http://www.utsystem.edu/offices/board-regents/regents-rules-and-regulations) the policies of The University of Texas System (http://www.utsystem.edu/board-of-regents/policy-library); and the institutional rules, regulations and policies of University (https://www.utep.edu/vpba/hoop/) (collectively, **University Rules**). Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for the firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor's response to University's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.

4.2 Contractor represents and warrants that (a) it will use commercially reasonable efforts to perform Work in a good and workmanlike manner and in accordance with commercially reasonable standards of Contractor's profession or business, and (b) all Work to be performed will be of the quality that prevails among similar businesses engaged in providing similar services in major United States urban areas under the same or similar circumstances.

4.3 Contractor will call to University's attention in writing all information in any materials supplied to Contractor (by University or any other party) that Contractor regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.

4.4 University at all times is relying on Contractor's skill and knowledge in performing Work. Contractor represents and warrants that Work will be accurate and free from any material defects. Contractor's duties and obligations under this Agreement will not be in any way diminished by reason of any approval by University. Contractor will not be released from any liability by reason of any approval by University.

4.5 Contractor will, at its own cost, correct all material defects in Work as soon as practical after Contractor becomes aware of the defects. If Contractor fails to correct material defects in Work within a reasonable time, then University may correct the defective Work at Contractor's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Work that University may have at law or in equity.

4.6 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will cause all persons connected with Contractor directly in charge of Work to be duly registered and licensed under all Applicable Laws. Contractor will assign to the Project a designated representative who will be responsible for administration and coordination of Work.

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

4.8 Contractor represents and warrants that neither the execution and delivery of this Agreement by Contractor nor the performance of its duties and obligations under this Agreement will (a) result in the violation of any provision of its organizational documents; (b) result in the violation of any provision of any agreement by which it is bound; or (c) conflict with any order or decree of any court or other body or authority having jurisdiction.

4.9 Contractor represents and warrants that all of Contractor's Personnel contributing to Work Material (ref. **Section 7**) under this Agreement will be required to (i) acknowledge in writing the ownership of Contractor (for the benefit of University) of Work Material produced by Personnel while performing services pursuant to this Agreement, and (ii) make all assignments necessary to effectuate such ownership. **Personnel** means any and all persons associated with Contractor who provide any work or work product pursuant to this Agreement, including officers, managers, supervisors, full-time employees, part-time employees, and independent contractors.

4.10 Contractor represents and warrants that: (i) Work will be performed solely by Contractor, its full-time or part-time employees during the course of their employment, or independent contractors who have assigned in writing all right, title and interest in their work to Contractor (for the benefit of University); (ii) University will receive free, good and clear title to all Work Material developed under this Agreement; (iii) Work Material and the intellectual property rights protecting Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges and other restrictions; (iv) Work Material will not infringe upon or violate any patent, copyright, trade secret, trademark, service mark or other property right of any former employer, independent contractor, client or other third party; and (v) the use, reproduction, distribution, or modification of Work Material will not violate the rights of any third parties in Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.

4.11 If this Agreement requires Contractor's presence on University's premises or in University's facilities, Contractor agrees to cause its employees, representatives, agents, or subcontractors to become aware of, fully informed about, and in full compliance with all applicable University Rules, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.

5. The Contract Amount.

5.1 University will pay Contractor for the performance of Work in accordance with **Exhibit C**, Payment for Services.

5.2 The Contract Amount includes all applicable federal, state or local sales or use taxes payable as a result of the execution or performance of this Agreement.

5.3 University (a State agency) is exempt from Texas Sales & Use Tax on Work in accordance with §151.309, *Texas Tax Code* and 34 *Texas Administrative Code* (**TAC**) §3.322. Pursuant to 34 TAC §§3.322(c)(4) and (g)(3), this Agreement is sufficient proof of University's tax exempt status and University is not required to provide further evidence of its exempt status.

6. Payment Terms.

6.1 At least ten (10) days before the end of each month during the Term, Contractor will submit to University an invoice covering Work performed for University to that date, in compliance with **Exhibit C**, Payment for Services. Each invoice will be accompanied by documentation that University may reasonably request to support the invoice amount. University will, within twenty-one (21) days from the date it receives an invoice and supporting documentation, approve or disapprove the amount reflected in the invoice. If University approves the amount or any portion of the amount, University will promptly pay (each a **Progress Payment**) to Contractor the amount approved so long as Contractor is not in default under this Agreement. If University disapproves any invoice amount, University will give Contractor specific reasons for its disapproval in writing.

6.2 Within ten (10) days after final completion and acceptance of Work by University or as soon thereafter as possible, Contractor will submit a final invoice (**Final Invoice**) setting forth all amounts due and remaining unpaid to Contractor. Upon approval of the Final Invoice by University, University will pay (**Final Payment**) to Contractor the amount due under the Final Invoice.

6.3 Notwithstanding any provision of this Agreement to the contrary, University will not be obligated to make any payment (whether a Progress Payment or Final Payment) to Contractor if Contractor is in default under this Agreement.

6.4 The cumulative amount of all Progress Payments and the Final Payment (defined below) will not exceed the Contract Amount in **Exhibit C**, Payment for Services.

6.5 No payment made by University will (a) be construed to be final acceptance or approval of that part of the Work to which the payment relates, or (b) relieve Contractor of any of its duties or obligations under this Agreement.

6.6 The acceptance of Final Payment by Contractor will constitute a waiver of all claims by Contractor except those previously made in writing and identified by Contractor as unsettled at the time of the Final Invoice for payment.

6.7 University will have the right to verify the details in Contractor's invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Contractor at mutually convenient times; (b) examining any reports with respect to the Project; and (c) other reasonable action.

6.8 Section 51.012, *Texas Education Code*, authorizes University to make payments through electronic funds transfer methods. Contractor agrees to accept payments from University through those methods, including the automated clearing house system (ACH). Contractor agrees to provide Contractor's banking information to University in writing on Contractor letterhead signed by an authorized representative of Contractor. Prior to the first payment, University will confirm Contractor's banking information. Changes to Contractor's bank information must be communicated to University in accordance with **Section 12.14** in writing at least thirty (30) days before the effective date of the change and must include an IRS Form W-9 signed by an authorized representative of Contractor.

6.9 Notwithstanding any other provision of this Agreement, University is entitled to a discount of ____% (**Prompt Payment Discount)** off of each payment that University submits within ____days after University's receipt of Contractor's invoice for that payment.

7. Ownership and Use of Work Material.

7.1 All tools, software, programs, drawings, specifications, plans, computations, sketches, data, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by Contractor or any subcontractors in connection with Work (collectively, **Work Material**), whether or not accepted or rejected by University, are the sole property of University and for its exclusive use and re-use at any time without further compensation and without any restrictions.

7.2 Contractor grants and assigns to University all rights and claims of whatever nature and whether now or hereafter arising in and to Work Material and will cooperate fully with University in any steps University may take to obtain or enforce patent, copyright, trademark or like protections with respect to Work Material.

7.3 Contractor will deliver all Work Material to University upon expiration or termination of this Agreement. University will have the right to use Work Material for the completion of Work or otherwise. University may, at all times, retain the originals of Work Material. Work Material will not be used by any person other than University on other projects unless expressly authorized by University in writing.

7.4 Work Material will not be used or published by Contractor or any other party unless expressly authorized by University in writing. Contractor will treat all Work Material as confidential.

7.5 All title and interest in Work Material will vest in University and will be deemed to be work made for hire and made in the course of Work rendered under this Agreement. To the extent that title to any Work Material may not, by operation of law, vest in University or Work Material may not be considered works made for hire, Contractor irrevocably assigns, conveys and transfers to University and its successors, licensees and assigns, all rights, title and interest worldwide in and to Work Material and all proprietary rights therein, including all copyrights, trademarks, service marks, patents, trade secrets, moral rights, all contract and licensing rights and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known. In the event Contractor has any rights in Work Material which cannot be assigned, Contractor agrees to waive enforcement worldwide of the rights against University, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to University with the right to sublicense. These rights are assignable by University.

8. Default and Termination

8.1 In the event of a material failure by a party to this Agreement to perform in accordance with its terms (**default**), the other party may terminate this Agreement upon fifteen (15) days' written notice of termination setting forth the nature of the material failure; provided, that, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the fifteen-day (15-day) period.

8.2 University may, without cause, terminate this Agreement at any time upon giving seven (7) days' advance written notice to Contractor. Upon termination pursuant to this Section, Contractor will be entitled to payment of an amount that will compensate Contractor for Work satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement; provided, that, Contractor has delivered all Work Material to University. Notwithstanding any provision in this Agreement to the contrary, University will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice, that could have been avoided or mitigated by Contractor.

8.3 Termination under **Sections 8.1** or **8.2** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.

8.4 If Contractor fails to cure any default within fifteen (15) days after receiving written notice of the default, University will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Contractor under this Agreement, any and all reasonable expenses incurred in connection with University's curative actions.

9. Indemnification

9.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY AND, THE UNIVERSITY OF TEXAS SYSTEM, AND 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, (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.

9.2 IN ADDITION, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF 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 AGREES TO REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

10. Relationship of the 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 sort, including workers' compensation insurance.

11. Insurance.

11.1 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:

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

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

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

11.1.2 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.

11.1.3 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;

11.1.4 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 11.1.1 Employer's Liability; 11.1.2 Commercial General Liability; and 11.1.3 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.

11.1.5 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.

11.1.6 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 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.

11.1.7 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.

11.1.8 Cyber Liability Insurance with limits of not less than $10,000,000 for each wrongful act. This policy must cover:

- Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of University data, whether by Contractor or any of subcontractor or cloud service provider used by Contractor;
- Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management / public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
- Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
- Liability for technological products and services;
- PCI fines, fees, penalties and assessments;
- Cyber extortion payment and response costs;
- First and Third Party Business Interruption Loss resulting from a network security failure;
- Liability for technological products and services;
- Costs of restoring, updating or replacing data; and
- Liability losses connected to network security, privacy, and media liability.

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

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

11.2 Contractor will deliver to University:

11.2.1 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.

11.2.1.1 ***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.

11.2.1.2 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 11**.

11.2.1.3 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.

11.2.1.4 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:

11.3 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.

11.3.1 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.

11.3.2 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.

12. Miscellaneous.

12.1 **Assignment and Subcontracting.** Except as specifically provided in **Exhibit E**, Historically Underutilized Business Subcontracting Plan, Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on University; and (b) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Applicable Laws, 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 ***Texas Family Code* Child Support Certification**. Pursuant to *§231.006, Texas Family Code*, Contractor certifies it is not ineligible to receive the award of or payments under this Agreement, and acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

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

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

12.5 **Loss of Funding.** Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (**Legislature**) and/or allocation of funds by the Board of Regents of The University of Texas System (**Board**). If Legislature fails to appropriate or allot necessary funds, or Board fails to allocate 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 University's control.

12.6 **Entire Agreement; Modifications.** This Agreement (including all exhibits, schedules, supplements and other attachments (collectively, **Exhibits)**) supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire agreement and understanding between the parties with respect to its subject matter. This Agreement and each of its provisions will be binding upon the parties, and may not be waived, modified, amended or altered, except by a writing signed by University and Contractor. All Exhibits are attached to this Agreement and incorporated for all purposes.

12.7 **Force Majeure.** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (**force majeure occurrence**). Provided, however, in the event of a force majeure occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that University may continue to provide during the occurrence.

12.8 **Captions.** The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

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

12.10 **Waivers.** No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.

12.11 **Confidentiality and Safeguarding of University Records; Press Releases; Public Information.** Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems (collectively, **University Records**). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws. Additional mandatory confidentiality and security compliance requirements with respect to University Records subject to the Family Educational Rights and Privacy Act, 20 United States Code (**USC)** §1232g (**FERPA**) are addressed in **Section 12.42**. Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to the security controls, including reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security, as well as the Payment Card Industry Data Security Standards) that are proportionate to the University's risk under the Agreement based on the sensitivity of University's Records, and no less rigorous than the standards by which Contractor protects its own confidential information, and periodically provide to University evidence that Contractor meets the security controls required under the Agreement; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all Applicable Laws and the terms of this Agreement; and (4) comply with University Rules regarding access to and use of University's computer systems, including UTS165 at http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy. 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.

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

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

12.11.3 **Disclosure.** If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this **Section 12.11**.

12.11.4 **Press Releases.** Except when defined as part of 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.

12.11.5 **Public Information.** University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* (**TPIA**), Chapter 552, *Texas Government Code*. In accordance with §§552.002 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**.**

12.11.6 **Termination.** In addition to any other termination rights 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 in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.

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

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

12.13 **Records.** Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments will be available to University or its authorized representative during business hours and will be retained for four (4) years after final Payment or abandonment of the Project, unless University otherwise instructs Contractor in writing.

12.14 **Notices.** Except as otherwise provided by this Section, notices, consents, approvals, demands, requests or other communications required or permitted under this Agreement, will be in writing and sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is provided below), or email (to the extent an email address is provided below) as indicated below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is provided below) or email (to the extent an email address is provided 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.

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

12.16 **State Auditor's Office.** Contractor understands acceptance of funds under this Agreement constitutes acceptance of authority of the Texas State Auditor's Office or any successor agency (**Auditor**), to conduct an audit or investigation in connection with those funds (ref. §§51.9335(c), 73.115(c) and 74.008(c), *Texas Education Code*). Contractor agrees to cooperate with Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.

12.17 **Limitation of Liability.** EXCEPT FOR UNIVERSITY'S OBLIGATION (IF ANY) TO PAY CONTRACTOR CERTAIN FEES AND EXPENSES UNIVERSITY WILL HAVE NO LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING ANY DUTY OR OBLIGATION OF UNIVERSITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR, NO PRESENT OR FUTURE AFFILIATED ENTERPRISE, SUBCONTRACTOR, AGENT, OFFICER, DIRECTOR, EMPLOYEE, REPRESENTATIVE, ATTORNEY OR REGENT OF UNIVERSITY, OR THE UNIVERSITY OF TEXAS SYSTEM, OR ANYONE

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

12.18 **Survival of Provisions.** No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination, including **Sections 6.7**, **9**, **12.5**, **12.9**, **12.10**, **12.11**, **12.13**, **12.16**, **12.17**, **12.19** and **12.21**.

12.19 **Breach of Contract Claims.**

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

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

12.19.1.2 If the parties are unable to resolve their disputes under **Section 12.19.1.1**, the contested case process provided in subchapter C of Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement by University.

12.19.1.3 Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, *Texas Civil Practices and Remedies Code*. The parties hereto specifically agree that (i) 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 (ii) University has not waived its right to seek redress in the courts.

12.19.2 The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted or subsequently amended.

12.19.3 University and Contractor agree that any periods provided in this Agreement for notice and cure of defaults are not waived.

12.20 **Undocumented Workers.** The *Immigration and Nationality Act* (8 *USC* §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 *CFR* §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 Applicable Laws. 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 8**. 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.

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

12.22 **Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy at https://www.utep.edu/compliance/, University's Standards of Conduct Guide at https://www.utep.edu/compliance/, and applicable state ethics laws and rules at https://www.utsystem.edu/offices/systemwide-compliance/ethics. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, 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.

12.23 **Intentionally Left Blank**

12.24 **Enforcement.** Contractor agrees and acknowledges that University is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to performing Work. Contractor's services provide a peculiar value to University. University cannot be reasonably or adequately compensated in damages for the loss of Contractor's services. Accordingly, Contractor acknowledges and agrees that a breach by Contractor of the provisions of this Agreement will cause University irreparable injury and damage. Contractor, therefore, expressly agrees that University will be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.

12.25 **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).

12.26 **Intentionally Left Blank**

12.27 **Historically Underutilized Business Subcontracting Plan.** Contractor agrees to use good faith efforts to subcontract Work in accordance with the Historically Underutilized Business Subcontracting Plan (**HSP**) (ref. **Exhibit E**). Contractor agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to University in the format required by the Statewide Procurement and Statewide Support Services Division of the Texas Comptroller of Public Accounts or successor entity (collectively, **SPSS**). Submission of compliance reports will be required as a condition for payment under this Agreement. If University determines that Contractor has failed to subcontract as set out in the HSP, University

will notify Contractor of any deficiencies and give Contractor an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. If University determines that Contractor failed to implement the HSP in good faith, University, in addition to any other remedies, may report nonperformance to the SPSS in accordance with 34 TAC §§20.285(g)(5), 20.585 and 20.586. University may also revoke this Agreement for breach and make a claim against Contractor.

12.27.1 **Changes to the HSP.** If at any time during the Term, 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 12.6** to replace the HSP with the revised subcontracting plan.

12.27.2 **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 contains 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; or (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 breach of this Agreement under **Section 8** and will be subject to any remedial actions provided by Applicable Laws, including Chapter 2161, *Texas Government Code*, and 34 TAC §20.285. University may report nonperformance under this Agreement to the SPSS in accordance with 34 TAC §§20.285(g)(5), 20.585 and 20.586.

12.28 **Responsibility for Individuals Performing Work; Criminal Background Checks.** Each individual who is assigned to perform Work under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing Work under this Agreement. Prior to commencing Work on campus, Contractor will at its expense (1) maintain through the term of this Agreement a list (**List**) of all individuals who are or may be assigned to perform Work under this Agreement and provide a copy of the List to the University when created or updated, and (2) have appropriate criminal background screenings performed on each individual on the initial List as well as all updates to the List. Contractor will determine on a case-by-case basis whether each individual assigned to perform Work is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University's campus 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.

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

12.29 **Intentionally Left Blank**

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

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

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

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

12.34 **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.

12.35 **Cybersecurity Training Program.** If Contractor and/or its subcontractors, officers, or employees will have an account on a state computer system (for example, an account to an application, database, or network), then pursuant to Section 2054.5192, *Texas Government Code*, Contractor and its subcontractors, officers, and employees must complete a cybersecurity training program certified under Section 2054.519, *Texas Government Code* and selected by the University. The cybersecurity training program must be completed by Contractor and its subcontractors, officers, and employees during the term and any renewal period of this Agreement. Contractor shall verify completion of the program to the University.

12.36 **Contractor Verification Regarding Discrimination Against Firearm Entities or Trade Associations**. Pursuant to Chapter 2274, *Texas Government Code (enacted by SB 19, 87th Texas Legislature, Regular Session (2021))*, Contractor verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.

12.37 **Contractor Verification Regarding Boycotting Energy Companies**. Pursuant to Chapter 2274, *Texas Government Code (enacted by SB 13, 87th Texas Legislature, Regular Session (2021))*, Contractor verifies (1) it does not boycott energy companies and (2) it will not boycott energy companies during the term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.

12.38 **Contractor Certification Regarding COVID-19 Vaccination**. Pursuant to Section 161.0085, *Texas Health and Safety Code (enacted by SB 968, 87th Texas Legislature, Regular Session (2021))*, Contractor certifies that it does not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Contractor's business. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

12.39 **Contractor Certification Relating to Critical Infrastructure**. Pursuant to Chapter 2274, *Texas Government Code (enacted by SB 2116, 87th Texas Legislature, Regular Session (2021)*, Contractor certifies (A) it is neither owned by nor is the majority of stock or other ownership interest of the Contractor held or controlled by (i) individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2274.0103 of the *Texas Government Code* (a "designated country") or (ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; and (B) it is not headquartered in China, Iran, North Korea, Russia, or a designated country. Contractor understands that the prohibitions set forth in the preceding sentence apply regardless of whether (1) Contractor's or its parent company's securities are publicly traded or (2) Contractor or its parent company is listed on a public stock exchange as either (a) a Chinese, Iranian, North Korean, or Russian company or (b) a company of a designated country. Contractor acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

12.40 **Contractor Compliance and Certification Relating to Cloud Computing Services**. Section 2054.0593 of the *Texas Government Code (enacted by SB 475, 87th Texas Legislature, Regular Session (2021)* requires the Texas Department of Information Resources (DIR) to establish and implement a state risk and authorization management program to provide a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services that process the data of Texas state agencies. DIR by rule shall prescribe (1) the categories and characteristics of cloud computing services subject to the state risk and authorization management program and (2) the requirements for certification through the program of vendors that provide cloud computing services. DIR shall evaluate vendors to determine whether a vendor qualifies for a certification issued by DIR reflecting compliance with program requirements. Texas state agencies must ensure that each contract for cloud computing services that the agency enters into or renews on or after January 1, 2022, complies with Section 2054.0593.

As a result, Contractor must comply with the requirements of such a state risk and authorization management program and maintain program compliance and certification throughout the term of this Agreement. Contractor understands and agrees that the University may not enter into or renew a contract with Contractor to purchase cloud computing services for the University that are subject to the state risk and authorization management program unless Contractor demonstrates compliance with program requirements. Contractor acknowledges this Agreement may be terminated and payment withheld if Contractor does not comply with this Section.

12.41 **FERPA Compliance.** Some of the University Records Contractor receives, creates or maintains for or on behalf of University constitute **Education Records** (as defined by FERPA), or **Personally Identifiable Information from Education Records** (as defined by FERPA) (collectively, **FERPA Data**). Before Contractor may access, create or maintain any of University's FERPA Data, Contractor must execute **EXHIBIT H**, FERPA Confidentiality and Security Addendum. **EXHIBIT H**, FERPA Confidentiality and Security Addendum, contains terms required by University to ensure that Contractor complies with FERPA (including the requirements of 34 CFR §99.33(a)) and University Rules related to FERPA, including (i) a description of all FERPA Data subject to this Agreement, and (ii) recognition that University retains the right to control Contractor's access, use, and disclosure of all FERPA Data. Except to the extent **Section 12.11** conflicts with **EXHIBIT H**, FERPA Confidentiality and Security Addendum, Contractor will comply with **Section 12.11** in connection with all FERPA Data. To the extent that **EXHIBIT H**, FERPA Confidentiality and Security Addendum, conflicts with any term contained in this Agreement, the terms of **EXHIBIT H**, FERPA Confidentiality and Security Addendum, will control.

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

UNIVERSITY:	**CONTRACTOR:**
THE UNIVERSITY OF TEXAS AT EL PASO	_____
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Attach:

EXHIBIT A – **Scope of Work**
EXHIBIT B – **Schedule**
EXHIBIT C – Payment for Services
EXHIBIT D – Intentionally Left Blank
EXHIBIT E – HUB Subcontracting Plan
EXHIBIT F – Environment Specifications
EXHIBIT G – Security Characteristics and Functionality of Contractor's Information Resources
EXHIBIT H – FERPA Confidentiality and Security Addendum

EXHIBIT A

SCOPE OF WORK

Note: Provide a detailed description and break-down of all tasks Contractor is to perform and technical standards for the tasks, if appropriate.

EXHIBIT B

SCHEDULE

Note: Describe specific time deadlines and due dates for each phase of Work and, if appropriate, for Work as a whole.

EXHIBIT C

PAYMENT FOR SERVICES

SERVICE FEES:

Note: Specify payment model.

EXHIBIT D

INTENTIONALLY LEFT BLANK

EXHIBIT E

HUB SUBCONTRACTING PLAN

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

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

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

EXHIBIT_F

ENVIRONMENT SPECIFICATIONS

EXHIBIT G

SECURITY CHARACTERISTICS AND FUNCTIONALITY OF CONTRACTOR'S INFORMATION RESOURCES

APPENDIX THREE

HUB SUBCONTRACTING PLAN

APPENDIX FOUR

CAMPUS MAP

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

THE UNIVERSITY OF TEXAS AT EL PASO

CAMPUS DIRECTORY

Academic Advising Center	104
Administration Building	1
Bell Hall	55
Benedict Hall	28
Bioscience Research Building	16
Biology Building	200-B
Boquillas Hall	274-A
Brumbelow Building	91
Business Administration Building	109
Campbell Building (Inset A)	96
Carl Hertzog Building	34
Centennial Museum	21
Centennial Plaza	275
Center for Inter-American and Border Studies	95
Central Energy Plant	57
Central Receiving	113-B
Chemistry and Computer Science Building	256
Chihuahuan Desert Gardens	252
Classroom Building	200-C
Cotton Memorial	18
Don Haskins Center	90
Education Building	47
Engineering and Sciences Complex	200
El Paso Natural Gas Conference Center	48
Facilities Services	113-A
Foster • Stevens Basketball Center	253
Fox Fine Arts Center	80
Geological Sciences Building	35
Glory Field	116
Glory Road Transfer Center and Parking Garage	276
Graduate Business Center (Inset B)	258
Graham Hall	3
Health Sciences and Nursing Building	255
Helen of Troy Softball Complex	93
Heritage House	17
Hilton Garden Inn	212
Holliday Hall	2
Honors House	43
Hudspeth Hall	30
Interdisciplinary Research Building	266
Kelly Hall	50
Key Shop/Hawthorne Building	73
Kidd Field	23
Kidd Memorial Seismic Lab	14
Larry K. Durham Sports Center	22
Leech Grove	118
Lhakhang	257
Liberal Arts Building	8
Magoffin Auditorium	19
Memorial Gym	201
Metallurgy Building	200-M
Mike Loya Academic Services Building	38
Military Science Building	110
Miner Canyon Student Housing	274
Miner Heights Student Housing	217
Miner Village Student Housing	94
Miners Hall	32
Multipurpose Field	251
North Energy Plant	106
Old Main	9
Parking and Transportation Services	
Customer Service Office	38
Administrative Office	112
Peter and Margaret de Wetter Center	25
Physical Sciences Building	36
Prospect Hall	60
Psychology Building	61
Quinn Hall	6
Ross Moore Building	84
Schuster Parking Garage	259
Stanlee and Gerald Rubin Center/ Seamon Hall	11
Student Health Center	40
Student Recreation Center	98
Sun Bowl Parking Garage	214
Sun Bowl Stadium	58
Undergraduate Learning Center	99
Union Building	24
University Bookstore	215
University Heights Early Learning Center	216
University Field	221
University Library	111
University Police	113-P
University Relations	42
University Ticket Center	254
University Towers	260
Vowell Hall	7
Worrell Hall	33

The Miner Metro Shuttle service is FREE to faculty, staff, students and official University use. Miner Metro Shuttle stops are conveniently located across the UTEP campus with minimal wait times. All buses are ADA accessible and have bicycle racks.

For real-time shuttle locations and to view the most up-to-date routes, visit utep.edu/map. For complete schedules and more information, visit parking.utep.edu.

MINER METRO SHUTTLE

Legend

- Drop-off/Pick-up Point
- Emergency Telephone
- Miner Metro Shuttle Stop
- Metered Parking
- Traffic Control Station
- Electric Control Gate
- Constuction Zone
- UN1 Parking Lot
  Valid University parking permit required in designated zones

APPENDIX FIVE

ACCESS BY INDIVIDUALS WITH DISABILITIES

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

APPENDIX SIX

ELECTRONIC AND INFORMATION RESOURCES ENVIRONMENT SPECIFICATIONS

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

University is primarily 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.

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.

EXHIBIT H

FERPA CONFIDENTIALITY AND SECURITY ADDENDUM

This FERPA Confidentiality and Security Addendum (**Addendum**) is made and entered into effective as of **[ ]** (**Effective Date**) by and between **The University of Texas at El Paso**, a state agency and institution of higher education established under the laws of the State of Texas (**University**) and **[ ]** (**Contractor**), (collectively, **Parties**). The purpose of this Addendum is to provide the terms under which Contractor is required to maintain the confidentiality and security of any and all University records subject to the Family Educational Rights and Privacy Act, 20 *United Stated Code* §1232g (**FERPA**) which Contractor will create, receive, or maintain on behalf of University pursuant to **Planning and Scheduling Software** (**Underlying Agreement**).

1. **FERPA.** The Parties understand and agree that:

1.1 As part of the work (**Work**) that Contractor will provide pursuant to the Underlying Agreement, Contractor is expected to create, receive or maintain, records or record systems from or on behalf of University that (a) are subject to FERPA or (b) contain personally identifiable information from "Education Records" as defined by and subject to FERPA (collectively, **FERPA Records**) namely: **A Software platform to enable the planning, scheduling of courses, events, and predictive course schedule as well as demand functionality**. FERPA Records include all data in any form whatsoever, including electronic, written and machine readable form.

1.2 Notwithstanding any other provision of the Underlying Agreement, this Addendum or any other agreement, all FERPA Records created, received or maintained by Contractor pursuant to the Underlying Agreement will remain the sole and exclusive property of University.

2. **FERPA Compliance**. In connection with all FERPA Records that Contractor may create, receive or maintain on behalf of University pursuant to the Underlying Agreement, Contractor is designated as a University Official with a legitimate educational interest in and with respect to such FERPA Records, only to the extent to which Contractor (a) is required to create, receive or maintain FERPA Records to carry out the Underlying Agreement, and (b) understands and agrees to all of the following terms and conditions *without reservation*:

2.1 **Prohibition on Unauthorized Use or Disclosure of FERPA Records:** Contractor will hold University FERPA Records in strict confidence. Contractor will not use or disclose FERPA Records received from or on behalf of University, including any FERPA Records provided by a University student directly to Contractor, except as permitted or required by the Underlying Agreement or this Addendum.

2.2 **Maintenance of the Security of FERPA Records**: Contractor will use the administrative, technical and physical security measures, including secure encryption in the case of electronically maintained or transmitted FERPA Records, approved by University and that are at least as stringent as the requirements of UT System Information and Resource Use & Security Policy, UTS165 at http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy, to preserve the confidentiality and security of all FERPA Records received from, or on behalf of University, its students or any third party pursuant to the Underlying Agreement.

2.3 **Reporting of Unauthorized Disclosures or Misuse of FERPA Records and Information**: Contractor, within one (1) day after discovery, will report to University any use or disclosure of FERPA Records not authorized by this Addendum. Contractor's report will identify: (i) the nature of the unauthorized use or disclosure, (ii) the FERPA Records used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure. Contractor will provide such other information, including written reports, as reasonably requested by University. For purposes of this **Section 2.3**, an unauthorized disclosure or use includes any access or use of an "Education Record" (as defined by FERPA) by a

Contractor employee or agent that the employee or agent does not require to perform Work or access by any employee or agent that does not involve the provision of Work.

2.4 **Right to Audit:** If University has a reasonable basis to believe that Contractor is not in compliance with the terms of this Addendum, University may audit Contractor's compliance with FERPA as Contractor's compliance relates to University's FERPA Records maintained by Contractor.

2.5 **Five Year Exclusion for Improper Disclosure of Education Records.** Under the federal regulations implementing FERPA, improper disclosure or redisclosure of personally identifiable information from University's "Education Records" (as defined by FERPA) by Contractor or its employees or agents may result in Contractor's complete exclusion from eligibility to contract with University for at least five (5) years.

3. **Return or Secure Destruction of FERPA Records.** Contractor agrees that no later than 30 days after expiration or termination of the Underlying Agreement or this Addendum for any reason, or within thirty (30) days after University's written request, Contractor will halt all access, use, creation, or processing of FERPA Records and will return to University or Securely Destroy all FERPA Records, including any copies created by Contractor or any subcontractor; and Contractor will certify in writing to University that all FERPA records have been returned to University or Securely Destroyed. **Secure Destruction**, **Securely Destroy** and **Securely Destroyed** mean shredding, erasing or otherwise modifying a record so as to make it unreadable or indecipherable.

4. **Disclosure.** Contractor will restrict disclosure of FERPA Records solely to those employees, subcontractors, or agents of Contractor that have a need to access the FERPA Records in order for Contractor to perform its obligations under the Underlying Agreement or this Addendum. If Contractor discloses any FERPA Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with restrictions and obligations that align with the restrictions and obligations imposed on Contractor by the Underlying Agreement and this Addendum, including requiring each subcontractor or agent to agree to the same restrictions and obligations in writing.

5. **Termination**. This Addendum will remain in effect until the earlier of (a) expiration or termination of the Underlying Agreement, or (b) the date University terminates this Addendum by giving Contractor sixty (60) days' written notice of University's intent to terminate. **Sections 2**, **3**, **4**, and **6** of this Addendum will survive expiration or termination of the Underlying Agreement and this Addendum.

6. **Breach.** In the event of a breach, threatened breach or intended breach of this Addendum by Contractor, University (in addition to any other rights and remedies available to University at law or in equity) will be entitled to preliminary and final injunctions, enjoining and restraining such breach, threatened breach or intended breach.

7. **Governing Law.** The validity, construction, and performance of this Addendum are governed by the laws of the State of Texas, and suit may be brought in **El Paso County, Texas** to enforce the terms of this Addendum.

8. **Non-Assignment.** The rights and obligations of the Parties under this Addendum may not be sold, assigned or otherwise transferred.

AGREED TO AND SIGNED BY THE PARTIES.

The University of Texas at El Paso	**Contractor**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____