



IFB Number: 742-19-152 Charter Bus Services for Athletics

Return Bid to:

Reynolds_d@utpb.edu

Date of Issuance: Wednesday, June 26, 2019

**Deadline: Thursday, July 18, 2019
12:00 p.m. Central Time**

Under Section 231.006, Family Code, the Vendor certifies that the individual or business entity named in this contract, offer, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

Texas Vendor ID or FEI No.

COMPANY NAME

ADDRESS

CITY STATE ZIP

PHONE NUMBER EMAIL ADDRESS

AUTHORIZED SIGNATURE DATE

TYPE OR PRINT NAME OF SIGNER

E-MAIL ADDRESS

QUOTE F.O.B. DESTINATION PREPAID & ALLOWED

DELIVERY TIME ____ DAYS

TERMS OF PAYMENT: NET ____ DAYS

FREIGHT CHARGES: _____

If quoting other than F.O.B. Destination Prepaid and Allowed, indicate all freight charges.

TOTAL AMOUNT OF BID:

\$ _____

If the paragraph above is applicable, provide names and social security number of each person with at least 25% ownership. Vendors that pre-registered this information on the Texas Procurement and Support Services Centralized Master Bidders List have satisfied This Vendor agrees to comply with all conditions shown on this form.

FAILURE TO MANUALLY SIGN WILL DISQUALIFY BID

- Check below if preference is claimed under Rule 1 TAC 113.8
- Produced in Texas and/or Texas bidder
 - Texas agricultural products
 - USA produced supplies, materials or Equipment
 - Historically Underutilized Business Certified by the TX Procurement and Support Services
 - Products of persons with mental or physical Disabilities
 - Products made of recycled materials
 - Energy efficient products



The University of Texas Permian Basin (**UTPB**) desires to enter into a contract awarded to the company(s) offering the most advantageous proposition to the institution. Bids will be accepted through email and must be plainly marked on the subject line as **IFB 742-19-152**.

CONTRACT TERM

The contract is anticipated to be effective upon issuance of one or more purchase orders and continue for an initial term of one (1) year from the date of commencement of services. After the expiration of the Initial Term, the contract term may be extended twice with each extension not exceeding one (1) year, provided both parties agree in writing to do so, prior to the expiration date. Any extensions shall be at the same terms and conditions, plus any approved changes. The University of Texas Permian Basin reserves the right to negotiate modification of terms and schedules as necessary.

BID DELIVERY

Through email only: reynolds_d@utpb.edu

EQUAL OPPORTUNITY

Contractor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this Contract.

PUBLIC INFORMATION

The University considers all information, documentation and other materials requested to be submitted in response to this solicitation to be of a non-confidential and/or non-proprietary nature, and therefore shall be subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, *et seq.*) after a contract is awarded. Respondents are hereby notified that the University strictly adheres to all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of IFB information.

WAIVER OF INCONSISTENCIES:

The University reserves the right to waive any and all minor technical inconsistencies in evaluating the proposal responses.

INCURRED EXPENSES

Any and all expenses incurred in response to this proposal are entirely the responsibility of the contractor. Neither the University, nor the State of Texas, is liable in any manner.



INQUIRIES

All inquiries regarding this Invitation for Bid must be submitted via email by **Wednesday, July 10, 2019** by **12:00 p.m. Central Time**. The University will not accept questions after this date. All inquiries may result in written responses posted to the University website at <https://www.utpb.edu/services/business-affairs/purchasing/bid-opportunities>. Questions must be emailed to Debbie Reynolds at reynolds_d@utpn.edu.

It is the bidder's responsibility to periodically check the University Website up until the offer opening time for any changes, modifications or addenda to this offer. Receipt of all addenda to this IFB should be acknowledged by returning a signed copy of each addendum with the submitted Bid. Failure to do so could result in an offer submission that cannot be considered.

REFERENCES

Vendors responding to this bid must be prepared, if asked pre-award, to submit a list of at least three references your company has successfully provided products for projects of this type and magnitude. The list must include the client's name, address, telephone number, a contact person, and a brief description of the particular type of project completed. The University shall not be confined to this list if it deems further reference investigation necessary.

HUB Requirements: In accordance with the State of Texas policy of encouraging the use of Historically Underutilized Business (HUB) Vendors in state procurement, the University shall make a good faith effort to utilize HUB Vendors in Contracts for commodities and services. The University will achieve the annual program goals by contracting directly with HUB Vendors or indirectly through subcontracting opportunities. Therefore, any business that contracts with the University shall be required to make a good faith effort to award subcontracts to HUB Vendors.

HUB Subcontracting Plan (HSP)

In accordance with Gov't Code §2161.252, The University of Texas Permian Basin (**UTPB**) has determined that subcontracting opportunities are NOT probable under this contract. Therefore, respondents, including State of Texas certified Historically Underutilized Businesses (HUBs), are NOT responsible for completion/submission of a State of Texas HUB Subcontracting Plan (HSP) with their solicitation response.

AWARD

UTPB intends to award in such a way as to gain the greatest benefit to the end result of this project and therefore the University. **UTPB** will be the sole judge of what constitutes the most advantageous proposition to the University.

CRITERIA FOR AWARD

The evaluation of the bid will include the overall response to the bid, and will include, but is not limited to the “Best Value Standard for Purchase of Goods or Services” and any other factor **UTPB** deems relevant. The University must be confident that their needs can be met. The University will evaluate and make the award on the offer that is determined to be the best value to the University based on the criteria listed below. All bids must be complete and convey all of the information requested to be considered responsive.

Considerations for award of this contract will include the factors in accordance with Government Code 2155.074. Best Value Standard for Purchase of Goods or Services are as follows:

(a) For a purchase of goods and services under this chapter, each state agency, including UTPB shall purchase goods and services that provide the best value for the state.

(b) In determining the best value for the state, the purchase price and whether the goods or services meet specifications are the most important considerations. However, the Texas Procurement and Support Services or other state agency may, subject to Subsection (c) and Section 2155.075, consider other relevant factors, including:

- (1) Proposed costs
- (2) Stability and success of contractor’s business
- (3) Quality and reliability of the goods and services
- (4) Delivery terms and proposed transition plan
- (5) Indicators of probable contractor performance under the contract such as past contractor performance, the contractor's financial resources and ability to perform, the contractor's experience or demonstrated capability and responsibility, and the contractor's ability to provide reliable maintenance agreements and support
- (6) Other factors relevant to determining the best value for the state in the context of a particular purchase

Added by Acts 1997, 75th Leg., ch. 1206, § 6, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., ch. 1422, § 14.16, eff. Sept. 1, 2001.



PUBLICITY

Contractor agrees that it shall not publicize this Contract or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of the University's employees or use the University's name in connection with any sales promotion or publicity event without the prior express written approval of the University.

SEVERABILITY

In case any provision hereof, or of any resulting agreement or purchase order, shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision thereof, and this Contract shall be construed as if such invalid or unenforceable provision had not been included herein.

GOVERNING LAW

This Contract, including, without limitation, this IFB and any resulting agreement or purchase order, shall be construed and governed by the laws of the State of Texas.

FIRM PRICING

Prices contracted for are to be guaranteed firm pricing for ninety (90) days.

TERMINATION FOR FAILURE TO MEET SPECIFIED DELIVERY

Should the contractor consistently fail to meet the specified delivery, UTPB reserves the right to cancel upon 10 days written notice. UTPB specifically reserves the right to purchase these items elsewhere when delivery cannot be met and UTPB deems it necessary to override the contractual agreement.

FIXED ESCALATION CLAUSE

Bidders must certify a fixed, maximum percentage of escalation for both the initial and any subsequent terms of the contract as specified. This percentage will be employed in the evaluation and award of any contract resultant of the bid. The maximum annual percentage of escalation is _____%. **If this field is not filled in, an escalation of 0% will be assumed.**



RIGHT TO TERMINATE

The University reserves the right to terminate this contract or any portion thereof on thirty (30) days written notice. Grounds for cancellation shall include, but are not limited to the following:

- 1) Failure to provide timely prompt service, and
- 2) Failure to provide quality products.

The University shall be the sole judge of acceptable service as indicated above.

TERMINATION

For termination which is not based upon cause, thirty (30) day written notice shall be given to the contractor.

AMENDMENTS

This Contract may be amended only upon written agreement between UTPB and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void.

PROTECTION OF PROPERTY

Vendors shall at all times guard against damage or loss to the University property or of other vendors, suppliers or contractors, and shall be responsible for replacing or repairing, or for the cost of repairs or replacement of any such loss or damage. The University may require payment or require such additions and/or adjustments to the Vendor's assessment to ensure reimbursement or replacement for such loss or damage to property incurred by the Vendor or its agents

INDEMNIFICATION

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND UT PERMIAN BASIN ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. CONTRACTOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY TEXAS SOUTHERN UNIVERSITY.

THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR UT PERMIAN BASIN FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF UT PERMIAN BASIN OR ITS EMPLOYEES.



VENDOR CERTIFICATION / ACCEPTANCE

The undersigned hereby certifies that he/she has read, understands, and agrees that acceptance by UTPB of the bidder's offer by issuance of a purchase order will create a binding legal contract. Further he/she agrees to fully comply with documentary forms herewith made a part of this specific procurement

NAME OF COMPANY:_____

AUTHORIZED SIGNATURE:_____

TYPED NAME & TITLE:_____

TERMS AND CONDITIONS & ATTACHMENTS

The following attachments are to be considered as part of this bid:

- 1) The University of Texas Permian Basin "Purchase Order Terms and Conditions"



SPECIFICATIONS

Statement of Work

The University is soliciting bids for bus transportation services for Athletics for the Fall 2019 – Spring 2020 Travel. Department is issuing this bid per the terms, conditions, and specifications as described below. Schedules are estimates only. Dates and/or entire schedule may change.

Bus Details

Vendor must provide operating equipment as specified on the charter bid sheet attached to the bid package. The bus size/capacity will vary by sport and must contain the following:

1. Air Conditioning
2. On-Board Restroom/Lavatory
3. Microphone/PA System
4. Video Monitors with VCR's and DVD's
5. Radio to Radio Communications between buses
6. Ample Storage Compartments
7. Satellite capabilities
8. Wi-Fi capabilities (for Student-Athlete academic purposes)
9. Reclining Seats
10. Ability to promote University Logo on sides of bus
11. Ample spacing between seating to accommodate larger athletes

The following options are not required but are preferred:

1: Electrical Outlets by seats

* Bidders must note on their bid, by line item, if the equipment being quoted does not meet the year model or other requirements. In markets where no equipment is available that meet the 2010 or newer equipment, **UTPB** reserves the right to waive the year model requirement if it is in the best interest of the University to do so.

Specifications

Numbers of buses, etc. included on pricing sheet. Please include all costs for fuel and/or fuel sub-charges, costs related to the driver, and/or other services on each individual trip line.



Please initial at the beginning of each line showing understanding of each mandatory item and ensuring inclusion of the additional necessary information:

___ Proper year and size of bus available for each trip.
➤ In case of accident or breakdown, replacement buses, equal to previous stated requirements, are to be furnished within a reasonable period of time depending on distance from nearest terminal.

___ Agent or Coordinator available for on-campus meetings, as necessary (3 days prior to trip).
➤ Charter Company, agents, and coordinator must have a minimum of five (5) years' experience handling athletic-related travel.
➤ Trip coordinator must be advised of any/all changes in driver assignment at least 24 hours in advance of trip.
➤ The charter service and member-companies are required to possess and submit documentation of the US Department (DOT) Safety designation.

___ Pre-Selection and certification of Motor Coach Drivers
➤ Must be full-time driver with extensive experience.
➤ Requires handpicked drivers by dispatcher. Dispatcher needs to coordinate selection, subject to approval of trip coordinator.

___ for overnight trips, Drivers will be provided lodging in the same hotel as the team. One (1) room with two (2) double beds will be provided for each driver.

___ Drivers shall be responsible for paying for any meals themselves.

___ No part-time drivers will be accepted for these charters without pre-approval by the trip coordinator.

___ Charter service shall have out of area maintenance arrangements. Please specify arrangements in the space provided: _____

___ Supply rates for additional miles and/or hours for changes to the itinerary of trips on this bid.
MILES: _____ HOURS: _____

___ Define any/all deadhead mileage charges or back charges anticipated/projected for this bid:

➤ Include and specify shuttle mileage charges if needed. _____



____ Indicate charges for cancellations made less than 48 hours but more than 24 hours prior to scheduled departure time:

____ Indicate charges for cancellations made less than 24 hours prior to scheduled departure time, and after buses have been dispatched for the charter:

____ Buses supplied for this charter service must all be from the bus line and company. No exceptions to this specification will be granted.

____ Vendor must contact the trip coordinator at least (5) days prior to each charter.

____ It shall not be acceptable to confirm reservation or expected provision of a smaller passenger bus in lieu of the mandatory specification for a 40/56 passenger unit as specified in this bid invitation, nor the substitution of a bus older than the 2010 model year in lieu of the newer unit without approval from **UTPB Athletic Department**.

____ *Changes may occur at charter party request.

By initialing next to each line item and signing below, I, _____, am certifying that I understand all responsibilities of my company and have included the necessary information needed in this form.

Signature

Date

Name

Company



IFB 742-19-152 Charter Bus for Athletics

Sport	Event Date	Opponent	Site	Depart Date	Return Date	# Buses	Seats	Pricing
W Basketball	November 8-9, 2019	Regis, UC-Springs	Denver, CO	11/6/2019	11/9/2019	1	56	
W Basketball	November 14-16, 2019	Dallas Christian & TX State Univ	Dallas, TX & San Marcos, TX	11/13/2019	11/16/19	1	56	
W Basketball	December 19 & 21, 2019	TAMUK & TAMIU	Kingsville, & Laredo, TX	12/18/2019	12/21/2019	1	56	
W Basketball	January 2 & 4, 2020	Angelo State & Lubbock	San Angelo & Lubbock, TX	1/1/2020	1/4/2020	1	56	
W Basketball	January 16 & 18, 2020	Tarleton & Texas Women's	Stephenville & Denton, TX	1/15/2020	1/18/2020	1	56	
W Basketball	January 30 and February 1, 2020	ENMU & WTAMU	Portales, NM & Canyon, TX	1/29/2020	2/1/2020	1	56	
W Basketball	February 13 & 15, 2020	St. Edwards & St. Mary's	Austin & San Antonio, TX	2/12/2020	2/15/2020	1	56	
W Basketball	February 22, 2020	WNMU	Silver City, NM	2/21/2020	2/22/2020	1	56	
W Basketball	February 4-8, 2020	LSC Tourney		3/1/2020	3/8/2020	1	56	

TOTAL BID Amount:

\$ _____



**The University of Texas at Permian Basin
Purchase Order Terms and Conditions**

1. **DELIVERY; SUBSTITUTIONS; INVOICES:** Contractor will keep University advised at all times of the status of delivery or performance under this Purchase Order. If delay is foreseen, Contractor will give prompt written notice to University. Upon notice, University may extend the delivery date in its sole discretion. Contractor will only tender for acceptance those goods and services that conform to the requirements of this Purchase Order. Substitutions, cancellations and price changes will require prior written consent of University. Default in promised delivery or failure to conform to the requirements of this Purchase Order authorizes University to purchase goods or services elsewhere and charge to Contractor any excess cost of such repurchase. Contractor will show this Purchase Order number on all packages, shipments, and invoices.
2. **TITLE AND RISK OF LOSS:** Title to and risk of loss to any goods to be delivered under this Purchase Order will not pass to University until University actually receives and takes possession of such goods at the point of delivery.
3. **PAYMENTS; SALES TAX; ELECTRONIC FUNDS TRANSFER:**
 - (a) So long as Contractor has provided University with its current and accurate Federal Tax Identification Number in writing, University will pay Contractor for goods and services in accordance with [Chapter 2251, Texas Government Code](#). University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with §151.309, *Texas Tax Code*, and Title [34 Texas Administrative Code \("TAC"\) §3.322](#).
 - (b) [Section 51.012, Texas Education Code](#), authorizes University to make any payment through electronic funds transfer methods. Contractor agrees to receive payments from University through electronic funds transfer methods, including the automated clearing house system (also known as ACH). Prior to the first payment under this Purchase Order, University will confirm Contractor's banking information. Any changes to Contractor's banking information must be communicated to University in writing at least thirty (30) days in advance of the effective date of the change.
4. **WARRANTIES:** In addition to all warranties established by law, Contractor hereby represents, covenants, certifies, warrants and agrees that:
 - (a) Contractor will comply with all requirements of this Purchase Order.
 - (b) If Contractor is a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, it is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly authorized and in good standing to conduct business in the State of Texas.
 - (c) If Contractor is a taxable entity as defined by [Chapter 171, Texas Tax Code](#) ("**Chapter 171**"), Contractor is not currently delinquent in the payment of any taxes due under Chapter 171, or Contractor is exempt from the payment of those taxes, or Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
 - (d) Pursuant to §§[2107.008](#) and [2252.903, Texas Government Code](#), Contractor agrees that any payments owing to Contractor under this Purchase Order 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.
 - (e) In accordance with [§231.006, Texas Family Code](#), the individual or business entity named in this Purchase Order is not ineligible to receive the award of or payment under this Purchase Order and this Purchase Order may be terminated and payment may be withheld if this certification is inaccurate.
 - (f) All goods and services covered by this Purchase Order will conform to the specifications, drawings, samples or other descriptions furnished or adopted by University (collectively "**specifications**"), and will be new, merchantable, fit for the purpose intended, of best quality and workmanship, and free from all defects. University will have the rights of inspection and approval and may reject and return goods or require reperformance of services at Contractor's expense if defective or not in compliance with University's specifications. Defects will not be deemed waived by University's failure to notify Contractor upon receipt of goods or completion of services or by payment of invoice.
 - (g) No disclosure, description, or other communication of any sort will be made by Contractor to any third person of the fact of University's purchase of goods or services under this Purchase Order, or of the details and characteristics of the goods or services, without University's prior written consent. Anything furnished to Contractor by University pursuant to this Purchase Order including samples, drawings, patterns, and materials will remain the property of University, will be held at Contractor's risk, and will be returned to University upon University's request, and no disclosure or reproduction thereof in any form will be made without University's prior written consent.
 - (h) Contractor is familiar with and is in full compliance with its obligations, if any, under all applicable federal, state and local, laws, regulations, and ordinances (collectively, "**Applicable Laws**").
 - (i) All goods delivered or services provided pursuant to this Purchase Order will conform to standards established for such goods and services by all Applicable Laws, including those standards promulgated by the federal Occupational Safety and Health Administration (OSHA) and the Texas Hazard Communication Act, [Chapter 502, Texas Health and Safety Code](#) ("**Texas hazard Communication Act**").
 - (j) Contractor is familiar with and in full compliance with the Texas Hazard Communication Act and will provide either (1) a Material Safety Data Sheet ("**MSDS**") for each product Contractor, its employees, agents or subcontractors brings on University's premises, or (2) a statement of exemption if the product is not covered by the Texas Hazard Communication Act.
 - (k) Use or sale of any goods delivered under this Purchase Order, except (with respect to patents) goods produced to University's detailed design, will not infringe any adverse valid patent, copyright, trademark or other intellectual property right.
 - (l) The price to be paid by University will be that contained in Contractor's bid or proposal, which Contractor warrants to be no higher than Contractor's current prices on orders by others for goods or services of the kind covered by this Purchase Order for similar quantities to similar customers under similar conditions. In the event Contractor breaches its warranty, the prices will be reduced to Contractor's current prices on orders by others or, in the alternative, University may cancel this Purchase Order without liability to Contractor.
 - (m) Contractor will make records of Contractor's costs, reimbursable expenses and payments pertaining to this Purchase Order available to University or its authorized representative during business hours and retain those records for four (4) years after final payment or abandonment of the project, unless University otherwise instructs Contractor in writing.

- (n) If this Purchase Order requires Contractor's presence on University's premises or in University's facilities, Contractor will cause its employees, representatives, agents, and subcontractors to become aware of, fully informed about, and in full compliance with all applicable University rules and policies, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.
- (o) Contractor has not given or offered to give, nor does Contractor 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 this Purchase Order.
- (p) The foregoing representations, covenants, certifications, warranties and agreements will survive acceptance of goods as well as performance of services under this Purchase Order.
5. **ACCESS BY INDIVIDUALS WITH DISABILITIES.** Contractor represents and warrants (the "EIR Accessibility Warranty") that the electronic and information resources and all associated information, documentation, and support that it provides to University under this Purchase Order (collectively, the "EIRs") comply with the applicable requirements set forth in [1 TAC Chapter 213](#) and [1 TAC §206.70](#) (as authorized by [Subchapter M, Chapter 2054, Texas 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 Purchase Order and Contractor will refund to University all amounts University has paid under this Purchase Order within thirty (30) days after the termination date.
6. **ANTITRUST LAWS; CLAIMS FOR OVERCHARGES:** Contractor warrants and represents that neither Contractor nor any party acting on behalf of Contractor has violated the antitrust laws of the United States or of the State of Texas. Contractor hereby assigns to University any and all claims for overcharges associated with this Purchase Order which arise under the antitrust laws of the United States, [15 U.S.C.A. §1](#), et seq., or of the State of Texas, [Tex. Bus. & Comm. Code Sec. 15.01](#), et seq.
7. **INDEPENDENT CONTRACTOR:** In performing any services under this Purchase Order, Contractor is, and undertakes performance thereof as, an independent contractor, with sole responsibility for all persons employed in connection therewith, including exclusive liability for the payment of all federal, state, and local unemployment and disability insurance premiums and fees and all social security and other taxes and contributions payable in respect of such persons, from and against which liability Contractor agrees to indemnify, exonerate and hold harmless University.
8. **INDEMNITY:** CONTRACTOR WILL DEFEND, INDEMNIFY AND HOLD HARMLESS UNIVERSITY, THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM ("BOARD") AND THE STATE OF TEXAS AND THEIR OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE "INDEMNIFIED PARTIES") 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, IN CONNECTION WITH OR RESULTING FROM THIS PURCHASE ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER, TO THE EXTENT CAUSED BY THE ACTS, OMISSIONS OR WILLFUL MISCONDUCT OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS OR SUPPLIERS. IN ADDITION, CONTRACTOR WILL DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THIS PURCHASE ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER.
9. **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 commencement of any services under this Purchase Order. Contractor will endorse all policies to require insurance carriers to notify University of cancellation, termination, material change, or non-renewal of any policy.
10. **VENUE; GOVERNING LAW:** ECTOR County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions, all rights and obligations of its parties, and all claims arising out of or relating to the Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.
11. **ASSIGNMENT AND DELEGATION:** Contractor may not assign any of its rights or delegate any of its obligations under this Purchase Order without University's prior written consent. Any assignment or delegation attempted by Contractor in violation of this clause will be void and ineffective for all purposes.

12. **ENTIRE AGREEMENT; MODIFICATIONS:** This Purchase Order supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. This Purchase Order and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except in writing.
13. **BREACH OF CONTRACT CLAIMS:** To the extent that [Chapter 2260, Texas Government Code](#), is applicable to this Purchase Order and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to [Chapter 2260](#), will be used by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief business officer of University will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties specifically agree that (i) neither the execution of this Purchase Order by University nor any other conduct, action or inaction of any representative of University relating to this Purchase Order 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.
14. **SUBCONTRACTING:** Contractor will use good faith efforts to subcontract the goods or services performed under this Purchase Order in accordance with the Contractor's Historically Underutilized Business Subcontracting Plan ("HSP") submitted in connection with this Purchase Order, if any. Except as specifically provided in the HSP, Contractor will not subcontract any of its duties or obligations under this Purchase Order, in whole or in part. This Purchase Order is subject to [34 TAC §20.285](#). Contractor will comply with all of its duties and obligations under [34 TAC §20.285](#). In addition to other rights and remedies, University may exercise all rights and remedies authorized by [34 TAC §20.285](#).
15. **LOSS OF FUNDING:** Performance by University under this Purchase Order 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. If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Purchase Order without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.
16. **STATE AUDITOR'S OFFICE:** Contractor understands that acceptance of funds under this Purchase Order 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 §§[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 providing all records requested. Contractor will include this provision in all contracts with subcontractors.
17. **LIMITATIONS:** THE PARTIES ARE AWARE THAT THERE MAY BE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THIS PURCHASE ORDER, INCLUDING TERMS AND CONDITIONS (IF ANY) RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
18. **Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy at <http://www.utpb.edu/services/business-affairs/human-resources/conflicts-of>, University's Standards of Conduct Guide at <http://www.utpb.edu/services/business-affairs/compliance/standards-of-conduct>, and applicable state ethics laws and rules at <http://utsystem.edu/offices/general-counsel/ethics>. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, University's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

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

19. **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 this Purchase Order 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 mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

If to University: The University of Texas of the Permian Basin
4901 E. University Blvd.
Odessa, Texas 79762

Attention: The Director of Purchasing



with copy to: The University of Texas of the Permian Basin
4901 E. University Blvd.
Odessa, Texas 79762

Attention: VP of Business Affairs

If to Contractor: _____

Attention: _____

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

Notwithstanding any other requirements for notices given by a party under this Purchase Order, if Contractor intends to deliver written notice to University pursuant to [§2251.054, Texas Government Code](#), then Contractor will send that notice to University as follows:

The University of Texas of the Permian Basin
4901 E. University Blvd.
Odessa, Texas 79762

Fax: (432)552-2795
Email: purchasing@utpb.edu
Attention: The Director of Purchasing

with copy to: The University of Texas of the Permian Basin
4901 E. University Blvd.
Odessa, Texas 79762

Fax: (432)552-2109
Email: businessaffairs@utpb.edu
Attention: VP of Business Affairs

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

- 20. **UNDOCUMENTED WORKERS:** The *Immigration and Nationality Act* ([8 United States Code 1324a](#)) ("**Immigration Act**") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form [I-9 Employment Eligibility Verification Form](#) ("**I-9 Form**") as the document to be used for employment eligibility verification ([8 Code of Federal Regulations 274a](#)). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Purchase Order in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, University may terminate this Purchase Order. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.
- 21. **STATE OF TEXAS COMPUTER EQUIPMENT RECYCLING PROGRAM CERTIFICATION:** Pursuant to [§361.965, Texas Health and Safety Code](#), Contractor certifies that it is full compliance with the *State of Texas Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act* set forth in [Subchapter Y, Chapter 361, Texas Health and Safety Code](#), and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in 30 TAC Chapter 328. Contractor acknowledges that this Purchase Order may be terminated and payment may be withheld if this certification is inaccurate.
- 22. **RESPONSIBILITY FOR INDIVIDUALS PERFORMING WORK; CRIMINAL BACKGROUND CHECKS:** Each individual who is assigned to perform services under this Purchase Order will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing services under this Purchase Order. Prior to commencing services, Contractor will (1) provide University with a list ("**List**") of all individuals who may be assigned to perform services, and (2) have an appropriate criminal background screening performed on all the individuals. Contractor will determine on a case-by-case basis whether each individual assigned to perform services is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University's campus who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform services. Prior to commencing performance of services under this Purchase Order, Contractor will provide University a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will provide University an updated certification letter each time there is a change in the individuals assigned to perform services.

23. **FORCE MAJEURE:** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("**force majeure occurrence**").
24. **TERMINATION:**
- (a) Upon written notice to Contractor, University may terminate this Purchase Order, in whole or in part, without cause. If University terminates without cause, University will pay Contractor all reasonable costs incurred up to the date of termination. Under no circumstance will University pay Contractor for anticipatory or lost profits.
 - (b) In the event of a material failure by Contractor to perform in accordance with the terms of this Purchase Order ("**default**"), University may terminate this Purchase Order upon ten (10) days' written notice of termination setting forth the nature of the default; provided that, the default is through no fault of University. Termination will not be effective if the default is fully cured by Contractor prior to the end of the ten-day period.
26. **EXTERNAL TERMS:** This Purchase Order completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor's performance or provision of goods or services under this Purchase Order ("**External Terms**"). The External Terms are null and void and will have no effect under this Purchase Order, 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.
27. **PUBLIC INFORMATION:** University strictly adheres to all statutes, court decisions and opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* ("**TPIA**"), [Chapter 552, Texas Government Code](#). In accordance with [§552.002](#) of TPIA and [§2252.907](#), *Texas Government Code*, and **at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Purchase Order (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public.**
28. **Contractor Certification regarding Boycotting Israel:** Pursuant to [Chapter 2270, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
29. **Contractor Certification regarding Business with Certain Countries and Organizations:** Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Contractor certifies Contractor (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.