

**REQUEST FOR PROPOSAL**

**by**

**The University of Texas at El Paso**

**for**

**Selection of a Vendor to Provide  
Ticketing Platform**

**related to**

**UTEP Ticketing Platform Services**

**RFP No. 724-2302-SF**

**Submittal Deadline: June 22, 2023**

Issued: May 12, 2023

REQUEST FOR PROPOSAL

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## SECTION 1

### INTRODUCTION

#### 1.1 Description of University

Founded in 1914, The University of Texas at El Paso (“UTEP” or “University”) is a vibrant top-tier public research university of more than 25,000 students enrolled in 170 undergraduate and graduate degree programs. Set against the backdrop of the Franklin Mountains in the Chihuahuan Desert, UTEP is located at the heart of the U.S.-Mexico border in one of the largest binational communities in the world. UTEP maintains one of the lowest out-of-pocket costs of any doctoral research university in the U.S., underscoring its commitment to make education accessible to all. Rigorous programs 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”), University is seeking qualified experienced, financially secure, and reliable companies (“Proposers”) to assist University in providing a computerized ticketing platform. This shall be in accordance with the terms, conditions, and requirements set forth in this RFP.

University is soliciting formal proposals from Proposers to enter a four (4) year agreement with three (3), one (1) year options to renew to provide comprehensive services related to a computerized ticketing platform (“the Services”). The Services are to include a computerized ticketing platform for the (“University Ticket Center”), (“Athletic Ticket Office”), its venue box offices, all satellite locations for the sale of tickets to individual, group, and season events, and all authorized office workstations. Tickets for events should be available for purchase through University on-campus facilities, Proposer’s off-campus (“Additional Ticketing Distribution Sites (Outlets)”), and by telephone and Internet. Proposer must demonstrate it has efficient and quality customer service, knowledge, experience, software, hardware, and personnel to provide Services to University.

Proposers may review frequently asked questions (FAQs) and the Solicitation Manual at <https://adminapps.utep.edu/sourcing/>.

#### 1.3 Objective of Request for Proposal

University is soliciting proposals for Services as more specifically described in RFP **Section 5.4, Scope of Work**. University reserves the right to award multiple contracts for the work refer in RFP **Section 5.32**.

## 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 separate agreements with a successful Proposer under this RFP. University is part of The University of Texas System (“UT System”), which is comprised of thirteen institutions described at <http://www.utsystem.edu/institutions>. UT System institutions routinely evaluate whether an agreement resulting from a procurement conducted by one institution might be suitable for use by another, and if so, this RFP could give rise to additional purchase volumes. In submitting its proposal, Proposer should consider proposing a pricing model and other commercial terms that consider 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 until 3:00 p.m. Mountain Standard Prevailing Time, on June 22, 2023 (“Submittal Deadline”).

Proposer must provide RFP proposal by electronic submission and acknowledge the attributes (answer questions) for the documents requested in **Section 3.4 (Terms and Conditions)** and **Section 3.5 (Submittal Checklist)** in Sourcing Manager at (<https://adminapps.utep.edu/sourcing/>).

2.1.1 Proposer should register as follows:

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 Users will be established after registration is complete

2.1.1.9 Confirm all information and 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](mailto: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 **Wednesday, May 31, 2023, at 2:00 PM MSPT (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

One or more Proposers, if any, selected by University through this RFP (hereafter “Contractor”), will be the Proposer that submits a timely and complete proposal the University deems most qualified to perform the Services to fulfill University’s Scope of Work (“Work”).

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 in its sole discretion the information is relevant.

Criteria to be considered by University in evaluating proposals and selecting Contractor, Include:

### 2.3.1 Threshold Criteria Not Scored

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

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

### 2.3.2 Scored Criteria

2.3.2.1 the financial return to University, which includes fees and commissions, software, and hardware offerings; 25%

2.3.2.2 the extent to which the goods or services meet University’s needs; 20%

2.3.2.3 the Proposer’s demonstrated capabilities, and experience; 20%

2.3.2.4 the use of efficient and reliable technology in providing services; 15%

2.3.2.5 the quality and reputation of the Proposer's goods or services; 10%

2.3.2.6 the Proposer’s exceptions to the terms and conditions set forth in **Section 4** of this RFP; 7%

2.3.2.7 the Proposer's past relationship with University; 3%

Pursuant to [§361.965\(d\), Health and Safety Code](#), University will give preference to a Proposer that demonstrates a program to recycle computer equipment of other manufacturers, including collection events and manufacturer initiatives to accept computer equipment labeled with another manufacturer's brand (ref. **Section 5.3.5**).

## 2.4 Key Events Schedule

Date RFP Issued	May 12, 2023
Pre-Proposal Conference	Tuesday, May 23, 2023, at 10:00 A.M. Mountain Standard Prevailing Time
Site Visit	Following Pre-Proposal Meeting
Question Deadline (ref. Section 2.2)	Wednesday, May 31, 2023, at 2:00 P.M. Mountain Standard Prevailing Time
Submittal Deadline (ref. Section 2.1)	Thursday, June 22, 2023, 3:00 P.M. Mountain Standard Prevailing Time

## 2.5 Historically Underutilized Businesses

- 2.5.1 All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (“HUBs”) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP, Contractor subcontracts any Work, then Contractor must make a good faith effort to utilize HUBs certified by the Procurement and Support Services Division of the Texas Comptroller of Public Accounts. Proposals that fail to comply with the requirements contained in this **Section 2.5** will constitute a material failure to comply with advertised specifications and will be rejected by University as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP. Proposer acknowledges that, if selected by University, its obligation to make a good faith effort to utilize HUBs when subcontracting any Work will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of Work by the Proposer is subject to review by University to ensure compliance with the HUB program.
- 2.5.2 University has reviewed this RFP in accordance with [34 TAC §20.285](#), and has determined that subcontracting opportunities are probable under this RFP.
- 2.5.3 A HUB Subcontracting Plan (“HSP”) is a required part of the proposal. The HSP will be developed and administered in accordance with University’s Policy on Utilization of Historically Underutilized Businesses, attached as **APPENDIX THREE**.

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

*Questions regarding the HSP may be directed to:*

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

Contractor will not be permitted to change its HSP unless: (1) Contractor completes a new HSP in accordance with the terms of **APPENDIX THREE**, setting forth all modifications requested by

Contractor, (2) Contractor provides the modified HSP to University, (3) University approves the modified HSP *in writing*, and (4) all agreements resulting from this RFP are amended in writing to conform to the modified HSP.

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

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

Any proposal submitted in response to this RFP that does not include a completed HSP will be rejected by University.

## 2.6 Pre-Proposal Conference

University will hold a pre-proposal conference at **10:00 AM, Mountain Standard Prevailing Savings Time on Tuesday, May 23, 2023**, in **Room 301 of Kelly Hall Building** (ref. **APPENDIX FOUR, Campus Map**). The pre-proposal conference will allow all Proposers an opportunity to ask University’s representatives relevant questions and clarify provisions of this RFP.

Site visit will be guided after the Pre-Proposal Conference meeting.

Proposers unable to attend the Pre-Proposal Conference, can participate via the following conference call bridge:

Phone number: +1 (915) 320-4743  
Phone Conference ID: 657 460 261#

### Microsoft Teams Meeting Link

Click here to join the meeting:

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_NGQ3NDdiNzMtOTk3Ny00ZDc5LWExMjktNzcyNjhjZTdjZjZi%40thread.v2/0?context=%7b%22Tid%22%3a%22857c21d2-1a16-43a4-90cf-d57f3fab9d2f%22%2c%22Oid%22%3a%22de01cf42-c229-4325-a691-d6ca91a3589a%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NGQ3NDdiNzMtOTk3Ny00ZDc5LWExMjktNzcyNjhjZTdjZjZi%40thread.v2/0?context=%7b%22Tid%22%3a%22857c21d2-1a16-43a4-90cf-d57f3fab9d2f%22%2c%22Oid%22%3a%22de01cf42-c229-4325-a691-d6ca91a3589a%22%7d)

Meeting ID: 218 159 737 515

Passcode: yZ5oYW



## 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 <https://adminapps.utep.edu/sourcing/>.

#### 3.2 Submission

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

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

Failure to comply with the electronic submittal requirements indicated in **Section 3.2.1** of this RFP will result in disqualification of the submittal.

#### 3.3 Proposal Validity Period

Each proposal must state that it will remain valid for University's acceptance for a minimum of three hundred sixty-five (365) 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 Sample 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 Sample 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 all 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 (pdf.) 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 Sample Agreement (ref. **APPENDIX TWO**) (“Agreement”) 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 nonetheless consider Proposer’s exceptions when evaluating 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 Proposer meets each of the following minimum qualification requirements:

- 5.2.1 Proposer can perform all objectives outlined in **Section 5.4, Scope of Work**.
- 5.2.2 Proposer has experience with a similar Scope of Work and can thoroughly describes its approach to fulfilling the Scope of Work and University’s needs.
- 5.2.3 Proposer can comply with the requirements for insurance described in the Sample Agreement (**APPENDIX TWO**) of this RFP.

#### 5.3 Additional Questions Specific to this RFP

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

- 5.3.1 Proposer must submit a list of the exceptions, if any, it takes to any terms or conditions set forth in the Sample Agreement, **APPENDIX TWO**.
- 5.3.2 By signing the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**), Proposer agrees to comply with Certificate of Interested Parties laws (ref. [§2252.908, Government Code](#)) and [1 TAC §§46.1 through 46.5](#)) as implemented by the Texas Ethics Commission (“TEC”), including, among other things, providing TEC and University with information required on the form promulgated by TEC and set forth in **APPENDIX EIGHT**. *Information about these disclosure requirements, is available at [§2252.908, Government Code](#), and [https://www.ethics.state.tx.us/resources/FAQs/FAQ\\_Form1295.php](https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php).*  
**The Certificate of Interested Parties must be submitted by Contractor upon delivery to University of a signed Agreement.**
- 5.3.3 Proposer’s proposal must include consent to include in the Agreement the “Access by Individuals with Disabilities” language set forth in **APPENDIX FIVE, Access by Individuals with Disabilities**. If Proposer objects to including that language in the Agreement, the proposal shall describe in detail all of the reasons for Proposer’s objection. **NOTE: A GENERAL OBJECTION IS NOT ACCEPTABLE.**
- 5.3.4 Proposer’s proposal must address to each item listed in **APPENDIX SIX, Electronic and Information Resources (EIR) Environment Specifications**. **APPENDIX SIX** establishes specifications, representations, warranties and agreements related to the EIR Proposer will provide to University. Responses to **APPENDIX SIX** will be incorporated into the Agreement and will be binding on Contractor.
- 5.3.5 Proposer’s proposal must address to each item listed in **APPENDIX SEVEN, Security Characteristics and Functionality of Contractor’s Information Resources**. **APPENDIX SEVEN** establishes specifications, representations, warranties and agreements related to the EIR

Proposer will provide to University. Responses to **APPENDIX SEVEN** will be incorporated into the Agreement and will be binding on Contractor.

## 5.4 Scope of Work

Proposer will provide the following services to University:

University has determined it needs a computerized ticketing platform for University Ticket Center, Athletic Ticket Office, its venue box offices, all authorized office workstations, and all satellite locations for the sale of tickets to individual, group, and season University events, including but not limited to Special Events, UTEP Dinner Theatre, Music Department, Theatre and Dance Department, and Student Organizations, among others. Tickets for events will be available for purchase through various on-campus facilities of the University, described more fully in **Exhibit J** of the RFP. Proposer will sell tickets for these events off-campus at Additional Ticketing Distribution Sites (Outlets) and via telephone and internet. Proposer will provide efficient and quality customer service, knowledge, experience, software, hardware, and personnel. Proposer will assign dedicated staff member(s) to perform these services, oversee all services related to the computerized ticketing platform, and facilitate communication and problem resolution, and be available to meet regularly with University.

Proposer responding to this RFP agrees;

- 5.4.1 Proposer shall ensure adequate ticketing channels are in place to serve the greater El Paso metropolitan area. Proposer shall indicate ticketing channels to be used.
- 5.4.2 Proposer shall provide services in both English and Spanish, whether through an automated system or live operators.
- 5.4.3 Proposer shall provide and utilize technology advances typical for the industry.
- 5.4.4 Proposer shall provide proper support staff with the knowledge, technology, and professionalism to accomplish the Athletic Ticket Office and/or University Ticket Center's services.
- 5.4.5 Proposer shall provide, at a minimum, the following additional services to its fully integrated individual, group, and season ticketing platform: venue access control, barcoding, and a fully integrated event management tool.

## 5.5 Hardware and Software

- 5.5.1 Proposer shall provide a plan for updates to and continuous improvement of its hardware and software platform during the Term.
- 5.5.2 The Proposer shall obtain, deliver, install, and maintain all necessary hardware and software for the Athletic Ticket Office and or University Ticket Center, its venue box offices, and all satellite locations. All hardware and software shall be the property of Proposer. All installations of hardware and software must conform to University's standards, and University reserves the right to review and approve any modifications.
- 5.5.3 As part of the software installation, Proposer shall provide authorized University personnel with logins and passwords necessary for access to the ticketing platform.
- 5.5.4 Proposer must provide written plans for backup, recovery, and security procedures to ensure data integrity.
- 5.5.5 Proposer shall provide a comprehensive training/refresh schedule for all authorized University personnel. Proposer shall include a training schedule proposal. Which should include at a minimum, the number of days of training, maximum hours per day, and identify training support materials.

- 5.5.6** Proposer shall provide a repair and replacement plan for hardware as required for efficient to completion of the Work, but with the useful life of all hardware not to exceed four (4) years. Proposer shall be, at its sole cost, responsible for all hardware upgrades and maintenance on hardware and software. Proposer shall provide a comprehensive hardware replacement program to maximize the ticketing platform's usage.
- 5.5.7** Before installation and implementation, Proposer shall test the software and each item of operational hardware to demonstrate it operates properly, and controls and safety devices are functioning.
- 5.5.8** Proposer and University will mutually agree on additional software and hardware needs to include installation, maintenance, repair, and operating costs beyond what is included in the original and as an amendment to the agreement.
- 5.5.9** Proposer to indicate the number of days required to correct any software, network, or peripheral items.

## **5.6 Communication Lines and Hardware**

- 5.6.1** Proposer, at its own expense, shall install and maintain the necessary number of primary and backup communication lines and hardware to efficiently operate the Athletic Ticket Office and/or Ticket Center, its venue box offices, and all satellite locations. All installations of cabling must conform to University's standards and will be coordinated with and verified and approved by University's communication infrastructure staff. Proposer shall provide a schematic of all communication lines of the proposed and as-built communication platform as it pertains to University.
- 5.6.2** During the Term of the agreement, and at the expense of the Proposer, the Proposer and University will mutually agree on additional communication lines and hardware needs to include installation, maintenance, repair, and operating costs as an amendment to the original agreement.

## **5.7 Central Computer Facility**

- 5.7.1** Proposer shall provide a detailed description to include software update schedule, location, hours of operation, and maintenance of its central computerized system.

## **5.8 Technical Support**

- 5.8.1** Proposer shall provide contact information for the representative that will be responsible for the service and repair of the platform software and hardware.
- 5.8.2** Proposer shall provide a detailed plan of how it will meet the anticipated service needs of University. Proposer shall indicate how it will respond to emergencies, such as a breakdown or malfunction in the operation of the hardware or software, and state the guaranteed response time for emergency calls.
- 5.8.3** Proposer shall provide manuals, schedule, and preventative maintenance plans for all installed hardware.
- 5.8.4** Proposer shall provide index and reference hardware numbers.

**5.8.5** Proposer shall provide timely, responsive and user-friendly customer service and customer support for the Athletic Ticket Office and/or Ticket Center to ensure a positive experience for University clients.

**5.8.6** Proposer has an on-call technical support channel that is quick and responsive.

## **5.9 Guarantee**

**5.9.1** All hardware furnished for the platform shall guarantee use for the term of the agreement.

**5.9.2** Guarantee shall protect against defective material, design, and workmanship.

**5.9.3** Proposer shall make all hardware repairs and replacements in a manner, timeframe and time to minimize disruption to Work operations, University operations, and in coordination with and satisfactory to University.

## **5.10 Quality Assurance**

**5.10.1** Where applicable, Proposer shall ensure there are UL labels on prime electrical components of hardware and “recognized markings” on other items with electrical components, signifying listing by UL.

**5.10.2** Proposer shall comply with all standards, codes, rules, regulations, authorities and similar requirements applicable to the Work.

## **5.11 Convenience Charges, Handling Fees, Facility Fees**

University has the right to establish the face value of all tickets for University-sponsored or produced events.

### **5.11.1 Convenience Charges:**

Proposer shall indicate convenience fees and charges proposed under this RFP in **Section 6.2.1**.

### **5.11.2 Handling Fees:**

Proposer should indicate handling fees and delivery options proposed.

**5.11.2.1** Proposed increases to handling fees require advanced written approval of University.

**5.11.2.2** University has the right to establish delivery options for all University-sponsored or produced events.

### **5.11.3 Facility fees:**

**5.11.3.1** University has the right to establish its own facility fees for University-sponsored or produced events.



## **5.12 Telephone and Internet Sales**

- 5.12.1** Proposer has the right to act as University's agent by telephone or internet for all tickets made available to the public for any University-sponsored or produced event. Both distribution channels shall be accessible 24/7 365 days a year.
- 5.12.2** Proposer shall provide services in both English and Spanish, whether through an automated system or live operators.
- 5.12.3** Internet website must be ("ADA compliant"), ("PCI compliant"), and maintained by Proposer.
- 5.12.4** Proposer will notify University quarterly to update venue profiles for its ticketing channels.
- 5.12.5** Proposer shall indicate toll-free and/or a local phone number and internet address.

## **5.13 Additional Ticketing Distribution Site (Outlet) Sales**

- 5.13.1** Proposer has the right to act as University's agent at Additional Ticketing Distribution Sites (Outlets) and by telephone or internet for all tickets made available to the public for any University-sponsored or produced event.
- 5.13.2** Proposer shall provide University a list of all ("Third-Party Ticket Agencies") with which Proposer has a current working relationship.
- 5.13.3** Proposer shall ensure adequate ticketing channels are in place to serve the greater El Paso metropolitan area. Proposer shall indicate ticketing channels.

## **5.14 Audit of Ticket Sales**

- 5.14.1** University shall have the right to audit ticket sales for University-sponsored or produced events processed through the Proposer's distribution channels, including but not limited to, Additional Ticketing Distribution Sites (Outlets), telephone, and internet, to assure Proposer's compliance.
- 5.14.2** Proposer shall provide support to ensure accuracies of said audit.

## **5.15 Methods of Payment ("MOP")**

- 5.15.1** Proposer will provide MOPs applicable to the platform it proposed under this RFP in **Section 6.2**.
- 5.15.2** Proposer will provide a fee schedule for credit card company charges.
- 5.15.3** Proposer will provide the information in Section 5.16.2 for both University-hosted and Proposer-hosted options.

## **5.16 Will Call**

- 5.16.1** Proposer will provide reports and platform jargon to adequately disperse Will Call tickets.
- 5.16.2** University will determine Will Call locations and hours for the ticketing platform chosen.

**5.16.3** University may require a representative from Proposer to assist in the distribution of Will Call tickets on advance notification of one (1) business day.

**5.16.4** Proposer will furnish University with contact names and telephone numbers of key personnel who can be reached during the time of an event to address ticket distribution logistics and any issues, including regarding Will Call.

## **5.17 Mail and Handling of Tickets**

**5.17.1** Proposer shall indicate mail delivery options, fees associated with each option, and how these fees are applied. Proposer will not pass through any delivery expenses to University, directly or indirectly, and such expenses will be overhead to Proposer to the extent not charged to customer. In no event will University assume, be charged for, or have its revenue affected by any of the associated costs.

**5.17.2** Proposer shall notify University, annually and in writing, of any proposed changes to mailing procedures and fees University must receive such notification at least sixty (60) days before the anniversary date of the agreement . University must approve proposed changes in writing.

**5.17.3** University has the right to establish a “no mailing” option and/or a “no print at home” option for University-sponsored or produced events.

## **5.18 Storage of Event Information**

**5.18.1** Proposer shall indicate event information retention schedule for University-sponsored or produced events proposed under this RFP in **Section 6.2.2**.

## **5.19 Refund and Cancellation Policy**

**5.19.1** University will decide, in its sole discretion, whether a University-sponsored or produced event is cancelled or postponed. Information regarding the cancellation or postponement of an event will be established and written notification will be given to Proposer.

**5.19.2** The Proposer will not withhold any funds owed to University for a canceled University event. The Proposer will invoice University if a refund is required.

**5.19.3** Proposer shall indicate their refund/cancellation policy and procedures and include procedures for dissemination of cancellation/postponement information for University-sponsored or produced events to their distribution channels.

## **5.20 Event Creation and Set-Up**

**5.20.1** Proposer shall indicate event creation method, training schedule, event creation required elements, and event process schedule and platform PC requirements for University-sponsored or produced events.

## **5.21 Ticket Stock and Ticket Envelopes**

**5.21.1** University has the right to sell advertising on ticket stock and/or envelopes for all University-sponsored or produced events.

**5.21.2** Proposer shall indicate ticket stock and envelope quantities proposed at no cost to University per year.

## **5.22 Advertising**

**5.22.1** Proposer shall indicate all advertising avenues available to University to promote University-sponsored and produced events at no cost to University.

## **5.23 Emergency Ticketing**

**5.23.1** Proposer will create emergency ticket stock for all University venues. The stock will include the section, row, and seat.

## **5.24 Additional Ticketing Distribution Site**

**5.24.1** Proposer shall indicate additional ticketing distribution site options for non-University events available to (“Athletic Ticket Office”) and or (“University Ticket Center”), its venue box offices, and all satellite locations.

**5.24.2** Proposer shall indicate all regions available, hours of operation, payment methodology, and potential revenue streams available to University.

**5.24.3** Proposer shall provide a list to University of all third-party ticket agencies with which the Proposer has a current working relationship. Proposer is to provide University an updated list every six (6) months during the Term of the agreement.

## **5.25 Accounting Procedures**

**5.25.1** Proposer will submit accounting policies and procedures for University-sponsored and produced events, and for additional ticketing distribution site events.

**5.25.2** Proposer will submit policies and handling procedures for credit card charge backs, purchase disputes and its refund policy for cancelled events.

**5.25.3** Proposer will submit sample reports detailing event revenue, fees, and commissions.

**5.25.4** Proposer will submit payment and report delivery schedule.

## **5.26 Technological Enhancements**

**5.26.1** Proposer shall inform University of all advances in ticketing technology by meeting quarterly with authorized University personnel throughout the Term of the agreement.

## **5.27 Miscellaneous Provisions**

### **5.27.1 Personnel**

Proposer shall assign dedicated staff member(s). Staff member(s) will oversee all services related to the computerized ticketing platform. In addition, Proposer’s staff will facilitate communication, and problem resolution and be available to meet weekly with University.

### **5.27.2 Current Location Set-up**

Proposer shall provide platform and peripheral device recommendations to meet the needs of the (“Athletic Ticket Office”) and or (“University Ticket Center”), its venue box offices, and all satellite locations for the sale of tickets to individual, group and season events, and all authorized office workstations.

**(Refer to EXHIBIT J, [Ticketing Locations](#))**

**5.28 Marketing**

**5.28.1** Proposer has the ability to provide digital marketing solutions and report based on return on investment

**5.28.2** Proposer offers multi-channel marketing strategies

**5.28.3** Proposer can upsell during the transaction and cart abandonment marketing options

**5.28.4** Proposer can enact behavior-based retargeting

**5.29 Customer Relationship Management System**

**5.29.1** Proposer has a current up-to-date customer relationship management system or can integrate with a third-party system

**5.30 Dynamic Reporting**

**5.30.1** Proposer offers real-time reporting that is accurate and reflective of the data, particularly on an attendance and revenue

**5.31 Integration with Fundraising for the Athletic Ticket Office (Only)**

**5.31.1** Proposer shall provide a system which is proficient in athletics fundraising and integrates with third-party system

**5.32 Alternate Scope of Work – Multi-award**

**5.32.1** Proposers are permitted to submit proposal(s) with alternate scopes. If an alternate scope of work is to be submitted, it shall be marked “Alternate Scope of Work” and it shall follow the format that University has provided herein.

5.32.1.1 Alternate Scope of Work for University Ticket Center and Athletics

5.32.1.2 Alternate Scope of Work for University Ticket Center

5.32.1.3 Alternate Scope of Work for Athletics

**SECTION 6**

**PRICING AND DELIVERY SCHEDULE**

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

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

**RFP No.: 724-2302-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 initial term of the Agreement may be up to four (4) years with the initial term of the Agreement proposed to begin on December 1, 2023, and proposed to expire on November 30, 2027. University may elect to renew the Agreement for up to three (3) additional one (1) year terms.

**6.2 Pricing for Work and Expenses**

6.2.1 Convenience Charge, Handling Charges and Royalties Schedule: Proposers are asked to submit their proposed schedules of convenience charges, handling charges and royalty-based fees that will provide the most benefit to University.

6.2.2 Delivery Schedule of Events and Time Periods Commencement of service, installation of equipment, and phase-in: The Proposer's installation of machines and commencement of services under the agreement shall begin thirty (30) days prior to (TBD) \_\_\_\_\_, 2023.

**6.3 Discounts**

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

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**6.4 Schedule for Completion of Tasks and Submittal of Deliverables**

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## 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 Proposer offers:

Prompt Payment Discount: \_\_\_\_\_%\_\_\_\_\_days/net 30 days.

[Section 51.012, Education Code](#), authorizes University to make payments through electronic funds transfer methods. Proposer agrees to accept payments from University through those methods, including the automated clearing house system (ACH). Proposer agrees to provide its banking information to University in writing on its letterhead signed by an authorized representative of Proposer. Before making the first payment, University will confirm Proposer's banking information. Changes to Proposer'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 Proposer.

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

Respectfully submitted,

**Proposer:** \_\_\_\_\_

**By:** \_\_\_\_\_  
(Authorized Signature for Proposer)

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

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

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

**APPENDIX ONE**  
**PROPOSAL REQUIREMENTS**

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## SECTION 1

### GENERAL INFORMATION

#### 1.1 Purpose

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

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

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

#### 1.2 Inquiries and Interpretations

University may in its sole discretion respond in writing to written inquiries concerning this RFP and mail its response as an Addendum to all parties recorded by University as having received a copy of this RFP. Only University responses 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 before 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 before 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 numbers, and email address, to University, so 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 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 its 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

Proposer, 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 Proposer by using the competitive sealed proposal process described in this Section. Any proposals 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 before its selection of Contractor.

University may make the selection of Contractor based on the proposals initially submitted, without discussion, clarification or modification. In the alternative, University may make the selection of Contractor based on 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 to obtain the Proposer's best and final offer. Representations made by Proposer in a 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 in its sole discretion.

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. Proposer shall also enter pricing information in Sourcing Manager at the Sourcing Manager Internet address at (<https://adminapps.utep.edu/sourcing/>). The fees must be inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit.

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

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

### 1.9.4 Proposer's General Questionnaire

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

### 1.9.5 Addenda Checklist

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

### 1.9.6 Submission

*Proposer should submit all proposal materials as instructed in **Section 3**. RFP No. (ref. **Title Page**) and Submittal Deadline (ref. **Section 2.1**) should be clearly shown (1) in the Subject line of any email transmitting the proposal, and (2) in the lower left-hand corner on the top surface of any envelope or package containing the proposal. In addition, the name and the return address of the Proposer should be clearly visible in any email or on any envelope or package. Proposers are required to acknowledge the attributes for the documents requested in Sections 3.4 (the “Terms and Conditions”) and 3.5 (the “Submittal Checklist”) as well as supply pricing for this RFP in Sourcing Manager at the Sourcing Manager Internet address at <https://adminapps.utep.edu/sourcing/>*

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

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

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

## SECTION 2

### EXECUTION OF OFFER

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

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

- 2.1.1 Proposer will furnish Work to University and comply with all terms, conditions, requirements and specifications set forth in this RFP and any resulting Agreement.
- 2.1.2 This RFP is a solicitation for a proposal and is not a contract or an offer to contract. Submission of a proposal by Proposer in response to this RFP will not create a contract between University and Proposer. University has made no representation or warranty, written or oral, that one or more contracts with University will be awarded under this RFP. Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
- 2.1.3 Proposer is a reputable company that is lawfully and regularly engaged in providing Work.
- 2.1.4 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform Work.
- 2.1.5 Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances relating to performance of Work.
- 2.1.6 Proposer understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in the Agreement under which Proposer will be required to operate.
- 2.1.7 Proposer will not delegate any of its duties or responsibilities under this RFP or the Agreement to any sub-contractor, except as expressly provided in the Agreement.
- 2.1.8 Proposer will maintain any insurance coverage required by the Agreement during the entire term.
- 2.1.9 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. University will rely on such statements, information and representations in selecting Contractor. If selected by University, Proposer will notify University immediately of any material change in any matters with regard to which Proposer has made a statement or representation or provided information.
- 2.1.10 PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, UT SYSTEM, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF PROPOSER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROPOSER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.
- 2.1.11 Pursuant to §§[2107.008](#) and [2252.903](#), *Government Code*, any payments owing to Proposer under the Agreement may be applied directly to any debt or delinquency that Proposer owes the

State of Texas or any agency of the State of Texas, regardless of when it arises, until such debt or delinquency is paid in full.

- 2.1.12 Any terms, conditions, or documents attached to or referenced in Proposer's proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP, and (b) do not place any requirements on University that are not set forth in this RFP. Submission of a proposal is Proposer's good faith intent to enter into the Agreement with University as specified in this RFP and that Proposer's intent is not contingent upon University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.
- 2.1.13 Pursuant to [Chapter 2271, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 2.1.14 Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Proposer certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.
- 2.1.15 Pursuant to Chapter 2274, *Texas Government Code (enacted by [SB 19, 87<sup>th</sup> Texas Legislature, Regular Session \(2021\)](#))*, Proposer verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of any contract or agreement resulting from this RFP against a firearm entity or firearm trade association. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this verification is inaccurate.
- 2.1.16 Pursuant to Chapter 2274, *Texas Government Code (enacted by [SB 13, 87<sup>th</sup> Texas Legislature, Regular Session \(2021\)](#))*, Proposer verifies (1) it does not boycott energy companies and (2) it will not boycott energy companies during the term of any contract or agreement resulting from this RFP. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this verification is inaccurate.
- 2.1.17 Pursuant to Section 161.0085, *Texas Health and Safety Code (enacted by [SB 968, 87<sup>th</sup> Texas Legislature, Regular Session \(2021\)](#))*, Proposer certifies that it does not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Proposer's business. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.

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

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

**2.4 Antitrust Certification.** Neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, nor anyone acting for such firm, corporation or institution, has violated the antitrust laws of



the State of Texas, codified in [§15.01 et seq., Business and Commerce Code](#), or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.

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

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

**2.7 Relationship Certifications.**

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

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

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

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

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

**2.12 Conflict of Interest Certification.**

- Proposer is not a debarred vendor or the principal of a debarred vendor (i.e. owner, proprietor, sole or majority shareholder, director, president, managing partner, etc.) either at the state or federal level.

- Proposer's provision of services or other performance under any Agreement resulting from this RFP will not constitute an actual or potential conflict of interest.
- Proposer has disclosed any personnel who are related to any current or former employees of University.
- Proposer has not given, nor does Proposer intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to an officer or employee of University in connection with this RFP.

**2.13 Proposer Certification Relating to Critical Infrastructure.** Pursuant to Chapter 2274, *Texas Government Code* (enacted by [SB 2116, 87<sup>th</sup> 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 Warranty Relating to Cloud Computing Services.** The Texas Department of Information Resources (**DIR**) has established and implemented a state risk and authorization management program providing a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services (**CCSs**) that process (including storing or transmitting) the data of Texas state agencies (**TX-RAMP**). The requirements of TX-RAMP include [Section 2054.0593 of the Texas Government Code, Title 1, Rule 202.77 of the Texas Administrative Code](#), and DIR's TX-RAMP Manual.

Proposer represents and warrants that throughout the term of any Agreement resulting from this RFP it will comply with the requirements of TX-RAMP and that all CCSs subject to TX-RAMP will comply with the requirements of and be certified under TX-RAMP. The CCSs subject to TX-RAMP include those provided by Proposer either through such an Agreement or in furtherance of such an Agreement, including CCSs provided through Proposer's subcontractors or third-party providers. A CCS used in furtherance of an Agreement includes a CCS that Proposer or its subcontractors or third-party providers use to process (including storing or transmitting) University data, even if University itself does not access or use that CCS.

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

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

Proposer's representations, warranties, and obligations under this Section 2.15 include any CCSs that are identified by Proposer in its response to Option 2 in Section 3.2.5 of Appendix One.



**215 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.: 724-2302-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.

3.2.5 Proposer must select, and if necessary complete, one of the following two options regarding cloud computing services (“CCSs”):

\_\_\_\_\_ **OPTION 1:** Proposer represents and warrants that it will not provide any CCSs either through this Agreement or in furtherance of this Agreement, as provided in Section 2.15 of Appendix One.

\_\_\_\_\_ **OPTION 2:** Proposer represents and warrants that it will provide the following CCSs either through this Agreement or in furtherance of this Agreement, as provided in Section 2.15 of Appendix One:

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### **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.:** 724-2302-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

### SAMPLE 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 El Paso**, an agency and institution of higher education established under the laws of the State of Texas (**University**), and \_\_\_\_\_, a \_\_\_\_\_ (**Contractor**), Federal Tax Identification Number \_\_\_\_\_.

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 goods or services previously provided 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 **UTEP Ticketing Platform Services** 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 \_\_\_\_\_, 20\_\_\_\_. University will have the option to renew this Agreement for \_\_\_\_\_ (\_\_\_\_) additional \_\_\_\_\_ (\_\_\_\_) 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 rules, regulations, and policies of The University of Texas System (<https://www.utsystem.edu/sites/policy-library>), and the institutional rules, regulations and policies of University (<https://www.utep.edu/hoop/index.html>) (collectively, **University Rules**). Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for Contractor or any such 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 its best efforts to perform Work in a good and workmanlike manner and in accordance with the highest standards of Contractor's profession or business, and (b) all Work performed will be of the quality that prevails among similar businesses of superior knowledge and skill 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 (as defined below) 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.
- 4.12 Contractor, at its sole cost and expense, will comply with all requirements of [Subchapter C, Chapter 2252, Texas Government Code](#), including the provision of financial statements, payment statements derived from sales tax reports, and bonds.
- 4.12.1 In accordance with [§2252.062, Texas Government Code](#), Contractor will submit to University two (2) copies of Contractor's most recent financial statement prepared by a certified public accountant on the Effective Date.
- 4.12.2 In accordance with [§2252.063, Texas Government Code](#), Contractor will submit to University, no later than the 15<sup>th</sup> day after the end of each contract year, an annual payment statement derived from all of Contractor's sales tax reports for its operations during the preceding contract year. The annual payment statement must be certified by a certified public accountant licensed in the State of Texas. **Contract year** means that period of time beginning on the Effective Date and ending TBD, 2023 and each twelve (12) month period thereafter, during the Term.
- 4.12.3 In accordance with [§2252.064, Texas Government Code](#), Contractor will provide University with a performance bond for each contract year during the Term. The amount of the performance bond for the first contract year during the Term will be equal to Five percent of total contract value (**5%**).
- 4.13 Contractor, at its own expense, shall install and maintain the necessary number of primary communication lines and equipment related to network connectivity, including but not limited to, internet, telephone, and Payment Card Industry (**PCI**) compliant network connectivity to efficiently operate all ticketing locations at University. These locations are listed in **Exhibit J**. Contractor acknowledges an adequate number of backup high speed data transmission lines with a direct link to central ticketing system are necessary to perform the Work to the standards required herein. Furthermore, Contractor shall update IT equipment and software to make use of state-of-the-art security enhancements.



Contractor must advise University of any outside entity that will provide these services. All installations of cabling must conform to University's standard and must be verified and approved by University's Telecommunication Infrastructure staff. Contractor shall be solely responsible for all expenses.

## 5. The Contract Amount.

- 5.1 University will pay Contractor the **Contract Amount** for the performance of Work in accordance with **Exhibit C**, Payment for Services, attached and incorporated for all purposes. Contractor understands and agrees that payments under this Agreement may be subject to the withholding requirements of Section 3402(t) of the Internal Revenue Code.
- 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. Notwithstanding the above any credit card fees and applicable taxes related to ticket sales or fees shall be deducted before the aforementioned royalties calculated.
- 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 University may reasonably request to support the invoice amount. University will, within twenty-one (21) days of 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 to Contractor (each payment a **Progress Payment**) 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 above) 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 each payment University submits within \_\_\_\_days of 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, THE UNIVERSITY OF TEXAS SYSTEM, AND THEIR RESPECTIVE AFFILIATED, INSTITUTIONS, ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY, **INDEMNITEES**) FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, DEMANDS, ALLEGATIONS, LIABILITIES, CAUSES OF ACTION, SUITS, JUDGMENTS, SETTLEMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING ATTORNEYS' FEES (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, WRONGFUL ACT, WRONGFUL 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 INDEMNITEES HAVE BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE. FURTHERMORE, CONTRACTOR WILL SAVE AND HOLD HARMLESS INDEMNITEES FROM ALL CLAIMS, DEMANDS, CAUSES OF ACTION, DAMAGES, LOSSES, LIENS, ALLEGATIONS, LIABILITIES, SUITS, JUDGMENTS, SETTLEMENTS, EXPENSES, COSTS AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION FOR TAXES, LICENSE FEES, EXCISES, FINES AND PENALTIES; AND FOR SUPPLIES, SERVICES OR MERCHANDISE PURCHASED BY CONTRACTOR; OR FOR WAGES AND FRINGE BENEFITS OF CONTRACTOR'S EMPLOYEES.

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-, VIII or better, and in amounts not less than the following minimum limits for each coverage. The insurance requirements herein are minimum requirements for this Agreement and in no way limit Contractor's obligations (including Contractor's indemnity obligations) contained in this Agreement. Contractor is solely responsible for procuring insurance in addition to that set forth in this **Section 11** as Contractor determines is necessary to protect the Contractor or its agents, representatives, employees, or subcontractors.

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

Workers' Compensation policy must include identification of the U.S. states where Contractor is to perform Work 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	\$1,000,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000

Contractor's Commercial General Liability Insurance policy must include bodily injury, property damage and liability assumed under an insured contract, including defense costs with respect to liability arising out of activities performed by or on behalf of the Contractor.

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. 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 claim, \$3,000,000 aggregate. Such insurance will cover all Work performed by or on behalf of Contractor under this Agreement. In the event that the Professional Liability insurance required by the contract is written on a claims-made basis, Contractor warrants that any retroactive date under that policy shall precede the Effective Date of this contract; and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this contract is completed. 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 \$1,000,000 per claim. If Contractor has property of University in its care, custody or control away from University's premises, Contractor will provide bailee coverage for the replacement cost of the property. Contractor's Employee Dishonesty policy will name University as Loss Payee.
- 11.1.7 Contractor will maintain Cyber Liability insurance with limits of not less than \$10,000,000 for each cyber incident and that provides coverage for:
- 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 or system failure.
  - Affirmative GDPR coverage.
  - 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, then (a) Contractor warrants that any retroactive date under the policy shall precede the effective date of this contract, and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this contract is completed or, if this policy is canceled, terminated or non-renewed at any time during the Term.

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 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. Certificates of Insurance shall reflect applicable limits, sub-limits, self-insured retentions and deductibles provided by Contractor. The certificate must confirm the required coverages in the "Additional Remarks" section or Contractor must provide a copy of the declarations page. In the event Contractor maintains broader coverage and/or higher limits than the minimums shown above, University requires and shall be entitled to the broader coverage and/or higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to University.

11.2.1.1 **All insurance policies** (except for workers' compensation, employer's liability, and professional liability) will be endorsed and name The University of Texas System Board of Regents, The University of Texas System and University (**UT Parties**) as Additional Insureds for liability caused by Contractor's acts or omissions with respect to its on-going and completed operations. A Blanket Additional Insured Certificate is also acceptable. 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. **All insurance policies** will be endorsed to provide a waiver of subrogation in favor of the UT Parties. the. A Blanket Waiver of Subrogation Certificate is also acceptable. No policy will be canceled until after thirty (30) days' unconditional written notice to University. Contractor will 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 and be responsible for any policy waiting periods for claims covered by policies that Contractor is required to provide under this Agreement.

11.2.1.4 Certificates of Insurance: Additional Insured/Blanket Additional Insured, Waiver of Subrogation/Blanket Waiver of Subrogation 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 insurance will be kept in force until all Work has been fully performed and accepted by University in writing.

## 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 the services which are the subject of the Agreement 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) 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 this



Agreement or the Work performed hereunder, the engagement of Contractor as an independent contractor of University in connection with this Agreement or the Work or release any information relative to the this Agreement or the Work 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 seven (7) years after the expiration or termination of this Agreement or until all audit, claim, and litigation matters are resolved, whichever is later, unless University otherwise instructs Contractor in writing. (Ref. [Section 441.1855 of the Texas Government Code](#).)
- 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 Auditor any information Auditor considers relevant to the investigation or audit. Contractor will include this provision in all contracts with permitted subcontractors. This provision is included pursuant to [Section 2262.154 of the Texas Government Code](#).
- 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 THE UT PARTIES, OR ANYONE CLAIMING UNDER THE UT PARTIES 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.
- Further, Contractor agrees to comply with [§2252.908, Texas Government Code \(Disclosure of Interested Parties Statute\)](#), and [1 TAC §§46.1 through 46.5 \(Disclosure of Interested Parties Regulations\)](#), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC and University with information required on the form promulgated by TEC. Contractor may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at [https://www.ethics.state.tx.us/resources/FAQs/FAQ\\_Form1295.php](https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php).
- 12.23 **State of Texas Computer Equipment Recycling Program Certification.** Pursuant to [§361.965, Texas Health and Safety Code](#), Contractor certifies that it is full compliance with the *State of Texas Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act*, [Subchapter Y, Chapter 361, Texas Health and Safety Code](#), and the rules adopted by the Texas Commission on Environmental Quality under that Act at [30 TAC §§328.131 through 328.155](#). Contractor acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 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.** All individuals assigned to perform Work under this Agreement will be employees of Contractor or employees of one or more subcontractors engaged by Contractor. Contractor is responsible for the performance of all individuals performing Work under this Agreement. Before commencing Work, Contractor will (1) provide University with a list (**List**) of all individuals who may be assigned to perform Work on University's premises and (2) have an appropriate criminal background screening performed on all the individuals on the List. Contractor is financially responsible for additional background checks on individuals if requested by University. 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 premises who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform Work on University's premises.

Before 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 on the List.

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



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

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

- 12.33 **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.
- 12.34 **FERPA Compliance.** Some of 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.
- 12.35 **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.
- 12.36 **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.
- 12.37 **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 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 University.

**12.38 Texas Public Information Act - Subchapter J Requirements.** Pursuant to [Section 552.372 of the Texas Government Code](#), Contractor must:

- (1) preserve all contracting information (ref. [Section 552.003\(1-a\), Texas Government Code](#)) related to this Agreement as provided by the records retention requirements applicable to University for the duration of this Agreement (Ref. [Section 441.1855 of the Texas Government Code](#));
- (2) promptly provide to University any contracting information related to this Agreement that is in the custody or possession of Contractor on request of University; and
- (3) on completion of this Agreement, either:
  - (A) provide at no cost to University all contracting information related to this Agreement that is in the custody or possession of Contractor, or
  - (B) preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to University.

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

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

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

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



- 12.40 Contractor Verification Regarding Boycotting Energy Companies.** Pursuant to [Chapter 2274, Texas Government Code](#) (enacted by [SB 13, 87<sup>th</sup> Texas Legislature, Regular Session \(2021\)](#)), Contractor verifies (1) it does not boycott energy companies and (2) it will not boycott energy companies during the term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
- 12.41 Contractor Certification Regarding COVID-19 Vaccination.** Pursuant to [Section 161.0085, Texas Health and Safety Code](#) (enacted by [SB 968, 87<sup>th</sup> Texas Legislature, Regular Session \(2021\)](#)), Contractor certifies that it does not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Contractor's business. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 12.42 Contractor Certification Relating to Critical Infrastructure.** Pursuant to [Chapter 2274, Texas Government Code](#) (enacted by [SB 2116, 87<sup>th</sup> 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.
- 12.43 Contractor Compliance and Warranty Relating to Cloud Computing Services.** The Texas Department of Information Resources (DIR) has established and implemented a state risk and authorization management program providing a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services (CCSs) that process (including storing or transmitting) the data of Texas state agencies (TX-RAMP). The requirements of TX-RAMP include [Section 2054.0593 of the Texas Government Code, Title 1, Rule 202.77 of the Texas Administrative Code](#), and DIR's TX-RAMP Manual.

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

Contractor further represents and warrants that the only CCSs that it will provide either through this Agreement or in furtherance of this Agreement as provided above are the following:

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

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

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

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: \_\_\_\_\_

Attest: \_\_\_\_\_  
Corporate Secretary

**Attach:**

- EXHIBIT A** – Scope of Work
- EXHIBIT B** – Schedule
- EXHIBIT C** – Convenience Charges and Royalties Schedule
- EXHIBIT D** – Hardware and Software
- 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 I** – Intentionally Left Blank
- EXHIBIT J** – Ticketing locations
- EXHIBIT K** – Trademark License Agreement

**EXHIBIT L - SCHEDULE 1** – Trademarks Licensed Products and Services

## EXHIBIT A

### SCOPE OF WORK

**Note:** Provide a detailed description and break-down of all tasks performed 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**

**CONVENIENCE CHARGES AND ROYALTIES SCHEDULE**

**Identify below all fees:**

**EXHIBIT D**

**HARDWARE AND SOFTWARE**

## **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 <https://adminapps.utep.edu/sourcing/>

**EXHIBIT F**

**ENVIRONMENT SPECIFICATIONS**



**EXHIBIT G**

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

## 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 States Code §1232g](#) (**FERPA**) which Contractor will create, receive, or maintain on behalf of University pursuant to **Ticketing services (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: to provide computerized ticketing services for University. 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: \_\_\_\_\_

**EXHIBIT I**

**Intentionally Left Blank**

**EXHIBIT J**

**Athletic Ticket Office - Ticketing Locations**

<b>Location</b>	<b>Windows</b>	<b>Workstations</b>	<b>Venue Entry Points</b>	<b>Ticket Scanners</b>	<b>Proposer's Recommendations</b>
Don Haskins Center	4	4	6 sets – various doors	36	
Sun Bowl Stadium	15	20	7 sets – various gates	50	
Ticket Trailer	6	7	0	0	
Helen of Troy Softball Complex	2	3	2	3	
University Field	4	5	2	2	
Kidd Field	2	3	3	2	
Memorial Gym	4	5	4	4	
Union Cinema	0	0	2	3	
Sun Bowl Garage	0	0	5	0	
Schuster Garage	0	0	3	0	
RV parking	0	0	1	1	
Athletics Department (individual and season ticketing platforms)	4	12	0	4	

### Ticket Center - Ticketing Locations

Location	Windows	Workstations	Venue Entry Points	Ticket Scanners	Proposer's Recommendations
University Ticket Center	8	17	1	4	
Don Haskins Center	0	0	6 sets – various doors	36	
Sun Bowl Stadium	15	17	7 sets – various gates	50	
Ticket Trailer	6	7	0	0	
Magoffin Auditorium	2	3	2	4	
UTEP Dinner Theatre	1	3	2	3	
Wise Family Theatre	2	4	2	3	
Studio Theatre	0	0	1	0	
Music Recital Hall	1	2	3	2	
Memorial Gym	4	5	4	4	
Union Annex	2	3	0	0	
Union Cinema	0	0	2	3	
Sun Bowl Garage	0	0	5	0	
Schuster Garage	0	0	3	0	
Office of Special Events	0	4	0	0	

## EXHIBIT K

### Trademark License Agreement

### UTEP Ticketing Platform Agreement

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

WHEREAS Licensee and University have entered into that certain UTEP Ticketing Platform Agreement dated effective as of \_\_\_\_\_, 2023 (hereafter “**Main Agreement**”);

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

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

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

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

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

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

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

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

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

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

“**Confidential Information**” has the meaning set forth in **Section 9.1(a)**.



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

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

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

“**License Period**” means that period beginning \_\_\_\_\_, and continuing through the remainder of the Term.

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

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

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

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

“**Term**” has the meaning given to it in **Section 13.1**.

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

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

## 2. License.

2.1 License Grant. Subject to the terms and conditions of this License Agreement and pursuant to the Main Agreement, Board hereby grants to Licensee during the License Period a non-exclusive, non-transferable (except as provided in **Section 12**), non-sublicenseable license to use the Marks on or in connection with the promotion, advertising, and distribution of Licensed Materials in the **Territory**.

2.2 Territorial Restrictions. Licensee shall not:

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

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

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

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

its corporate or trade name; or

any domain name.

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

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

### 3. Use of the Marks.

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

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

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

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

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

#### 4. Ownership and Registration.

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

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

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

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

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

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

#### 5. Quality Control.

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

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

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

5.4 Submission of Materials for Approval. Licensee shall, at its own expense, prior to any use of the Marks and thereafter at any time at Board's request) supply a reasonable number of production samples of the Licensed Materials to Board for approval as per the requirements of **Section 3.2**, which may be given or withheld in Board's sole discretion; provided that such approval will not be unreasonably withheld. In the event that Board rejects

any sample, it shall use reasonable efforts to give written notice of such rejection to Licensee within thirty (30) days of receipt by Board of the sample. Licensee shall immediately cease distribution of such Licensed Materials and shall not recommence distribution until Board confirms in writing that it may do so. In the absence of a written notice of rejection, within thirty (30) days of receipt of a sample, the sample shall be deemed to have been disapproved by Board.

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

## 6. Marketing, Advertising and Promotion.

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

(a) Approval of Marketing and Advertising Materials. Licensee shall send to Board for its prior written approval the text and layout of all proposed advertisements and marketing and promotional material relating to the Licensed Materials as per the requirements of **Section 3.2**, which may be given or withheld in Board's sole discretion. In the event that Board disapproves of such material, it shall give written notice of such disapproval to Licensee within twenty (20) days of receipt by Board of the material. In the absence of a written notice of disapproval within twenty (20) days of receipt of such materials, the materials shall be deemed to have been disapproved by Board. Licensee shall not use any material in the advertising, marketing or promotion of Licensed Products which has not been approved by Board.

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

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

## 7. Protection of the Marks.

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

any actual, suspected or threatened infringement of the Marks;

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

any actual, suspected or threatened opposition to the Marks;

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

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

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

7.2 Actions. With respect to any of the matters listed in **Section 7.1**:

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

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

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

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

8. Royalties and Payment Terms.

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

9. Confidentiality.

9.1 Licensee Obligations. Licensee agrees:

not to disclose or otherwise make available to any third party any information that is treated as confidential by Board, including, without limitation, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, the “**Confidential Information**”) without the prior written consent of Board; *provided, however*, that Licensee may disclose the Confidential Information to its officers, employees, consultants and legal advisors who have a “need to know”, who have been apprised of this restriction and who are themselves bound by nondisclosure restrictions at least as restrictive as those set forth in this **Section 9**;

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

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

9.2 Exceptions. Confidential Information shall not include information that:

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

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

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

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

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

## 10. Representations and Warranties.

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

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

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

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

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

any of the Marks are valid;

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

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

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

## 11. Indemnity.

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

11.2 Indemnification Procedures. Licensee shall promptly notify the Board in writing of any Action and cooperate with Board at the Licensee's sole cost and expense. Licensee shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Licensee's sole cost and expense. Licensee shall not settle any Action in a manner that adversely affects the rights of the Board without the Board's prior written consent. The Board's failure to perform any obligations under this **Section 11.2** shall not relieve the Licensee of its obligations under this **Section 11.2** except to the extent that Licensee can demonstrate that it has been materially prejudiced as a result of such failure. The Board may participate in and observe the proceedings at its own cost and expense.

11.3 Assignment. Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this License Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Board's prior written consent. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Licensee (regardless of whether Licensee is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this License Agreement for which Board's prior written consent is required. No delegation or other transfer will relieve Licensee of any of its obligations or performance under this License Agreement. Any purported assignment, delegation or transfer in violation of this **Section 12** is void. Board may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this License Agreement without Licensee's consent. This License Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

### 13. Term and Termination.

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

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

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

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

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

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

there is a change in control of Licensee.

#### 14. Post-termination Rights and Obligations.

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

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

Licensee shall cease all use of the Marks;

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

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

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

#### NOT UTILIZED.

14.2 Surviving Rights. Any rights or obligations of the parties in this License Agreement which, by their nature, should survive termination or expiration of this License Agreement will survive any such termination or expiration, including the rights and obligation set forth in this **Section 14.3**, and in **Section 4, Section 9, Section 10, Section 11, Section 12, Section 14, and Section 15.**

#### 15. Miscellaneous.

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

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

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

15.4 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient;



(d) when received by the addressee if sent by e-mail; or (e) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this Section 15.4.

**Notice to Board**

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

With a Copy to:

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

and copy to:

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

**Notice to Company:**

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

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

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

promulgated thereunder. This License Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this License Agreement to the same extent as if they were set forth verbatim herein.

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

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

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

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

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

15.11 Governing Law; Submission to Jurisdiction. This License Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Texas. Any legal suit, action or proceeding arising out of or related to this License Agreement shall be instituted in the Federal District Court, Western District of Texas, Austin Division located in Austin Texas or the courts of the State of Texas located in the city of Austin and County of Travis, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

15.12 Equitable Relief. Licensee acknowledges that a breach by Licensee of this License Agreement may cause Board irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, Board will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available

from any court, in addition to any other remedy to which Board may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this License Agreement to the contrary.

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

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

**DATE EXECUTED:**

\_\_\_\_\_, 2023

**LICENSEE:**

\_\_\_\_\_

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

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

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

**BOARD/UNIVERSITY:**

\_\_\_\_\_, 2023

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

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

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

**Approved as to content:**

\_\_\_\_\_, 2023

THE UNIVERSITY OF TEXAS AT EL PASO

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

Name: Mark McGurk  
Title: Vice President for Business Affairs

**EXHIBIT L - SCHEDULE 1**

**TRADEMARKS**

**LICENSED PRODUCTS AND SERVICES**

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

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

**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
Brumbeelow 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
Holiday 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
Leach 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
<b>Parking and Transportation Services</b>	
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
<b>Stanlee and Gerald Rubin Center/</b>	
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
Warrell 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](http://utep.edu/map). For complete schedules and more information, visit [parking.utep.edu](http://parking.utep.edu).



### Legend

- Drop-off/Pick-up Point
- Emergency Telephone
- Miner Metro Shuttle Stop
- Metered Parking
- Traffic Control Station
- Electric Control Gate
- Construction Zone
- 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 a Microsoft products environment.

#### Basic Specifications

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

#### Security

1. Has the EIR been tested for application security vulnerabilities? For example, has the EIR been evaluated

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

2. Which party, Proposer or University, will be responsible for maintaining critical EIR application security updates?
3. If the EIR is hosted, indicate whether Proposer's will permit University to conduct a penetration test on University's instance of the EIR.
4. If confidential data, including HIPAA or FERPA data, is stored in the EIR, will the data be encrypted at rest and in transmittal?

### **Integration**

1. Is the EIR authentication Security Assertion Markup Language (**SAML**) compliant? Has Proposer ever implemented the EIR with Shibboleth authentication? If not, does the EIR integrate with Active Directory? Does the EIR support TLS connections to this directory service?
2. Does the EIR rely on Active Directory for group management and authorization or does the EIR maintain a local authorization/group database?
3. What logging capabilities does the EIR have? If this is a hosted EIR solution, will University have access to implement logging with University's standard logging and monitoring tools, RSA's Envision?
4. Does the EIR have an application programming interface (**API**) that enables us to incorporate it with other applications run by 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 accessibility information for the electronic and information resources (**EIRs**)<sup>1</sup> products or services proposed by Proposer, where applicable, through one or more of the following methods, as required by [1 TAC §213.38\(b\)](#):

- (A) inclusion in its proposal of (or URLs to) manufacturer pages of completed Voluntary Product Accessibility Templates (**VPATs**)<sup>2</sup> or accessibility conformance reports (**ACRs**)<sup>3</sup> for applicable Commercial Off the Shelf products / or services;
- (B) inclusion in its proposal of other documents / forms that provide credible evidence of the Proposer's capability or ability to produce accessible EIR products and services. Such evidence may include, but is

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<sup>1</sup> Electronic and information resources are defined in [§2054.451, Government Code](#) and [1 TAC §213.1 \(9\)](#).

<sup>2</sup> A Voluntary Product Accessibility Template is a vendor-supplied form for a commercial off-the-shelf Electronic and Information Resource used to document its compliance with technical accessibility standards and specifications. See [1 TAC §213.1 \(22\)](#). For further information, see this [VPAT document](#) provided by the Information Technology Industry Council.

<sup>3</sup> Accessibility conformance reports are an accessibility report of an EIR item's compliance with Section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. §794(d), 36 C.F.R. §1194.1, that is created using a VPAT template. See [1 TAC §213.1 \(1\)](#).

not limited to, Proposer's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results; or

- (C) inclusion in its proposal of the URL to a web page which explains how to request completed ACRs or VPATs for any product Proposer proposes to provide to University under any contract resulting from this RFP.

If Proposer cannot provide credible accessibility documentation for an EIR, then the Proposer's EIR shall be considered noncompliant.

## 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.

## APPENDIX EIGHT

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

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



**CERTIFICATE OF INTERESTED PARTIES**

**FORM 1295**

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

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

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

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

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

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

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

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

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

**ADD ADDITIONAL PAGES AS NECESSARY**