

REQUEST FOR PROPOSAL

by

The University of Texas

Permian Basin

for

Selection of a Vendor to Provide

**Athletic Apparel, Footwear, Equipment and Related Accessories,
as well as Sponsorship Support**

RFP No. 742-20-164

Submittal Deadline: Friday, January 31, 2020 10am CST

Date Published/Issued: January 6, 2020

REQUEST FOR PROPOSAL

TABLE OF CONTENTS

SECTION 1: INTRODUCTION..... 1

SECTION 2: NOTICE TO PROPOSER..... 6

SECTION 3: SUBMISSION OF PROPOSAL..... 9

SECTION 4: GENERAL TERMS AND CONDITIONS..... 11

SECTION 5: SPECIFICATIONS AND ADDITIONAL QUESTIONS..... 12

SECTION 6: PRICING AND DELIVERY SCHEDULE..... 15

Attachments:

APPENDIX ONE: PROPOSAL REQUIREMENTS

APPENDIX TWO: AGREEMENT

APPENDIX THREE: HUB SUBCONTRACTING PLAN

APPENDIX FOUR: CAMPUS MAP

APPENDIX FIVE: ACCESS BY INDIVIDUALS WITH DISABILITIES

APPENDIX SIX: ELECTRONIC AND INFORMATION RESOURCES ENVIRONMENT SPECIFICATIONS

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

SECTION 1

INTRODUCTION

1.1 The University of Texas Permian Basin

The University of Texas Permian Basin (“**UTPB**”) is an institution of higher education and a state agency authorized by the laws of the State of Texas and accredited through the Southern Association of Colleges and Schools (SACS).

See more information about UTPB below:

UTPB Alumni	> 30,000
Estimated UTPB Enrollment	> 6,500
Estimated UTPB Faculty & Staff	> 450
UTPB Estimated Annual Budget	> \$150 million

The Athletics Department at UTPB will have an estimated operating budget of more than \$5.5 million in 2019-20.

UTPB, an academic institution of The University of Texas System, is a growing and vibrant four-year university offering bachelors and master’s degrees. Its faculty is engaged in a wide range of research attracting millions of dollars in grants for programs in teacher certification, energy research, and groundbreaking work in many other disciplines.

UTPB, a Hispanic serving institution, has a diverse student population who consistently earn awards in kinesiology, business, engineering, and visual arts. UTPB has a 98% pass rate for teacher certification and ranks third in the state for placement in employment and graduate school. Student enrollment has grown, often in the double digits. Approximately 1200 students reside in student housing.

The largest graduate program at UTPB is the College of Education, respected for its teacher certification programs and mentoring strategies that reach out to the public school classrooms in the community. UTPB boasts exceptionally high success rates for graduates in the pre-health and education professions. First-time acceptance rates for graduates who apply to medical or health professional schools averages 78 percent, compared to the 1998 state average of 40 percent. UTPB takes pride in offering 32 undergraduate degrees and 19 graduate programs, as well as various certification programs. Master’s degree programs include seven different education specialties, Professional Accountancy, Biology, Business Administration, Criminal Justice Administration, English, Geology, History, Kinesiology, Clinical or Research Psychology, Public Administration and Spanish. New undergraduate programs include mechanical and petroleum engineering, and nursing.

Since the first classes were offered at the upper-level University in 1973, UTPB has evolved from a largely commuter campus to one that was granted four-year status in 1991. The four-year status and the expansion of the athletic program continue to attract a younger student population.

Additional information about UTPB can be found at this link: <http://www.utpb.edu>

1.2 Background and Special Circumstances

The Department of Intercollegiate Athletics (“**Athletics Department**”) will represent UTPB on the field and on the court at a regional and national level. UT Permian Basin sponsors the following sixteen (16) sports programs that compete in the Lone Star Conference: men’s/women’s basketball, baseball, football, men’s/women’s golf, men’s/women’s soccer, softball, men’s/women’s swimming, men’s/women’s tennis, men’s/women’s cross country, and women’s volleyball.

The Athletics Department will support and complement the educational mission of UTPB by providing student-athletes the academic resources to obtain their baccalaureate degree while participating in athletics competition as a Division II member of the National Collegiate Athletic Association (“**NCAA**”). To fulfill its mission, Athletics Department will seek to develop and maintain a highly competitive and sound athletics program, reaching a standard of excellence in athletics consistent with the mission of UTPB.

The Athletics Department will support and enhance the visibility of UTPB by serving as a means to broaden and strengthen the Midland/Odessa and surrounding communities’ interest and involvement with UTPB. The Athletics Department will promote a sense of institutional identity, unity, and pride within UTPB and its surrounding communities. The Athletics Department will disperse information to the public, alumni, current students, faculty and staff through a wide variety of mediums such as Internet broadcasts, social media, radio and television, special events, publications, and in-game elements. UTPB will attract coverage from media outlets such as local television and radio stations, as well as local and regional newspapers. UTPB currently enjoys excellent media coverage.

UTPB’s fiscal year (“**FY**”) begins September 1st and ends August 31st.

The table on the next page contains estimates of the number of student-athletes, coaches and support staff for UTPB in FY 2020:

Sport	Participants	Coaches/Support Staff
Baseball	50	3
Men's Basketball	16	3
Women's Basketball	16	3
Men's Cross Country	10	2
Women's Cross Country	10	2
Football (2016)	125	10
Men's Golf (2016)	10	2
Women's Golf	10	2
Men's Soccer	30	2
Women's Soccer	30	2
Softball	25	3
Men's Swimming	20	2
Women's Swimming	20	2
Men's Tennis	12	2
Women's Tennis	12	2
Volleyball	18	3
Training/Strength-Cond	20	4
Administration	NA	15
Cheer Squad	30	2
Dance Squad	25	1
Band	115	4
TOTAL	604	71

1.3 Objective of this Request for Proposal

UTPB is soliciting proposals in response to this Request for Proposal Number **742-20-164** ("RFP") from qualified vendors to provide goods and services (collectively "**Services**") to the Athletics Department all as more particularly described in Section **5.4, Scope of Work**, of this RFP, including (1) athletic apparel, footwear, equipment and related accessories to include spirit squads (collectively, "**Athletic Product**"), (2) value added services to University and (3) sponsorship in support of the Athletics Department. In connection with sponsorship support UTPB intends to license its trademarks to the Contractor (ref. **Section 2.3**).

1.4 Group Purchase Authority

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

SECTION 2

NOTICE TO PROPOSER

2.1 Submittal Deadline

UT Permian Basin will accept proposals submitted in response to this RFP until **Friday, January 31, 2020 @ 10 a.m. CST** (the “**Submittal Deadline**”).

2.2 University Contact Person

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

Elsa Montalvo
Director of Purchasing
The University of Texas Permian Basin
4901 East University
Odessa, TX 79762
Fax: (432) 552-3790
Email: Montalvo_e@utpb.edu

UTPB specifically instructs all interested parties to restrict all contact and questions regarding this RFP to written communications forwarded to University Contact. University Contact must receive all questions or concerns no later than 10:00 am CST on Monday, January 13, 2020. UTPB will have a reasonable amount of time to respond to questions or concerns. It is UTPB’s intent to respond to all appropriate questions and concerns. However, UTPB reserves the right to decline to respond to any question or concern.

2.3 Criteria for Selection

The successful Proposer, if any, selected by UTPB in accordance with the requirements and specifications set forth in this RFP will be the Proposer that submits a proposal in response to this RFP on or before the Submittal Deadline that is the most advantageous to University. The successful Proposer is referred to as the “**Contractor**.”

Proposer is encouraged to propose terms and conditions offering the maximum benefit to University in terms of (1) quality of Services, (2) total overall cost of Services to University, (3) total overall sponsorship benefits to University, and (4) project management expertise. Proposers should describe all educational, state and local government discounts, as well as any other applicable discounts that may be available to University in a contract for the Services.

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

The criteria to be considered by UTPB in evaluating proposals and selecting Contractor, will be those factors listed below:

- 2.3.1 Threshold Criteria Not Scored
 - 2.3.1.1 Ability of UTPB to comply with laws regarding Historically Underutilized Businesses; and
 - 2.3.1.2 Ability of UTPB to comply with laws regarding purchases from persons with disabilities.
- 2.3.2 Scored Criteria
 - 2.3.2.1 the cost of goods and services;
 - 2.3.2.2 the reputation of the Proposer and of the Proposer's goods or services;
 - 2.3.2.3 the quality of the Proposer's goods or services;
 - 2.3.2.4 the extent to which the goods or services meet the University's needs;
 - 2.3.2.5 the Proposer's past relationship with the University;
 - 2.3.2.6 the total long-term cost to the University of acquiring the Proposer's goods or services;
 - 2.3.2.7 the total sponsorship benefit Proposer offers UTPB; and
 - 2.3.2.8 the Proposer's exceptions to the terms and conditions set forth in **Section 4** of this RFP.

2.4 Key Events Schedule

Issuance of RFP	Monday, January 6, 2020
Deadline for Questions/Concerns	Monday, January 13, 2020 @ 10 a.m.CST (ref. Section 2.2 of this RFP)
Submittal Deadline	<u>Friday, January 31, 2020 @ 10 a.m. CST</u> (ref. Section 2.1 of this RFP)

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 (each a “HUB”) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP, Contractor subcontracts any of the Services, 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 of the Services will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of the Services by the 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 Title 34, *Texas Administrative Code*, Section 20.13 (a), and has determined that subcontracting opportunities are probable under this RFP.

- 2.5.3 A HUB Subcontracting Plan (“**HSP**”) is required as part of Proposer’s proposal. The HSP will be developed and administered in accordance with University’s Policy on Utilization of Historically Underutilized Businesses attached as **APPENDIX THREE** and incorporated for all purposes.

*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 do so will be considered non-responsive to this RFP in accordance with Section 2161.252, Government Code.*

Questions regarding the HSP may be directed to:

Contact: Elsa Montalvo
 Director of Purchasing
 The University of Texas of the Permian Basin
 4901 East University
 Odessa, TX 79762
 Phone: (432) 552-2795
 Fax: (432) 552-3790
 Email: Montalvo_e@utpb.edu

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

- 2.5.4 Proposer must submit an electronic response to the HSP to University at the same time it submits its electronic response to the University (ref. **Section 3.2** of this RFP.) The electronic HSP must be submitted in a separate email clearly marked as the HUB Subcontracting Plan for this RFP.

Any proposal submitted in response to this RFP that is not accompanied by a separate HSP will be rejected by University and returned to the Proposer unopened as that proposal will be considered non-responsive due to material failure to comply with advertised specifications. Furthermore, University will open a Proposer’s HSP email prior to opening the proposal submitted by the Proposer, in order to ensure that the Proposer has submitted the completed and signed HSP required by this RFP.

2.6 Pre-Proposal Conference

There will be NO pre-proposal conference. Please send all questions to the Director of Purchasing.

SECTION 3

SUBMISSION OF PROPOSAL

3.1 Number of Copies

Proposer must submit electronically its *entire* proposal. An *original* signature by an authorized officer of Proposer must appear on the Execution of Offer (ref. **Section 2 of APPENDIX ONE**).

3.2 Submission

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

Elsa Montalvo
 Director of Purchasing
 The University of Texas of the Permian Basin
 Purchasing Office 4270
 4901 East University
 Odessa, TX 79762
 Fax: (432) 552-3790
 Email: montalvo_e@utpb.edu

3.3 Proposal Validity Period

Each proposal must state that it will remain valid for University's acceptance for a minimum of one hundred-twenty (120) days after the Submittal Deadline, to allow time for evaluation, selection, and any unforeseen delays.

3.4 Terms and Conditions

3.4.1 Proposer must comply with the requirements and specifications contained in this RFP, including the Agreement (ref. **APPENDIX TWO**), the Notice to Proposer (ref. **Section 2** of this RFP), Proposal Requirements (ref. **APPENDIX ONE**) and the Specifications and Additional Questions (ref. **Section 5** of this RFP). 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** of this RFP);
- 3.4.1.2. Agreement (ref. **APPENDIX TWO**);
- 3.4.1.3. Proposal Requirements (ref. **APPENDIX ONE**);
- 3.4.1.4. Notice to Proposers (ref. **Section 2** of this RFP).

3.5 Submittal Checklist

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

- 3.5.1 Signed and Completed Execution of Offer (ref. **Section 2** of **APPENDIX ONE**)
- 3.5.2 Signed and Completed Pricing and Delivery Schedule (ref. **Section 6** of this RFP)
- 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** of this RFP)
- 3.5.6 Signed and complete HUB Subcontracting Plan or other applicable documents (ref. **Section 2.5** of this RFP and **APPENDIX THREE**).

SECTION 4**GENERAL TERMS AND CONDITIONS**

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

SECTION 5

SPECIFICATIONS AND ADDITIONAL QUESTIONS

5.1 General

The minimum requirements and the specifications for the Services, 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** of this RFP, the successful Proposer is referred to as the “**Contractor.**”

5.2 Minimum Requirements

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

- 5.2.1 Contractor must demonstrate experience and competence performing the Services for an athletics department at another institution of higher education that is at least equal to the size and scope of the Athletics Department.
- 5.2.2 All Athletic Product supplied by Proposer must be a nationally recognized brand name.
- 5.2.3 All Athletic Product supplied by Proposer must be of a quality that prevails among similar businesses engaged in providing similar products in major NCAA athletic departments in the United States.

5.3 Additional Questions Specific to this RFP

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

- 5.3.1 If Proposer takes exception to any terms or conditions set forth in **Section 4** of this RFP, Proposer will submit a list of the exceptions.
- 5.3.2 Proposer must provide an itemized list, description and price of all Athletic Product that Proposer will supply to UTPB.
- 5.3.3 Proposer must provide a description of Proposer’s web-based online ordering system [ref. **Section 5.4.2**] and sample screen shots of the system. Proposer’s web-based online ordering system should include a complete network for ordering, timely fulfillment, delivery, and support for web-based merchandising sales.
- 5.3.4 Proposer must indicate any minimum purchase requirements in terms of dollars (retail value), promotional merchandise and other requirements of University.
- 5.3.5 Proposer must include any exceptions to the minimum purchase requirements that may apply.
- 5.3.6 Proposer must include web links or screen shots of Proposer’s online ordering system for other higher education institutions.
- 5.3.7 In its proposal, Proposer must indicate whether it will consent to include in the Agreement the “Access by Individuals with Disabilities” language that is set forth

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

- 5.3.8 In its proposal, Proposer must respond to each item listed in **APPENDIX SIX, Electronic and Information Resources (“EIR”) Environment Specifications**. **APPENDIX SIX** will establish specifications, representations, warranties and agreements related to the EIR that Proposer is offering to provide to UTPB. Responses to **APPENDIX SIX** will be incorporated into the Agreement and will be binding on Contractor.
- 5.3.9 In its proposal, Proposer must respond to each item listed in **APPENDIX SEVEN, Security Characteristics and Functionality of Contractor’s Information Resources**. **APPENDIX SEVEN** will establish specifications, representations, warranties and agreements related to the EIR that Proposer is offering to provide to UTPB. Responses to **APPENDIX SEVEN** will be incorporated into the Agreement and will be binding on Contractor.

5.4 Scope of Work

Contractor will provide the following services to UTPB:

5.4.1 Athletic Product

Contractor will provide Athletics Department with Athletic Product to include apparel, footwear, equipment and related accessories (see **Section 6.1** for examples of Athletic Product).

5.4.2 Website Ordering

Contractor will maintain a website that provides the Athletics Department the ability to efficiently order Athletic Product both without charge and at UTPB’s designated pricing structure through the use of purchase orders, credit cards, or a mutually-agreed upon invoicing structure. Contractor’s online ordering system to be used by UTPB should include a complete network for ordering, timely fulfillment, delivery, and support for web-based merchandising sales.

5.4.3 New Product Line

If Contractor begins producing athletic products for commercial sale that are not currently included in the definition of Contractor Products, and UTPB maintains a Team Program that utilizes those athletic products, then upon UTPB’s request, UTPB and Contractor will negotiate in good faith to incorporate the newly commercialized sports products into the definition of Contractor Products under any Agreement resulting from this RFP.

5.4.4 **Ordering System & Schedule**

Contractor must maintain and provide UTPB with access to a web-based online ordering system that provides an efficient method for the Athletics Department to order and receive Athletic Product on a schedule that meets the requirements of the Athletics Department.

5.4.5 **Sponsorship Activities**

Contractor will provide Athletics Department with sponsorship support, including discounts, free products and other consideration outlined in **Section 6** of this RFP. In exchange for sponsorship support provided by Contractor to Athletics Department, UTPB may recognize Contractor as more particularly described in **EXHIBIT A** of the Agreement (ref. **APPENDIX TWO**), including:

- official sponsor designation,
- public address announcements,
- radio/Internet broadcast announcements (if any)
- link to Contractor's Internet site from Athletics Department page,
- Contractor's logo in print materials,
- tickets to athletic events, and
- promotional product and printed material distribution.

SECTION 6

PRICING AND DELIVERY SCHEDULE

Proposal of: _____
(Proposer Company Name)

To: The University of Texas Permian Basin

Ref.: RFP related to Athletic Product and Sponsorship Support

RFP No.: 742-20-164

Ladies and Gentlemen:

Having carefully examined all the specifications and requirements of this RFP and any attachments thereto, the undersigned proposes to furnish the Athletic Product and sponsorship support requested pursuant to the above-referenced Request for Proposal upon the terms quoted below.

6.1 Pricing for Athletic Product Offered

Proposer must provide a detailed list of all categories of Athletic Product offered to Athletics Department with the associated Manufacturer’s Suggested Retail Price (“MSRP”) and any discount offered to UTPB as follows:

Discount for Athletic Product

	Three (3) Year Term with 2 One (1) year renewals Percentage Off MSRP	Five (5) Year Term with 2 One (1) year renewals Percentage Off MSRP	Promotional Product offerings (Proposer should specify any Athletic Product that Contractor will provide to Athletics Department at no charge
Footwear	%	%	
Apparel (Non-Footwear products)	%	%	
Custom Uniforms	%	%	
Accessories (including but not limited to travel bags, headwear, socks, wristband, gloves, watches, eyewear)	%	%	
Equipment	%	%	
Baseball/Softball Items	%	%	
Gloves/Mitts	%	%	
Batting helmets	%	%	
Catcher protective equipment	%	%	
Gloves and bats	%	%	
Football Items	%	%	
Shoulder Pads	%	%	
Other Pads	%	%	
Helmets	%	%	
Field Equipment	%	%	
Goal Posts	%	%	
Field Training Aids	%	%	
Other. Please specify _____	%	%	
Spirit Squads Items			
Cheer Apparel			
Cheer Equipment			
Dance Apparel			
Band Apparel			

- 6.2 Credit for Additional Contractor Products.** During each Contract Year, Contractor will provide UTPB with the ability to order additional Contractor Products at no charge up to the retail value listed below contingent upon the conditions in **Section 6.1**.

Promotional Merchandise Allotment \$ _____ Suggested Retail Price

6.3 Additional Consideration

6.3.1 Team Program Accomplishment Incentives. Contractor will provide UTPB the following incentive bonuses in each Contract Year that UTPB achieves any of the following goals:

Baseball Team Program

- Baseball Team Program will receive \$ _____ in Contractor Products based on retail value for participating in the NCAA Regional.
- Baseball Team Program will receive \$ _____ in Contractor Products based on retail value for participating in the Division II National Tournament Elite 8.
- Head Baseball Coach will receive \$ _____ in Contractor Products based on retail value for being named Conference Coach of the Year.

Men's Basketball Team Program

- Men's Basketball Team Program will receive \$ _____ in MSRP Product Credit based on retail value for winning the Conference regular season or post-season tournament.
- If the Men's Basketball Team Program reaches the NCAA Division II Regional Tournament, the Men's Basketball Team Program will receive \$ _____ in MSRP Product Credit based on retail value.
- If the Men's Basketball Team Program reaches the Elite 8 in the NCAA Division II Championship Basketball Tournament, the Men's Basketball Team Program will receive an additional \$ _____ in Contractor Products based on retail value.
- If the Head Basketball Coach of the Men's Basketball Team Program is named Conference Coach of the Year, the Head Coach will receive \$ _____ in Contractor Product based on retail value.

Women's Basketball Team Program

- Women's Basketball Team Program will receive \$ _____ in MSRP Product Credit based on retail value for winning the Conference regular season or post-season tournament.
- If the Women's Basketball Team Program reaches the NCAA Division II Regional Tournament Championship, the Women's Basketball Team Program(s) will receive \$ _____ in Contractor Products based on retail value.
- If the Women's Basketball Team Program reaches the Sweet Sixteen in the NCAA Championship Basketball Tournament, the Women's Basketball Team Program(s) will receive an additional \$ _____ in Contractor Products based on retail value.
- If the Head Basketball Coach of the Women's Basketball Team Program is named Conference Coach of the Year, the Head Coach will receive \$ _____ in Contractor Product based on retail value.

Football Team Program

- If the Football Team Program reaches the NCAA Division II Regional Tournament, the Football Team Program will receive \$ _____ in Contractor Products based on retail value.
- If the Football Team Program reaches the Elite 8 in the NCAA Division II Championship Football Tournament, the Football Team Program will receive an additional \$ _____ in Contractor Products based on retail value.
- If the Head Football Coach of the Men's Basketball Team Program is named Conference Coach of the Year, the Head Coach will receive \$ _____ in Contractor Product based on retail value.

Men's Golf Team Program

- If the Men's Golf Team Program participates in NCAA Post-Season Play, the Men's Golf Team Program will receive \$ _____ in Contractor Products based on retail value.
- If the Head Coach of the Men's Golf Team Program is named Conference Coach of the Year, the Head Coach will receive \$ _____ in Contractor Product based on retail value.

Women's Golf Team Program

- If the Women's Golf Team Program participates in NCAA Post-Season Play, the Women's Golf Team Program will receive \$ _____ in Contractor Products based on retail value.
- If the Head Coach of the Women's Golf Team Program is named Conference Coach of the Year, the Head Coach will receive \$ _____ in Contractor Product based on retail value.

Softball Team Program

- Softball Team Program will receive \$ _____ in MSRP Product Credit based on retail value for winning the Conference regular season or post-season tournament.
- Softball Team Program will receive \$ _____ in Contractor Products based on retail value for participating in the NCAA Regional.
- Softball Team Program will receive \$ _____ in Contractor Products based on retail value for participating in the Division II National Tournament Elite 8.
- Head Softball Coach will receive \$ _____ in Contractor Products based on retail value for being named Conference Coach of the Year.

Men's Tennis Team Program

- If the Men's Tennis Team Program participates in NCAA Post-Season Play, the Men's Tennis Team Program will receive \$ _____ in Contractor Products based on retail value.
- If the Head Coach of the Men's Tennis Team Program is named Conference Coach of the Year, the Head Coach will receive \$ _____ in Contractor Product based on retail value.

Women's Tennis Team Program

- If the Women's Tennis Team Program participates in NCAA Post-Season Play, the Women's Tennis Team Program will receive \$ _____ in Contractor Products based on retail value.
- If the Head Coach of the Women's Tennis Team Program is named Conference Coach of the Year, the Head Coach will receive \$ _____ in Contractor Product based on retail value.

Men's Soccer Team Program

- Men's Soccer Team Program will receive \$ _____ in MSRP Product Credit based on retail value for winning the Conference regular season or post-season tournament.
- If the Men's Soccer Team Program participates in NCAA Post-Season Play, the Men's Soccer Team Program will receive \$ _____ in Contractor Products based on retail value.
- If the Head Coach of the Men's Soccer Team Program is named Conference Coach of the Year, the Head Coach will receive \$ _____ in Contractor Product based on retail value.

Women's Soccer Team Program

- Women's Soccer Team Program will receive \$ _____ in MSRP Product Credit based on retail value for winning the Conference regular season or post-season tournament.
- If the Women's Soccer Team Program participates in NCAA Post-Season Play, the Women's Soccer Team Program will receive \$ _____ in Contractor Products based on retail value.
- If the Head Coach of the Women's Soccer Team Program is named Conference Coach of the Year, the Head Coach will receive \$ _____ in Contractor Product based on retail value.

Men's Swimming Team Program

- If the Head Coach of the Men's Swimming Team Program is named Conference Coach of the Year, the Head Coach will receive \$ _____ in Contractor Product based on retail value.

Women's Swimming Team Program

- If the Head Coach of the Women's Swimming Team Program is named Conference Coach of the Year, the Head Coach will receive \$ _____ in Contractor Product based on retail value.

Volleyball Team Programs

- If the Volleyball Team Program participates in NCAA Post-Season Play, the Volleyball Team Program will receive \$ _____ in Contractor Products based on retail value.
- If the Head Coach of the Volleyball Team Program is named Conference Coach of the Year, the Head Coach will receive \$ _____ in Contractor Product based on retail value.

Men's & Women's Cross Country

- If the Head Coach of the Men's & Women's Cross Country Team Program is named Conference Coach of the Year, the Head Coach will receive \$ _____ in Contractor Product based on retail value.

Future Emerging Sports at UTPB

In the event that UTPB sponsors additional sports during the duration of the contract, team program accomplishment incentives would be extended by mutual agreement of the Contractor and UTPB.

6.5 Delivery Schedule of Events and Time Periods

Proposer must describe Proposer's typical order to deliver schedule for each category of Athletic Product.

6.6 University's Payment Terms

University's standard payment terms for services are "Net 30 days."

Indicate below the prompt payment discount that Proposer will provide to University:

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

6.7 Shipping Terms

Contractor will ship all Athletic Product to UTPB "FOB Destination."

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

**APPENDIX ONE
PROPOSAL REQUIREMENTS**

TABLE OF CONTENTS

SECTION 1: GENERAL INFORMATION	1
SECTION 2: EXECUTION OF OFFER.....	5
SECTION 3: PROPOSER'S GENERAL QUESTIONNAIRE.....	8
SECTION 4: ADDENDA CHECKLIST	10

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 the services to be performed, the detailed requirements of the services to be provided, and the conditions under which such services are to be performed. Proposer also certifies that it understands that all costs relating to preparing a response to this RFP will be the sole responsibility of the Proposer.

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

1.2 Inquiries and Interpretations

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

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

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

1.3 Public Information

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

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

Upon execution of a final agreement, University will consider all information, documentation, and other materials requested to be submitted in response to this RFP, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the *Texas Public Information Act (Government Code, Chapter 552.001, et seq.)*. Proposer will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under Sections 552.101, 552.110, 552.113, and 552.131, *Government Code*.

1.4 Type of Agreement

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

1.5 Proposal Evaluation Process

University will select Contractor by using the competitive sealed proposal process described in this Section. University will open the HSP Envelope submitted by a Proposer prior to opening the Proposer's proposal in order to ensure that the Proposer has submitted the number of completed and signed originals of the Proposer's HUB Subcontracting Plan (also called the HSP) that are required by this RFP (ref. **Section 2.5.4** of the RFP.) All proposals submitted by the Submittal Deadline accompanied by the number of completed and signed originals of the HSP that are required by this RFP will be opened publicly to identify the name of each Proposer submitting a proposal. Any proposals that are not submitted by the Submittal Date or that are not accompanied by the number of completed and signed originals of the HSP that are required by this RFP will be rejected by University as non-responsive due to material failure to comply with advertised specifications. After the opening of the proposals and upon completion of the initial review and evaluation of the proposals, University may invite one or more selected Proposers to participate in oral presentations. University will use commercially reasonable efforts to avoid public disclosure of the contents of a proposal prior to selection of Contractor.

University may make the selection of Contractor on the basis of the proposals initially submitted, without discussion, clarification or modification. In the alternative, University may make the selection of Contractor on the basis of negotiation

with any of the Proposers. In conducting such negotiations, University will use commercially reasonable efforts to avoid disclosing the contents of competing proposals.

At University's sole option and discretion, University may discuss and negotiate all elements of the proposals submitted by selected 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 will 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 interests of University.

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

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

1.6 Proposer's Acceptance of Evaluation Methodology

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

1.7 Solicitation for Proposal and Proposal Preparation Costs

Proposer understands and agrees that (1) this RFP is a solicitation for proposals and University has made no representation written or oral that one or more agreements with University will be awarded under this RFP; (2) University issues this RFP predicated on University's anticipated requirements for the Services, and University has made no representation, written or oral, that any particular scope of services 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** of this RFP). 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.

1.9.3 Pricing and Delivery Schedule

Proposer must complete and return the Pricing and Delivery Schedule (ref. **Section 6** of this RFP), 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 the Services; and (b) the method by which the fees are calculated. The fees must be inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit.

University will not recognize or accept any charges or fees to perform the Services 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 the Services 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 enclosed in a sealed envelope, box, or container. The RFP No. (ref. **Section 1.3** of this RFP) and the Submittal Deadline (ref. **Section 2.1** of this RFP) should be clearly shown in the lower left-hand corner on the top surface of the container. In addition, the name and the return address of the Proposer should be clearly visible.

Proposer must also submit the number of originals of the HUB Subcontracting Plan (also called the HSP) as required by this RFP (ref. **Section 2.5** of the RFP.)

Upon Proposer's request and at Proposer's expense, University will return to a Proposer its proposal received after the Submittal Deadline if the proposal is properly identified. University will not under any circumstances consider a proposal that is received after the Submittal Deadline or which is not accompanied by the number of completed and signed originals of the HSP that are required by this RFP.

University will not accept proposals submitted by telephone, proposals submitted by Facsimile ("FAX") transmission, or proposals submitted by electronic transmission (i.e., e-mail) in response to this RFP.

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 submittal of a written explanation and documentation evidencing a reason acceptable to University, in University's sole discretion.

By signing the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) and submitting a proposal, Proposer certifies that any terms, conditions, or documents attached to or referenced in its 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 or in the Appendices to this RFP.

Proposer further certifies that the submission of a proposal is Proposer's good faith intent to enter into the Agreement with University as specified herein and that such 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.

1.9.7 Page Size, Binders, and Dividers

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

1.9.8 Table of Contents

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

1.9.9 Pagination

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

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 By signature hereon, Proposer represents and warrants the following:
- 2.1.1 Proposer acknowledges and agrees that (1) this RFP is a solicitation for a proposal and is not a contract or an offer to contract; (2) the submission of a proposal by Proposer in response to this RFP will not create a contract between University and Proposer; (3) University has made no representation or warranty, written or oral, that one or more contracts with University will be awarded under this RFP; and (4) Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
 - 2.1.2 Proposer is a reputable company that is lawfully and regularly engaged in providing the Services.
 - 2.1.3 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform the Services.
 - 2.1.4 Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances.
 - 2.1.5 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.
 - 2.1.6 If selected by University, 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.
 - 2.1.7 If selected by University, Proposer will maintain any insurance coverage as required by the Agreement during the term thereof.
 - 2.1.8 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. Proposer acknowledges that 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.
 - 2.1.9 PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, THE UNIVERSITY OF TEXAS SYSTEM, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF PROPOSER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROPOSER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.
 - 2.1.10 Pursuant to Sections 2107.008 and 2252.903, *Government Code*, any payments owing to Proposer under any contract or agreement resulting from this RFP 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.
- 2.2 By signature hereon, Proposer offers and agrees to furnish the Services to University and comply with all terms, conditions, requirements and specifications set forth in this RFP.
- 2.3 By signature hereon, Proposer affirms that it 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 submitted proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting contracts, and the Proposer may be removed from all proposal lists at University.
- 2.4 By signature hereon, Proposer certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, *Tax Code*, or that Proposer is exempt from the payment of those taxes, or that Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at University's option, may result in termination of any resulting contract or agreement.
- 2.5 By signature hereon, Proposer hereby certifies that neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, or anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in Section 15.01, et seq., *Business and Commerce Code*, or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.

- 2.6 By signature hereon, Proposer certifies that the individual signing this document and the documents made a part of this RFP, is authorized to sign such documents on behalf of Proposer and to bind Proposer under any agreements and other contractual arrangements that may result from the submission of Proposer's proposal.
- 2.7 By signature hereon, Proposer certifies as follows:
 "Under Section 231.006, *Family Code*, relating to child support, Proposer certifies that the individual or business entity named in the Proposer's proposal is not ineligible to receive the specified contract award and acknowledges that any agreements or other contractual arrangements resulting from this RFP may be terminated if this certification is inaccurate."
- 2.8 By signature hereon, Proposer certifies that (i) no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any 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 component of The University of Texas System, on the other hand, other than the relationships which have been previously disclosed to University in writing; (ii) Proposer has not been an employee of any component institution of The University of Texas System within the immediate twelve (12) months prior to the Submittal Deadline; and (iii) no person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in Proposer's proposal or any contract resulting from this RFP (ref. Section 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 a contract or agreement with Proposer.
- 29 By signature hereon, Proposer certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 210 By signature hereon, Proposer represents and warrants that all products and services offered to University in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and the *Texas Hazard Communication Act*, Chapter 502, *Health and Safety Code*, and all related regulations in effect or proposed as of the date of this RFP.
- 211 Proposer will and has disclosed, as part of its proposal, any exceptions to the certifications stated in this Execution of Offer. All such disclosures will be subject to administrative review and approval prior to the time University makes an award or enters into any contract or agreement with Proposer.
- 2.12 If Proposer will sell or lease computer equipment to the University under any agreements or other contractual arrangements that may result from the submission of Proposer's proposal then, pursuant to Section 361.965(c), *Health & Safety Code*, Proposer certifies that it is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in Chapter 361, Subchapter Y, *Health & Safety Code* and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in Title 30, Chapter 328, Subchapter I, *Texas Administrative Code*. Section 361.952(2), *Health & Safety Code*, states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term "computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.
- 213 **Proposer should complete the following information:**
 If Proposer is a Corporation, then State of Incorporation: _____
 If Proposer is a Corporation then Proposer's Corporate Charter Number: _____
 RFP No.: 742-15-008

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

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)

(Email)

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 SECTIONS 552.021 AND 552.023, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 559.004, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Proposals must include 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 Section 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*, Chapter 552, *Government Code*, and other applicable law.

3.2 Approach to Project Services

- 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 the RFP. Proposer will include samples of reports and documents if appropriate.

3.3 General Requirements

- 3.3.1 Proposer will provide summary resumes for its proposed key personnel who will be providing services under the Agreement with University, including their specific experiences with similar service projects, and number of years of employment with Proposer.
- 3.3.2 Proposer will describe any difficulties it anticipates in performing its duties under the Agreement with University and how Proposer plans to manage these difficulties. Proposer will describe the assistance it will require from University.

3.4 Service Support

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

3.5 Quality Assurance

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

3.6 Miscellaneous

- 3.6.1 Proposer will provide a list of any additional services or benefits not otherwise identified in this RFP that Proposer would propose to provide to University. Additional services or benefits must be directly related to the goods and services solicited under this RFP.
- 3.6.2 Proposer will provide details describing any unique or special services or benefits offered or advantages to be gained by University from doing business with Proposer. Additional services or benefits must be directly related to the goods and services solicited under this RFP.
- 3.6.3 Does Proposer have a contingency plan or disaster recovery plan in the event of a disaster? If so, then Proposer will provide a copy of the plan.

SECTION 4

ADDENDA CHECKLIST

Proposal of: _____
(Proposer Company Name)

To: _____ The University of Texas of the Permian Basin

Ref: RFP related to Athletic Product and Sponsorship Support

RFP No.: ___742-

Ladies and Gentlemen:

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

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

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)/

Name: _____

Title: _____

Email: _____

Date: _____

APPENDIX TWO

SAMPLE AGREEMENT

INTERCOLLEGIATE ATHLETIC PRODUCT and sponsorship agreement

This Intercollegiate Athletic Product and Sponsorship Agreement ("Agreement") is effective as of _____ (the "Effective Date"), and is made and entered into by and between _____, ("Contractor"), and The University of Texas of the Permian Basin, a state agency and institution of higher education of the State of Texas ("University").

AGREEMENTS

In consideration of the mutual promises, covenants and agreements expressed herein and for other good and valuable consideration, the receipt and adequacy of which the parties acknowledge Contractor and University agree as follows:

1. Contract Term and Termination

1.1 **Term.** The initial term ("**Initial Term**") of this Agreement will begin on the Effective Date and will expire _____ unless sooner terminated pursuant to the term of this Agreement. Upon expiration of the Initial Term, this Agreement may be extended by mutual written agreement of the parties for up to two (2) additional renewal periods, with each renewal period being a twelve (12) month term (each an "**Extension Term**"). "**Contract Term**" means the Initial Term and any Extension Term.

Provided, however, (a) the Contract Term of this Agreement will run co-terminus with the term of the License (ref. **Section 2.3**), and will automatically terminate upon the expiration or earlier termination of the License.

The term "**Contract Year**" means that period of time beginning on the Effective Date and ending twelve (12) calendar months thereafter, and each following twelve (12) month period during the Contract Term.

1.2 **Termination with Cause.** Either party may terminate this Agreement, effective upon delivery of a termination notice, without prejudice to any other legal or equitable rights to which such terminating party may be entitled, if (i) the other party fails to perform a material duty or obligation under this Agreement, and that failure is not (a) cured to the satisfaction of the non-defaulting party within thirty (30) days following written notice of the failure to the defaulting party, or (b) to the extent not reasonably curable within the thirty (30) day time period, attempted to be cured within the thirty (30) day period and, thereafter, pursued diligently until cured to the satisfaction of the non-defaulting party within a reasonable time period; or (ii) any of the representations or warranties made by the other party to this Agreement prove to be untrue or inaccurate in any material respect.

1.3 **University's Rights to Terminate.** University may immediately terminate this Agreement upon written notice to Contractor, if University determines that continued affiliation with Contractor is inconsistent with University's mission or philosophy and/or adversely impacts the reputation of University.

1.4 **Continuing Obligations.** Expiration or termination of this Agreement for any reason will not relieve either party from its obligation to (i) perform up to the effective date of expiration or termination, or (ii) perform such obligations as may survive expiration or termination.

2. **Supplier Recognition and Grant of Rights**

2.1 **Limitations and Reservations.**

2.1.1 Subject to Laws, Regulations and Rules. This Agreement and all rights granted under this Agreement are subject to (i) all applicable federal, state, and municipal, laws, regulations, codes, ordinances and orders (collectively, the "**Applicable Laws**"), (ii) all existing contractual arrangements and obligations of University; (iii) the constitution, bylaws, rules, policies and procedures of the National Collegiate Athletic Association ("**NCAA**"), the Lone Star Conference ("**LSC**"), and any other athletic organization with jurisdiction (collectively, "**Athletic Organization Rules**"); and (iv) all University Rules. "**University Rules**" means (i) the *Rules and Regulations* of the Board of Regents of The University of Texas System found at <http://www.utsystem.edu/bor/rules/>, including Rule 80103 (Solicitation) and Rule 80111 (Smoke Free Facilities); (ii) the policies of The University of Texas System found at <http://www.utsystem.edu/bor/procedures/policy/>, including UTS102 (Drug & Alcohol Policy), UTS103 (Unrelated Business Income Tax), UTS122 (Guidelines for Website Solicitations), and UTS164 (Drug Free University); (iii) the institutional rules and regulations and policies of University found at <http://www.utpa.edu/hop/>

2.1.2 Rights Reserved. Any rights not expressly granted by University in this Agreement are specifically deemed withheld and reserved for University.

2.2 **Contractor Recognition & Limitations.**

2.2.1. Recognition. University will provide to Contractor recognition as set forth on **EXHIBIT A**, Contractor Recognition, attached and incorporated for all purposes, so long as such recognition complies with the terms of this **Section 2** and satisfies the qualified sponsorship requirements under the then current Treasury Regulations. Contractor acknowledges that the issue of tax liability as a result of entering into this Agreement is an important concern to University. All sponsorship recognition provided under this Agreement is collectively referred to herein as "**Sponsorship Recognition.**" All Sponsorship Recognition materials provided under this Agreement are collectively referred to as "**Sponsorship Recognition Material.**"

2.2.2. No Endorsements or Calls to Action. Notwithstanding any other term or condition of this Agreement to the contrary, no Sponsorship Recognition, Sponsorship Recognition Material or recognition of Contractor of any other any kind, may state or imply that University endorses a particular company, organization or any other entity, including Contractor, or any other entity's goods or services, including Contractor's goods or services.

Contractor will not have the right to display a message in Sponsorship Recognition Material that contains a comparative or qualitative description of Contractor's goods or services, price information about Contractor's goods or services, or any other message that is a call to action related to Contractor's goods or services.

2.3 **Licensed Marks.** University will grant Contractor a license to use University's name and certain trademarks during the Contract Term in accordance with **EXHIBIT D**, 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.

3. Contractor Products.

3.1 **Contractor Products.** During the Contract Term, Contractor will provide University with the ability to purchase Contractor Products for Team Program use from Contractor at prices that reflect the following discounts off of Contractor's suggested retail price:

Discount for Athletic Product

	Three (3) Year Term with 2 One (1) year renewals Percentage Off MSRP	Five (5) Year Term with 2 One (1) year renewals Percentage Off MSRP	Promotional Product offerings (Proposer should specify any Athletic Product that Contractor will provide to Athletics Department at no charge)
Footwear	%	%	
Apparel (Non-Footwear products)	%	%	
Custom Uniforms	%	%	
Accessories (including but not limited to travel bags, headwear, socks, wristband, gloves, watches, eyewear)	%	%	
Equipment	%	%	

Baseball/Softball Items	%	%	
Gloves/Mitts	%	%	
Batting helmets	%	%	
Catcher protective equipment	%	%	
Gloves and bats	%	%	
Football Items	%	%	
Shoulder Pads	%	%	
Other Pads	%	%	
Helmets	%	%	
Field Equipment	%	%	
Goal Posts	%	%	
Field Training Aids	%	%	
Other. Please specify _____	%	%	
Spirit Squads Items			
Cheer Apparel			
Cheer Equipment			
Dance Apparel			
Band Apparel			

3.2 **Newly Commercialized Sports Products.** If Contractor begins producing athletic products for commercial sale that are not currently included in the definition of Contractor Products, and University maintains a Team Program that utilizes those athletic products, then University and Contractor will negotiate in good faith to incorporate the newly commercialized athletic products into the definition of Contractor Products under this Agreement. Any incorporation of newly commercialized athletic products into the definition of Contractor Products will require mutual written agreement between University and Contractor.

3.3 **Purchases Submitted to Contractor.**

University will purchase Contractor Products directly from Contractor.

4. **Implementation and Limited Exclusive Use and Limitations**

Team Programs to Use Contractor Products. University will phase in the use of Contractor Products on the following schedule (“**Transition Period**”):

<u>Date</u>	<u>Team Program</u>	<u>Transition Date</u>	<u>Team Program</u>	<u>Transition</u>
-------------	---------------------	------------------------	---------------------	-------------------

After the Transition Period and during the remaining Contract Term, the coaches, staff and players in each Team Program will exclusively use or wear Contractor Products whenever the Team Program is (i) playing an intercollegiate game with the exception of baseball hats

and footwear purchased by the players rather than The University. The football team will utilize Adidas footwear exclusively for practice and games. (ii) conducting official Team Program operations while being filmed by motion picture or video tape when University knows or should reasonably have known, that the film or video is meant for public distribution, (iii) posing for official Team Program photographs, (iv) conducting or participating in Team Program-sanctioned camps or clinics, or (v) is otherwise engaged in official Team Program activities where such attire is reasonably appropriate, (collectively “**Official Team Program Events**”). University further agrees that it will prohibit players, coaches or staff from covering or altering the Contractor logo in any way during Official Team Program Events. University, at its sole discretion, will make all decisions regarding medical reasons for athletes and coaches to use alternate products.

5. Contractor Products, Product Specific Allotments, Team Program Accomplishment Incentives.

During each Contract Year, Contractor will provide University with the ability to order Contractor Products (“**Promotional Merchandise**”) at no charge up to the retail value listed below:

Promotional Merchandise Allotment	<u>See Below</u>
-----------------------------------	------------------

Unused promotional merchandise amounts, as of 5:00 pm on May 15, each year of this Agreement, are forfeited by UTPB. As a result, promotional merchandise cannot be carried from one school year to the next.

1. Bonus compensation (merchandise):

6. University/Contractor Relationship. For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent entity and is not an employer, employee, partner, joint venturer, or agent of University. Contractor will not bind nor attempt to bind University to any agreement or contract.

7. **Warranties.**

9.1 **University.** University warrants and represents that it is not a party to any agreement, contract or understanding, whether oral or written, that would prevent, limit or hinder the performance of any of its obligations under this Agreement.

9.2 **Contractor.** Contractor warrants and represents that it is not a party to any agreement, contract or understanding, whether oral or written, that would prevent, limit, or hinder the performance of any of its obligations under this Agreement.

8. **Limitation on Resale.** During the Contract Term, University agrees that University will not sell any Contractor Products purchased pursuant to this Agreement, except that University may sell such Contractor Products to: (1) affiliates of the University, including on-campus retail outlets that provide services or sales to the University's teams, athletic facilities, faculty, students, and visitors, and (2) vendors of the University that provide services to the University's teams or athletic facilities but only to the extent related to the service. Disposal of used contractor products will follow University procedures through surplus action.

9. **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.**") However, it is expressly agreed that University will not provide to Contractor, and Contractor will never seek to access, any University Records that contain personally identifiable information regarding any individual that is not available to any requestor under the *Texas Public Information Act*, Chapter 552, Texas Government Code, including "directory information" of any student who has opted to prohibit the release of their "directory information" as that term is defined under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("**FERPA**") and its implementing regulations. 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 reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security, as well as the Payment Card Industry Data Security Standards) that are no less rigorous than the standards by which Contractor protects its own confidential information; (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 UTS 165 at <http://www.utsystem.edu/bor/procedures/policy/policies/uts165.html>. 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.

- 9.1 **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.
- 9.2 **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.
- 9.3 **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 11**.
- 9.4 **Press Releases.** Except when defined as part of the Work, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of University in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of University.
- 9.5 **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 Section 552.002 of TPIA and Section 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.
- 9.6 **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.
- 9.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

10. Insurance; Indemnification.

10.1 Insurance. If Contractor's employees, agents, suppliers or subcontractors will be present on University's property, Contractor will maintain and cause its agents, suppliers and subcontractors (if any) to maintain the following insurance coverages for at least the specified limits:

<u>Coverages</u>	<u>Limits</u>
Workers' Compensation	Statutory Limits
Employer's Liability	\$1,000,000 per accident and employee
Commercial General Liability (including contractual liability)	\$1,000,000 per occurrence
Personal & Advertising Injury	\$1,000,000 per occurrence
Product/Completed Ops	\$1,000,000 aggregate
Business Auto Liability	\$1,000,000 combined single limit
General Aggregate	\$2,000,000 per policy limit

All policies (except Workers' Compensation) will name University, the Board, and their officers and employees as Additional Insured. A Waiver of Subrogation in favor of University and the Board and thirty (30) day notice of cancellation is required on all policies. Certificates of insurance verifying the foregoing requirements will be provided to University prior to the Effective Date of this Agreement. Contractor will endorse all policies to require insurance carriers to notify University of cancellation, termination, material change, or non-renewal relating to any insurance policy required herein.

10.2 Damage or Injury. Contractor will be solely responsible for any damage or injury to University's facilities, property (tangible or intangible), or personnel that results from acts or omissions of Contractor or Contractor's employees, agents, suppliers or subcontractors.

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

10.4 Intellectual Property Indemnity. 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 THIS AGREEMENT, 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.

- 11. Miscellaneous.** This Agreement, including its exhibits, attachments, schedules and addenda, constitutes the entire understanding between the parties which cannot be amended or modified except by an agreement in writing, signed by each of the parties. All previous understandings or agreements between the parties will have no further force and effect. Every provision of this Agreement is severable. If any term or provision of this Agreement is held to be illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this Agreement or any other provision. This Agreement will be governed by and construed in accordance with the laws of the State of Texas. The parties agree and consent to the exclusive jurisdiction and venue of the courts located in Hidalgo County, Texas.

IN WITNESS WHEREOF, **the parties hereto have duly executed this Agreement as of the Effective Date.**

**THE UNIVERSITY OF TEXAS OF THE
PERMIAN BASIN**

By: _____

By: _____

Date: _____

Date: _____

Attached:

EXHIBIT A – Contractor Recognition

ATTACHMENT 1 – Contractor Logo

EXHIBIT B – Addendum to Intercollegiate Athletic Products and Sponsorship Agreement

ATTACHMENT 1 – Contractor HSP

EXHIBIT C – Website Sponsorship Agreement

ATTACHMENT 1 - Contractor Logo and URL and Screen Copy of University Website Displaying Contractor Logo

ATTACHMENT 2 - URL and Screen Copy of Linked Website Page

EXHIBIT D – Trademark License Agreement

SCHEDULE 1 - Trademarks

EXHIBIT A

CONTRACTOR RECOGNITION

Subject to the terms and conditions of this Agreement, University will provide Contractor with the following recognition during each Contract Year of this Agreement:

1. Specific Recognition

1.1 Exclusive athletic footwear, apparel, and accessory sponsor

In all media and methods of communication listed below, School agrees that _____ shall be the exclusive athletic footwear, apparel, and accessory brand permitted to advertise its products.

1.2 Promotional Product and Printed Material Distribution

1.2.1 Products and Materials. Subject to the terms and conditions of this Agreement, including **Section 2** of this Exhibit, after thirty (30) days advance written notice to University, Contractor may distribute the following Sponsorship Recognition Material at the specified home athletic events:

<u>Low Cost Items</u>	<u>Athletic Event</u>
Value of \$10 or less	At six (6) home football, basketball or volleyball games/matches of Contractor's choosing

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

1.2.2 Policy Limitations. University Rules, including Rule 80301, place restrictions on the display and distribution of promotional products and the distribution of printed material related to goods or services provided by Contractor. Among other restrictions, such activities: (i) may not interfere with the use of facility entrances and exits or the flow of pedestrian or vehicular traffic; (ii) may not harass, embarrass, or intimidate the people being solicited; (iii) may not violate any applicable law or regulation; (iv) may only be authorized the day before and the day of an intercollegiate athletic event or an athletic related event taking place in a facility used for athletic events; (v) may only be conducted from booths, tables, and kiosks (or in a University designated area for display of motorized vehicles) immediately adjacent to an athletic facility, the location and number of which have been authorized by University; (vi) must be conducted in accordance with University Rules, including those regarding safety; and (vii) must not include making sales or taking orders.

1.2.3 License Required. Any promotional products distributed under this Agreement that are imprinted with the name, logos, trademarks, service marks and other symbols of University (collectively, "**University Marks**") may only be imprinted pursuant to a license issued by Learfield Licensing Partners, LLC or any successor identified by University.

2. Guidelines

2.1 **Approval of Sponsorship Recognition Material; Use of University Marks; Use of University Name; License; Required Approval.**

2.1.1 Approval of All Sponsorship Recognition Material. All Sponsorship Recognition Material is subject to approval by University, which will not be unreasonably withheld. All Sponsorship Recognition Material must comply with Applicable Laws, Athletic Organization Rules and University Rules. All Sponsorship Recognition Material must be submitted to:

The University of Texas of the Permian Basin
4901 E. University Blvd.
Odessa, Texas 79762
Attention: Elsa Montalvo
Email : montalvo_e@utpb.edu
Fax: 432-552-3790

for written approval *prior to production and use*. The parties will cooperate with each other in order to assure compliance with this Section. Requests for written approval of Sponsorship Recognition Material will be in writing, accompanied by the material to be approved, and transmitted by facsimile, express mail, overnight carrier, or regular mail depending upon the expected response time. University will use reasonable efforts to respond to requests within ten (10) days after the date the request is received by University in accordance with this Section. Failure to obtain prior written approval required by this Section will be a material breach of this Agreement and will entitle University to terminate this Agreement.

2.1.2 Approval of Use of University Marks. Upon execution by Contractor and the Board of Regents of The University of Texas System ("**Board**") of the Trademark License Agreement, attached as **EXHIBIT D** and incorporated for all purposes, Contractor may use the designated University trademarks ("**University Marks**") subject to prior written approval as specified in the Trademark License.

CONTRACTOR LOGO

(please insert _____ Logo)

EXHIBIT B

**ADDENDUM
TO**

INTERCOLLEGIATE ATHLETIC PRODUCT AND SPONSORSHIP AGREEMENT

The following terms and conditions are incorporated into and form a part of that certain Intercollegiate Athletic Product and Sponsorship Agreement (the "**Agreement**") between ("**Contractor**") and **The University of Texas of the Permian Basin** ("**University**"), to which such terms and conditions are attached for all purposes.

1. **Tax Certification.** If Contractor is a taxable entity as defined by Chapter 171, *Texas Tax Code*, then Contractor certifies that it is not currently delinquent in the payment of any taxes due under such Chapter, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
2. **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
3. **Texas Family Code Child Support Certification.** Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.
4. **Breach of Contract Claims.** To the extent that Chapter 2260, *Texas Government Code*, is applicable to the Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief business officer of University will examine Contractor claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties specifically agree that (i) neither the execution of the Agreement by University nor any other conduct, action or inaction of any representative of University relating to the 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.
5. **Loss of Funding.** Performance by University under the Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "**Legislature**") and/or allocation of funds by the Board of Regents of The University of Texas System (the "**Board**"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate the Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.

6. **State Auditor's Office.** Contractor understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "**Auditor**"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.
7. **Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives, and subcontractors have read and understand University's Conflicts of Interest Policy available at <http://www.utpb.edu/docs/default-source/utpb-docs/files/university-forms/conflictinterest.pdf>, University's Standards of Conduct Guide available at <http://www.utpb.edu/services/business-affairs/compliance/standards-of-conduct>, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, provisions described by University's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board of Regents has a direct or indirect financial interest in the transaction that is the subject of this Agreement.
8. **Board of Regents Approval:** The Agreement is not effective for values exceeding One Million Dollars (\$1,000,000) in the aggregate until approved by the Board of Regents of The University of Texas System.
9. **Access by Individuals with Disabilities** Contractor represents and warrants (the "**EIR Warranty**") that the electronic and information resources and all associated information, documentation, and support that it provides to University under the Agreement (collectively, the "**EIRs**") comply with the applicable requirements set forth in Title 1, Chapters 206 and 213 of the *Texas Administrative Code* ("**TAC**"). To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Warranty, then Contractor represents and warrants that it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Warranty.
10. **HUB Subcontracting Plan.** Contractor will use good faith efforts to subcontract the work performed under this Agreement in accordance with Contractor' Historically Underutilized Business Subcontracting Plan (the "**Contractor HSP**") attached as **ATTACHMENT 1** to this **EXHIBIT B** and incorporated for all purposes. Except as specifically provided in the Contractor HSP, Contractor will not subcontract any of its duties or obligations under the Agreement, in whole or in part. The Agreement is subject to 34 TAC Section 20.14. Contractor will comply with all of its duties and obligations under 34 TAC Section 20.14. In addition to other rights and remedies, University may exercise all rights and remedies authorized by 34 TAC Section 20.14.
11. **Notices.** Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of the Agreement will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided

below, and notice will be deemed given (i) if delivered by certified mailed, 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 set forth below) or email (to the extent an email address is set forth below), when received:

If to the University:

The University of Texas of the Permian Basin
4901 E. University Blvd.
Odessa, Texas 79762
Attention: Elsa Montalvo
Email : montalvo_e@utpb.edu
Fax: 432-552-3790

If to Contractor:

or such other person or address as may be given in writing by either party to the other in accordance with the aforesaid. Any notice sent pursuant to Section 2251.054, *Texas Government Code*, will reference Section 2251.054 in the notice.

12. **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, UNIVERSITY PROVIDES ANY AND ALL SERVICES TO SPONSOR UNDER THIS AGREEMENT "AS IS", WITHOUT WARRANTIES, GUARANTEES, CERTIFICATIONS, OR REPRESENTATIONS OF ANY KIND. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (1) UNIVERSITY EXPRESSLY AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE, (2) UNIVERSITY'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNTS PAID BY SPONSOR TO UNIVERSITY DURING THE IMMEDIATELY PRECEDING CONTIGUOUS TWELVE (12) MONTH PERIOD DURING THE TERM OF THIS AGREEMENT, AND (3) UNIVERSITY WILL NOT BE RESPONSIBLE OR LIABLE TO SPONSOR OR TO ANY PERSON OR ENTITY CLAIMING THROUGH SPONSOR FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST OR ANTICIPATED PROFITS, REVENUES, OR SAVINGS, EVEN IF UNIVERSITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
13. **External Terms.** This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor's provision of goods or services under this Agreement ("**External Terms**"). The External Terms are null and void and will have no effect under this Agreement, regardless of whether University or its employees, contractors, or agents express assent or agreement to the External Terms. The 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.

14. Addendum Controlling. In the event there is a conflict between the terms and conditions of the Agreement and this Addendum, this Addendum will control.

Basin	The University of Texas of the Permian
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

EXHIBIT C

WEBSITE SPONSORSHIP AGREEMENT

This Website Sponsorship Agreement ("**Agreement**") is entered into effective ("**Effective Date**"), by and between ("**Contractor**"), and **THE UNIVERSITY OF TEXAS OF THE PERMIAN BASIN ("University")**, an agency of the State of Texas and an institution of higher education.

RECITALS

Contractor and University have entered into that certain Qualified Sponsorship Agreement ("**Sponsorship Agreement**") date of even effective date with this Agreement.

In connection with the Sponsorship Agreement University desires to accept a payment related to website sponsorship recognition, subject to the terms and conditions set forth in this Sponsorship Payment Agreement.

AGREEMENT

The parties agree as follows:

[Note: A portion of the sponsorship support provided by Contractor will be allocated to the web page recognition.]

1. **Sponsorship Payment.** A portion of the benefits to University under **Sections 5, 6 and 7** of the Sponsorship Agreement with a value equal to \$ _____ of all purchases in the first year of contract and _____ of all purchases in the 2nd and 3rd year. ("**Website Sponsorship Payment**") will be paid and transferred to Contractor in exchange for the benefits Contractor receives under this Agreement.
2. **Payment.** The Website Sponsorship Payment will be paid and transferred to University as provided in the Sponsorship Agreement.
3. **Acknowledgment.** University will recognize Contractor by granting Contractor the ability to post Contractor's company logo on University's website at <http://www.utpbfalcons.com/> ("**University URL**").
 - 3.1 A copy of the Contractor's company logo ("**Contractor Logo**"), the University URL and a copy of the screen of University's website displaying Contractor Logo are attached as **ATTACHMENT 1**.
 - 3.2 The recognition must comply with the terms and conditions of University's existing policy on website solicitations and The University of Texas System ("**UT System**") Policy UTS122 "Guidelines for Web Site Solicitations."
 - 3.3 The Contractor's company logo will not be hyperlinked from University's website to a website maintained by or for Contractor ("**Contractor URL**").

4. **Tax Liability.** The Website Sponsorship Payment is intended to be a qualified sponsorship payment as defined in the Internal Revenue Code. Contractor acknowledges that the issue of tax liability as a result of entering into this Agreement is an important concern to University. If the Contractor alters the Contractor URL (ref. **Section 3.3**) and in the reasonable and good faith opinion of University, the alterations may create unrelated business taxable income for University, then University will display Contractor's company logo on its website for the remainder of the Term but will sever the hyperlink to the Contractor URL.
5. **Removal of Contractor Logo Posting.** In the unlikely event University determines in its reasonable and good faith opinion that circumstances have changed or if new matters are discovered involving the Contractor or its officers or directors, University, in its sole discretion, may remove the Contractor's company logo and sever the hyperlink to the Contractor URL, if the continuation of displaying the company logo would adversely impact the reputation, image, mission or integrity of University or UT System. Neither University nor UT System will have any further obligation or liability to Contractor.
6. **Representations and Warranties.** Contractor represents and warrants that the following statement is true and correct as of the initial date of this Agreement: Contractor is a corporation or other legal entity duly organized, validly existing, and in good standing under the laws of its state of incorporation or organization and has the full right, power, and authority to enter into this Agreement.
7. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between Contractor and University and will supersede any and all other agreements between the parties whether verbal or otherwise. Any amendment or modification of this Agreement must be in writing and signed by an authorized representative of both parties.
8. **Venue; Controlling Law; Interpretation.** Ector County Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties to this Agreement and all of the terms and conditions of this Agreement will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. No provision of this Agreement will be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of that party having or being deemed to have drafted, structured or dictated such provision.
9. **Sponsorship Agreement; Priority of Provisions.** The terms of the Sponsorship Agreement are incorporated by reference into this Agreement. If the terms of the Sponsorship Agreement conflict with the terms of this Agreement, the terms of this Agreement will control.
10. **Contingent Upon Approval.** This Agreement is contingent upon the approval of the contents of ATTACHMENTS 1 and 2 by the UT System Executive Vice Chancellor for Business Affairs.

The parties have executed this Agreement effective as of the Effective Date.

**THE UNIVERSITY OF TEXAS
OF THE PERMIAN BASIN**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT D

TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement ("**Agreement**"), dated as of _____, is by and between The Board of Regents of The University of Texas System on behalf of the University of Texas Permian Basin, an Agency of the State of Texas (the "**Licensor**") and, _____, a _____, (the "**Licensee**").

WHEREAS, Licensor is the owner of the Marks (as defined below); and

WHEREAS, Licensee wishes to use the Marks in the Territory (as defined below) in connection with the Licensed Products and Services (as defined below) and Licensor is willing to grant to Licensee a license to use the Marks on the terms and conditions set out in this 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 Agreement, the following terms shall have the following meanings:

"**Action**" has the meaning set forth in **Section 10.1**.

"**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.

"**Confidential Information**" has the meaning set forth in **Section 8.1(a)**.

"**Effective Date**" means the date of this Agreement as set forth in the preamble.

"**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

"**Licensed Products and Services**" means the products and services listed in Schedule [1] and any other products or services that may be agreed upon in writing by Licensor and Licensee from time to time.

"**Licensee**" has the meaning set forth in the preamble.

"**Licensor**" 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 12.1**.

"**Territory**" means the United States.

2. License.

2.1 License Grant. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee during the Term a non-exclusive, non-transferable, non-sublicenseable license to use the Marks on or in connection with the manufacture of Licensed Products and Services in the Territory.

2.2 Restrictions on Licensor. Licensor shall not grant others the right to use the Marks (or any other Marks confusingly similar to the Marks) in connection with the manufacture, promotion, distribution and sale of the Licensed Products and Services.

2.3 Territorial Restrictions. Licensee shall not:

(a) undertake advertising of Licensed Products and Services in, or specifically aimed at, any country outside the Territory;

(b) actively seek orders for Licensed Products and Services; or

(c) establish any branch dealing in Licensed Products and Services or maintain any distribution center for Licensed Products and Services.

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

(a) its corporate or trade name; or

(b) any domain name.

2.5 Sublicensing. Licensee shall not grant sublicenses under this Agreement

2.6 Reservation of Rights. Licensor expressly reserves all rights not expressly granted to Licensee under this Agreement.

3. Use of the Marks.

3.1 Compliance With Licensor's Directions. All Licensed Products and Services made, sold or otherwise distributed by Licensee in the Territory shall carry the Marks. Licensee shall comply strictly with the directions of Licensor regarding the form and manner of the application of the Marks.

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

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

4. Ownership and Registration.

4.1 Acknowledgement of Ownership. Licensee acknowledges that Licensor is the owner of the Marks throughout the world. Any goodwill derived from the use by Licensee of the Marks shall inure to the benefit of Licensor. If Licensee acquires any rights in the Marks, by operation of law, or otherwise, such rights shall be deemed and are hereby irrevocably assigned to Licensor without further action by any of the parties. Licensee agrees not to dispute or challenge or assist

any Person in disputing or challenging Licensor's rights in and to the Marks or the validity of the Marks.

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

(a) 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 Licensor or which will or may invalidate or jeopardize any registration of the Marks; or

(b) 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/in the Territory].

4.3 Maintenance of Registrations. Licensor shall at its own expense take all reasonable steps to maintain the existing registrations of the Marks and prosecute to registration any pending applications for so long as the Marks is being used in commerce as required by applicable Law.

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 Licensor, 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 Licensor Specifications. Licensee shall comply with the specifications, standards and directions relating to the Licensed Products and Services, including their design, manufacture, promotion, packaging, distribution and sale, as set forth in Schedule 2 and as notified in writing by Licensor from time to time.

5.3 Compliance With Laws. In exercising its rights under this Agreement, Licensee shall comply with, and shall ensure that each Licensed Product sold or otherwise supplied by Licensee complies with, all applicable Laws. Licensee shall promptly provide Licensor with copies of all communications, relating to the Marks or the Licensed Products and Services, 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 least once in every [six] months and at any time at Licensor's request supply production samples of the Licensed Products and Services to Licensor for approval, which may be given or withheld in Licensor's sole discretion. In the event that

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

5.5 Complaints. Licensee shall promptly provide Licensor with details of any complaints it has received relating to the Licensed Products and Services 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 Licensor in respect thereof.

6. Marketing, Advertising and Promotion.

6.1 Approval of Marketing and Advertising Materials. Licensee shall send to Licensor, as specified in section 6.3, for its prior written approval the text and layout of all proposed advertisements and Marketing and promotional material relating to the Licensed Products and Services. In the event that Licensor disapproves of such material, it shall give written notice of such disapproval to Licensee within [20] days of receipt by Licensor of the material. In the absence of a written notice of disapproval within [20] days of receipt of such materials, the materials shall be deemed to have been disapprove] by Licensor. Licensee shall not use any material in the advertising, Marketing or promotion of Licensed Products and Services which has not been approved by Licensor.

6.2 All Request for Approval Sent to

Craig Westemeier
Associate Athletics Director, Trademark Licensing (“**Trademark Director**”)
The University of Texas at Austin
P.O. Box 7399
Austin, Texas 78713
512-475-7923
512-232-7080 fax
trademarks@athletics.utexas.edu
or
cw@utexas.edu

6.3 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.

6.4 Celebrity Endorsement. Licensee shall not use a personality or celebrity to endorse or promote any Licensed Products and Services without the prior written approval of Licensor.

7. Protection of the Marks.

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

- (a) any actual, suspected or threatened infringement of the Marks;
- (b) any actual, suspected or threatened claim that the Marks is invalid;
- (c) any actual, suspected or threatened opposition to the Marks;
- (d) any actual, suspected or threatened claim that use of the Marks infringes the rights of any third party;
- (e) 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 Agreement; or
- (f) 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**:

- (a) Licensor shall decide, in its sole discretion, what action if any to take;
- (b) Licensor shall have exclusive control over, and conduct of, all claims and proceedings;
- (c) Licensee shall provide Licensor with all assistance that Licensor may reasonably require in the conduct of any claims or proceedings; and
- (d) Licensor shall bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for its own account.

8. Confidentiality.

8.1 Licensee Obligations. Licensee agrees:

- (a) not to disclose or otherwise make available to any third party any information that is treated as confidential by Licensor, 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 Licensor; *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;
- (b) to use the Confidential Information as permitted under this Agreement; and

(c) to promptly notify Licensor in the event it becomes aware of any loss or disclosure of any Confidential Information.

8.2 Exceptions. Confidential Information shall not include information that:

(a) is already known to Licensee without restriction on use or disclosure prior to receipt of such information from Licensor;

(b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, Licensor;

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

(d) is required to be disclosed by Law, including without limitation, pursuant to the terms of a court order; *provided, that* Licensee has given Licensor 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.

9. Representations and Warranties.

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

(a) 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;

(b) (i) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder, and (ii) the execution of this 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

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

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

(a) any Marks is valid;

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

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

9.3 Exclusion of Consequential and Other Indirect Damages. To the fullest extent permitted by Law, Licensor 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.

10. Indemnity.

10.1 Indemnity. Licensee shall indemnify, defend and hold harmless Licensor 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 Agreement by Licensee, and (b) Licensee's exercise of its rights granted under this Agreement, including but not limited to any product liability claim or third party intellectual property rights infringement claim relating to Licensed Products and Services manufactured, supplied or put into use by Licensee, in each case, except for any Action based solely on Trademarks infringement arising out of the use by Licensee of the Marks in accordance with this Agreement.

10.2 Indemnification Procedures. The indemnified party shall promptly notify the indemnifying party in writing of any Action and cooperate with the indemnifying party at the indemnifying party's sole cost and expense. The indemnifying party 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 indemnifying party's sole cost and expense. The indemnified party's failure to perform any obligations under this section shall not relieve the indemnifying party of its obligations under this section except to the extent that the indemnifying party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified party may participate in and observe the proceedings at its own cost and expense.

11. 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 Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Licensor'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 Agreement for which Licensor's prior written consent is required. No delegation or other transfer will relieve Licensee of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this section is void. Licensor 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 Agreement without Licensee's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

12. Term and Termination.

12.1 Term. This Agreement shall commence as of the Effective Date and, unless terminated earlier in accordance with **Section 12.3**, shall remain in force for a period of three years (the "**Term**").

12.2 Termination Without Cause. Licensor shall have the right to terminate this Agreement for any reason on giving Licensee not less than 30 days written notice.

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

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

(b) (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;

(c) Licensee challenges the validity or Licensor's ownership of the Marks;

(d) there is a change in control of Licensee.

13. Post-termination Rights and Obligations.

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

(a) all outstanding amounts payable by Licensee to Licensor shall immediately become due and payable;

(b) all rights and licenses granted pursuant to this Agreement shall cease;

(c) Licensee shall cease all use of the Marks;

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

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

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

13.2 Surviving Rights. Any rights or obligations of the parties in this Agreement which, by their nature, should survive termination or expiration of this Agreement will survive any such termination or expiration, including the rights and obligation set forth in this **Section 13.2** and **Section 1, Section 4, Section 7, Section 8, Section 9, Section 10, Section 11, Section 13, and Section 14**.

14. Miscellaneous.

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

14.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this 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.

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

14.4 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; or (d) 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).

If to Licensor

Craig Westemeier
Associate Athletics Director, Trademark Licensing (“**Trademark Director**”)
The University of Texas at Austin
P.O. Box 7399
Austin, Texas 78713
512-475-7923
512-232-7080 fax
trademarks@athletics.utexas.edu
or
cw@utexas.edu

If to Licensee:

14.5 Interpretation. For purposes of this 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 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 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 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 Agreement to the same extent as if they were set forth verbatim herein.

14.6 Entire Agreement. This 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 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.

14.7 No Third-Party Beneficiaries. This 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 Agreement.

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

14.9 Amendment and Modification; Waiver. This 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 Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this 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.

14.10 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this 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 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.

14.11 Governing Law; Submission to Jurisdiction. This 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 Agreement or the Services provided hereunder shall be instituted [exclusively] in the federal courts of the United States or the courts of the State of Texas in each case located in the city of Odessa and County of Midland, 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.

14.12 Equitable Relief. Licensee acknowledges that a breach by Licensee of this Agreement may cause Licensor 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, Licensor 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 Licensor 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 Agreement to the contrary.

14.13 Counterparts. This 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.

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

The Board of Regents of
The University of Texas System

By _____

Name: Dan Sharphorn

Title: Vice Chancellor and General
Counsel

By _____

Name:

Title:

SCHEDULE 1 - EXHIBIT D

TRADEMARKS

LICENSED PRODUCTS AND SERVICES

(WILL BE PROVIDED UPON REQUEST)

APPENDIX THREE

HUB SUBCONTRACTING PLAN

[HTTP://WWW.UTEXAS.EDU/ADMINISTRATION/HUB/HSPATTACHMENTS1.PDF](http://www.utexas.edu/administration/hub/hspattachments1.pdf)

APPENDIX FOUR

CAMPUS MAP

Website link:

<http://www.UTPB.edu/maps/campusmap.pdf>

APPENDIX FIVE

ACCESS BY INDIVIDUALS WITH DISABILITIES

Access by Individuals with Disabilities. Contractor represents and warrants (“EIR Accessibility Warranty”) that the electronic and information resources and all associated information, documentation, and support that it provides to University under this Agreement (collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1, Chapter 213, *Texas Administrative Code*, and Title 1, Chapter 206, Rule §206.70, *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M, *Government Code*.) To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants that 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. In the event that Contractor fails or is unable to do so, then University may terminate this Agreement and Contractor will refund to University all amounts University has paid under this Agreement within thirty (30) days after the termination date.

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.

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 SSL connections to this directory service?
2. Does the EIR rely on Active Directory for group management and authorization or does the EIR maintain a local authorization/group database?
3. What logging capabilities does the EIR have? If this is a hosted EIR solution, will University have access to implement logging with University’s standard logging and monitoring tools, RSA’s Envision?
4. Does the EIR have an application programming interface (“**API**”) that enables us to incorporate it with other applications run by the University? If so, is the API .Net based? Web Services-based? Other?
5. Will University have access to the EIR source code? If so, will the EIR license permit University to make modifications to the source code? Will University’s modifications be protected in future upgrades?
6. Will Proposer place the EIR source code in escrow with an escrow agent so that if Proposer is no longer in business or Proposer has discontinued support, the EIR source code will be available to University?

Accessibility Information

1. Please complete the Voluntary Product Accessibility Template (“**VPAT**”) found at <http://www.itic.org:8080/dotAsset/5644ecd2-5024-417f-bc23-a52650f47ef8.doc> and submit the VPAT with Proposer’s proposal.

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

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

4. Describe the monitoring procedures and tools used for monitoring the integrity and availability of all products interacting with Information Resources, including procedures and tools used to, detect security incidents and to ensure timely remediation.
5. Describe the physical access controls used to limit access to Proposer's data center and network components.
6. What procedures and best practices does Proposer follow to harden all systems that would interact with Information Resources, including any systems that would hold or process University Records, or from which University Records may be accessed?
7. What technical security measures does the Proposer take to detect and prevent unintentional, accidental and intentional corruption or loss of University Records?

8. Will the Proposer agree to a vulnerability scan by University of the web portal application that would interact with Information Resources, including any systems that would hold or process University Records, or from which University Records may be accessed? If Proposer objects, explain basis for the objection to a vulnerability scan.
9. Describe processes Proposer will use to provide University assurance that the web portal and all systems that would hold or process University Records can provide adequate security of University Records.
10. Does Proposer have a data backup and recovery plan supported by policies and procedures, in place for Information Resources? If yes, briefly describe the plan, including scope and frequency of backups, and how often the plan is updated. If no, describe what alternative methodology Proposer uses to ensure the restoration and availability of University Records.
11. Does Proposer encrypt backups of University Records? If yes, describe the methods used by Proposer to encrypt backup data. If no, what alternative safeguards does Proposer use to protect backups against unauthorized access?
12. Describe the security features incorporated into Information Resources to safeguard University Records containing confidential information.

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

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

Access Control

1. How will users gain access (i.e., log in) to Information Resources?
2. Do Information Resources provide the capability to use local credentials (i.e., federated authentication) for user authentication and login? If yes, describe how Information Resources provide that capability.
3. Do Information Resources allow for multiple security levels of access based on affiliation (e.g., staff, faculty, and student) and roles (e.g., system administrators, analysts, and information consumers), and organizational unit (e.g., college, school, or department)? If yes, describe how Information Resources provide for multiple security levels of access.
4. Do Information Resources provide the capability to limit user activity based on user affiliation, role, and/or organizational unit (i.e., who can create records, delete records, create and save reports, run reports only, etc.)? If yes, describe how Information Resources provide that capability. If no, describe what alternative functionality is provided to ensure that users have need-to-know based access to Information Resources.
5. Do Information Resources manage administrator access permissions at the virtual system level? If yes, describe how this is done.

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

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

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

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

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

Use of Data

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

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

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

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

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

Data Transmission

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

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

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

Notification of Security Incidents

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

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

Compliance with Applicable Legal & Regulatory Requirements

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

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