

REQUEST FOR PROPOSAL

by

The University of Texas Permian Basin



for

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

related to

**Installation and Operation of
Vending Machines**

RFP No. 742-21-174-2

Submittal Deadline: 3:00 P. M. Monday, November 30, 2020

Issued: Monday, November 2, 2020

REQUEST FOR PROPOSAL

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SECTION 1

INTRODUCTION

1.1 Description of University

The University of Texas Permian Basin (the "University") is a comprehensive university located in Odessa, Texas. University is an agency and institution of higher education of the State of Texas. University is a component of The University of Texas System ("UT System") and operates under the governance of the Board of Regents of the University of Texas System. The University is a dynamic, growing campus with over 7,000 students. For more information see: www.utpb.edu

1.2 Background and Special Circumstances

The University of Texas Permian Basin currently has vending machines offering candy, chips, crackers/cookies, gum/mints, pastry, bottled sodas 20 oz., canned soda, and PowerAde, located at various locations on campus, with additional machines to be added as needed. The University issues this Request for Proposal ("RFP") to solicit proposals from Qualified Companies to provide beverage and snacks machines and service. The University has two locations, one in Odessa and another at the intersection of HWY 1788 and HWY 191 in Midland County.

1.3 Objective of Request for Proposal

University is seeking to establish a long-term business relationship with a private contractor to manage the beverages and vending machine service operations, and through this RFP the University is soliciting proposals from qualified respondents to assume responsibility for those operations. Our goal is to increase the revenue generated from our beverage and snack service and to provide excellent service to our student population. Proposals should be based on an initial base term of five (5) years with three (3) renewal options of one (1) year each. Vendors may submit a proposal for beverage vending only, snack vending only, or all inclusive of beverage and snack vending combined.

1.4 Commissions

Commissions paid to the University shall be based on a percentage of total monthly gross sales (excluding sales tax) from all beverage/snack vending machines during the contract term with the University agreeing to an exclusive contract. The Contractor shall submit to the University each month a detailed report of sales showing units and dollar values for each machine, that includes the means of computations used to derive the commission. The Contractor will track and collect all sales.

Commission payment shall be due to the University on the tenth (10th) day of the following month.

SECTION 2

NOTICE TO PROPOSER

2.1 Submittal Deadline

University will accept proposals until 3:00 P. M. Central Time, Monday, November 30, 2020 (**Submittal Deadline**).

2.2 RFP Contact Information and Questions

Interested parties may direct questions about this RFP to:

Diana Rodriguez
Assistant Director of Purchasing
The University of Texas Permian Basin
4901 E. University Blvd.
Odessa, Texas 79762

Email to: purchasing@utpb.edu
Subject Line: RFP No. 742-21-174-2

University instructs interested parties to restrict all contact and questions regarding this RFP to written communications delivered (i) in accordance with this Section on or before **3:00 P.M. Monday, November 16, 2020, (Question Deadline)**, or (ii) if questions relate to Historically Underutilized Businesses, in accordance with **Section 2.5**.

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

2.3 Criteria for Selection

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

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

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

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

2.3.1 Threshold Criteria Not Scored

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

2.3.2 Scored Criteria

- 2.3.2.1 Commission revenue and other proposed benefits;
- 2.3.2.2 Reputation of the Proposer and of the Proposer's goods or services;
- 2.3.2.3 Quality of the Proposer's goods or services;
- 2.3.2.4 Extent to which the goods or services meet the University's needs;
- 2.3.2.5 Proposer's past relationship with the University;
- 2.3.2.6 Total long-term benefit to the University;

2.4 Key Events Schedule

Date RFP Issued November 2, 2020

Pre-Proposal Conference 10:00 A. M. Central Time on
Monday, November 9, 2020
TEAMS MEETING (non-mandatory)

https://teams.microsoft.com/join/19%3ameeting_ZGY3YjY4MGIItM2ViYi00MmM0LWExMDEtYjc2ZTE1NTE4NDdj%40thread.v2/0?context=%7b%22Tid%22%3a%221a80b9a9-d8ff-40a8-a66c-c6b368e4f2ae%22%2c%22Oid%22%3a%223cc015d1-aff4-4d11-8bdb-e4b8813648cf%22%2c%22IsBroadcastMeeting%22%3a%22true%7d

Question Deadline 3:00 P. M. Central Time on
Monday, November 16, 2020

(ref. **Section 2.2**)

Submittal Deadline 3:00 P. M. Central Time on
Monday, November 30, 2020
(ref. **Section 2.1**)

2.5 Historically Underutilized Businesses

- 2.5.1 All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (**HUBs**) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP, Contractor subcontracts any Work, then Contractor must make a good faith effort to utilize HUBs certified by the Procurement and Support Services Division of the Texas Comptroller of Public Accounts. Proposals that fail to comply with the requirements contained in this Section 2.5 will constitute a material failure to comply with advertised specifications and will be rejected by University as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP. Proposer acknowledges that, if selected by University, its obligation to make a good faith effort to utilize HUBs when subcontracting any Work will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of Work by the Proposer is subject to review by University to ensure compliance with the HUB program.
- 2.5.2 University has reviewed this RFP in accordance with [34 TAC Section 20.13\(a\)](#), and has determined that subcontracting opportunities are probable under this RFP.
- 2.5.3 A HUB Subcontracting Plan (**HSP**) is a required part of the proposal. The HSP will be developed and administered in accordance with University's Policy on Utilization of Historically Underutilized Businesses, attached as **APPENDIX THREE**.

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

Questions regarding the HSP may be directed to:

*Contact: Diana Rodriguez
Assistant Director of Purchasing
Phone: 432-552-2792
Email: purchasing@utpb.edu*

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

- 2.5.4 *At the same time Proposer submits its proposal (no later than the Submittal Deadline (ref. **Section 2.1**)), Proposer must submit the following HUB materials (**HUB Materials**):*
- (a) **One (1) complete original paper copy of Proposer's HSP**, and
 (b) **One (1) complete electronic copy of Proposer's HSP in a single .pdf file on a flash drive.**

Proposer's HUB Materials must be submitted (as instructed in **Section 3.2**) under separate cover and in a separate envelope (**HSP Envelope**) with the top outside surface clearly indicating:

- 2.5.4.1 RFP No. 742-21-174-2 and the Submittal Deadline (ref. **Section 2.1**) in the lower left hand corner,
 2.5.4.2 Name and the return address of Proposer, and
 2.5.4.3 Phrase "HUB Subcontracting Plan."

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

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

NOTE: The requirement that Proposer provide the HSP under this **Section 2.5.4** is separate from and does not affect Proposer's obligation to provide University with the number of copies of its proposal specified in **Section 3.1**.

2.6 Pre-Proposal Conference

University will hold a non-mandatory pre-proposal TEAMS conference at **10:00 A.M. Central Time on Monday, November 9, 2020**,

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZGY3YjY4MGltM2ViYi00MmMOLWExMDEtYjc2ZTE1NTE4NDdj%40thread.v2/0?context=%7b%22Tid%22%3a%221a80b9a9-d8ff-40a8-a66c-c6b368e4f2ae%22%2c%22Oid%22%3a%223cc015d1-aff4-4d11-8bdb-e4b8813648cf%22%2c%22IsBroadcastMeeting%22%3atrue%7d

(ref. **APPENDIX FOUR**). Attendance at the pre-submittal conference is optional.

SECTION 3

SUBMISSION OF PROPOSAL**3.1 Number of Copies**

Proposer must submit one (1) original complete 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**) and delivered to:

The University of Texas of the Permian Basin
4901 E. University Blvd.
Odessa, TX 79762
Purchasing Department
Mesa Building Room 4270

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

- 3.4.1.1 Specifications and Additional Questions (ref. **Section 5**);
- 3.4.1.2 Agreement (ref. **APPENDIX TWO**);
- 3.4.1.3 Proposal Requirements (ref. **APPENDIX ONE**);
- 3.4.1.4 Notice to Proposers (ref. **Section 2**).

3.5 Submittal Checklist

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

- 3.5.1 Signed and Completed Execution of Offer (ref. **Section 2** of **APPENDIX ONE**)
- 3.5.2 Signed and Completed Pricing and Delivery Schedule (ref. **Section 6**)
- 3.5.3 Responses to Proposer's General Questionnaire (ref. **Section 3** of **APPENDIX ONE**)
- 3.5.4 Signed and Completed Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**)
- 3.5.5 Responses to questions and requests for information in the Specifications and Additional Questions Section (ref. **Section 5**)
- 3.5.6 Signed and completed originals of the HUB Subcontracting Plan or other applicable documents (ref. **Section 2.5** and **APPENDIX THREE**).

SECTION 4

GENERAL TERMS AND CONDITIONS

The terms and conditions contained in the attached Agreement (ref. **APPENDIX TWO**) or, in the sole discretion of University, terms and conditions substantially similar to those contained in the Agreement, will constitute and govern any contract or agreement that results from this RFP.

SECTION 5

SPECIFICATIONS AND ADDITIONAL QUESTIONS

5.1 General

The minimum requirements and the specifications for the Services are set forth in the sample Vending Machine Agreement in **Appendix two**. Each proposal must include information that clearly indicates the Proposer's ability to meet or exceed those minimum requirements. Additionally, in its proposal each Proposer must (1) list any additional services or benefits not otherwise identified in the RFP that Proposer would propose to provide to the University and (2) provide details describing any unique or special services or benefits offered or advantages to be gained by University from doing business with Proposer. **Provided, however, such additional services or benefits must be directly related to the goods and services solicited under this RFP.** (See section 3.6 of **Appendix One.**)

5.2 Products

In its Proposal, the Proposer must clearly identify all of the snack/beverages products that it proposes to sell through vending machines at the University locations identified in **Exhibit B to Appendix two**.

It is the University's intention to select a Contractor as a result of this RFP that has the exclusive right to sell beverage and snacks through vending machines at the locations defined in **Section 2.2 of Appendix Two**. Such exclusivity shall only apply to machines vended, and shall not affect or prohibit any over the counter sales.

In addition, the University will accept labeled **ALTERNATE** proposals for "**SNACK ONLY**" or "**BEVERAGE ONLY**"

In its Proposal, the Proposer must clearly identify the vending machines and services (the "Equipment" and "Services" as defined in **Section 2.2 of Appendix Two**) that it proposes to use to sell Products at the University locations identified in **Exhibit B to Appendix Two**.

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

5.2.1 Service Requirements

a. Basic Service

- Furnish, install, operate and maintain new, state of the art vending machines for all University facilities as specified by the University. All machines on campus must be equipped with one card reader that will process credit cards.
- Competitive pricing for all bottled and canned beverages as well as prepackaged snacks
- Suitable product for use by the athletics program.
- Vending for hot/cold meals in the Engineering Building
- A plan for assisting the University with recycling efforts

5.2.2 Product: The Contractor shall provide a variety of beverage products, which shall include healthy alternatives. The drinks shall include, but not be limited to, juices, teas, carbonated drinks, bottled water and isotonic beverages. No products which have exceeded the recommended sales date of the manufacture may be stocked or remain stocked, in machines under the terms of the contract.

5.2.3 Product Brand: A list of all beverage/snack products to be stocked in machines and their selling prices will be provided to the University

5.2.4 Product Pricing: A list of all beverage/snack products selling prices will be provided to the University including Proposer's demonstration that at all times its prices are and will be competitive with local vendors in the greater Odessa, Texas area.

5.2.5 The package or servicing size of each of the Products.

- 5.2.6 Machine(s) Location: Location of machines will only be approved by the University
- 5.2.7 Change in Service at a Location: Any changes to the type of vending service provided at a particular location must be approved by the University in advance.
- 5.2.8 Product Outages: The Contractor shall keep full service machines stocked so as to provide sufficient amounts of products of good quality, dispensed in conformity with all applicable federal, state, and local laws. This includes all various break periods when students and faculty are out, but staff is still on campus. Product outages exceeding 20% of selections for any machine are not acceptable. The Contractor will immediately increase service frequency to a given location if unacceptable product outages occur more than once in any one-month period.
- 5.2.9 Machine Maintenance and Repairs: The Contractor shall be responsible for all maintenance and repairs of its equipment. In the event service failures reach an unacceptable level, as reasonably determined by University, The University will have the right to require, and the contractor shall agree to furnish at its expense, a dedicated mechanic to service University's account, for the remaining period of the contract.
- 5.2.10 The Preparation Activities that the Proposer will perform as set forth in **Section 2.1 of Appendix Two**.
- 5.2.11 The Proposer's procedures for performing on-call service (**Section 2.6.2 of Appendix Two**) and Maintenance (**Section 2.6.3 of Appendix Two**) of the Equipment.
- 5.2.12 The Proposer's plan for conducting student evaluations as required in Section 2.12 of Appendix Two.
- 5.2.13 The Proposer's plan for ensuring the Equipment's compliance with the Energy-Saving and Energy Management requirements in Section 2.10 of Appendix Two.
- 5.2.14 The Proposer's ability to comply with the Payment Card Industry Standards Section 3.5 of Appendix Two
- 5.2.15 The Proposer's ability to comply with the requirements for Access by Individuals with Disabilities as set forth in Section 16 of Appendix Two.
- 5.2.16 Cleanliness: The Contractor shall maintain its equipment in a clean and sanitary condition and in compliance with all local, county, state and federal regulations. This includes internal and external surfaces, including the top of the machines. The Contractor shall keep areas under machines at the same level of cleanliness as floor areas around the machines. This may require occasional moving of machines and cleaning of accumulated dust, grease and food or drink products. Failure to maintain machine cleanliness as described will subject the contract to cancellation.
- 5.2.17 Sales Royalty
In its Proposal, the Proposal must clearly identify the Royalty it offers to pay to the University as set forth in Section 3 of Appendix Two. The Royalty proposed must reflect the proposed exclusivity rights set forth in Section 5.2 above

5.3 Additional Questions Specific to this RFP

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

- 5.3.1 If Proposer takes exception to any terms or conditions set forth in **APPENDIX TWO**), Proposer must submit a list of the exceptions.
- 5.3.2 By signing the Execution of Offer (ref. **Section 2 of APPENDIX ONE**), Proposer agrees to comply with Certificate of Interested Parties laws (ref. [Section 2252.908, Government Code](#)) and [1 TAC Sections 46.1 through 46.5](#)) as implemented by the Texas Ethics Commission (**TEC**), including, among other things, providing TEC and University with information required on the form promulgated by TEC and set forth in **APPENDIX EIGHT**. *Proposer may learn more about these disclosure requirements, including the use of the TEC electronic filing system, by reviewing the information on the TEC website at https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html. **The Certificate of Interested Parties must only be submitted by Contractor upon delivery to University of a signed Agreement.***

SECTION 6

PRICING AND DELIVERY SCHEDULE

Proposal of: _____
(Proposer Name)

To: University

RFP No.: 742-21-174-2

Ladies and Gentlemen:

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

6.1 Term of Agreement

University anticipates that the term of the Agreement may be up to 5 years with the initial term of the Agreement proposed to begin on January 1, 2021, and proposed to expire on December 31, 2026. The Agreement may be extended up to three (3) times for one (1) year periods upon mutual agreement and in writing.

6.2 Proposed Royalty Payment Model

University will *not* reimburse Contractor for expenses.

Additional promotional offerings to University.

6.3 Discounts

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

6.4 Schedule for Completion of Tasks and Submittal of Deliverables

6.5 Payment Terms

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

University will be entitled to withhold _____ percent (____%) of the total payment due under the Agreement until after University's acceptance of the final work product.

Indicate below the prompt payment discount that Proposer offers:

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

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

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

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

APPENDIX ONE
PROPOSAL REQUIREMENTS

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SECTION 1

GENERAL INFORMATION

1.1 Purpose

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

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

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

1.2 Inquiries and Interpretations

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

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

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

1.3 Public Information

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

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

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

1.4 Type of Agreement

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

1.5 Proposal Evaluation Process

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

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

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

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

University reserves the right to (a) enter into an agreement for all or any portion of the requirements and specifications set forth in this RFP with one or more Proposers, (b) reject any and all proposals and re-solicit proposals, or (c) reject any and all proposals and temporarily or permanently

abandon this selection process, if deemed to be in the best interests of University. Proposer is hereby notified that University will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by University.

1.6 Proposer's Acceptance of RFP Terms

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

1.7 Solicitation for Proposal and Proposal Preparation Costs

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

1.8 Proposal Requirements and General Instructions

- 1.8.1 Proposer should carefully read the information contained herein and submit a complete proposal in response to all requirements and questions as directed.
- 1.8.2 Proposals and any other information submitted by Proposer in response to this RFP will become the property of University.
- 1.8.3 University will not provide compensation to Proposer for any expenses incurred by the Proposer for proposal preparation or for demonstrations or oral presentations that may be made by Proposer. Proposer submits its proposal at its own risk and expense.
- 1.8.4 Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFP in any way; or (iii) contain irregularities of any kind, are subject to disqualification by University, at University's sole discretion.
- 1.8.5 Proposals should be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet the requirements and specifications of this RFP. Emphasis should be on completeness, clarity of content, and responsiveness to the requirements and specifications of this RFP.
- 1.8.6 University makes no warranty or guarantee that an award will be made as a result of this RFP. University reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP or the Agreement when deemed to be in University's best interest. University reserves the right to seek clarification from any Proposer concerning any item contained in its proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to University, at University's sole discretion. Representations made by Proposer within its proposal will be binding on Proposer.
- 1.8.7 Any proposal that fails to comply with the requirements contained in this RFP may be rejected by University, in University's sole discretion.

1.9 Preparation and Submittal Instructions

1.9.1 Specifications and Additional Questions

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

1.9.2 Execution of Offer

Proposer must complete, sign and return the attached Execution of Offer (ref. **Section 2 of APPENDIX ONE**) as part of its proposal. The Execution of Offer must be signed by a representative of Proposer duly authorized to bind the Proposer to its proposal. Any proposal received without a completed and signed Execution of Offer may be rejected by University, in its sole discretion.

1.9.3 Pricing and Delivery Schedule

Proposer must complete and return the Pricing and Delivery Schedule (ref. **Section 6**), as part of its proposal. In the Pricing and Delivery Schedule, the Proposer should describe in detail (a) the total fees for the entire scope of Work; and (b) the method by which the fees are calculated. The fees must be inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit.

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

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

1.9.4 Proposer's General Questionnaire

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

1.9.5 Addenda Checklist

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

1.9.6 Submission

*Proposer should submit all proposal materials as instructed in **Section 3**. RFP No. (ref. **Title Page**) and Submittal Deadline (ref. **Section 2.1**) should be clearly shown (1) in the Subject line of any email transmitting the proposal, and (2) in the lower left-hand corner on the top surface of any envelope or package containing the proposal. In addition, the name and the return address of the Proposer should be clearly visible in any email or on any envelope or package.*

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

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

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

SECTION 2

EXECUTION OF OFFER

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

- 2.1 Representations and Warranties.** Proposer represents, warrants, certifies, acknowledges, and agrees as follows:
- 2.1.1 Proposer will furnish Work to University and comply with all terms, conditions, requirements and specifications set forth in this RFP and any resulting Agreement.
 - 2.1.2 This RFP is a solicitation for a proposal and is not a contract or an offer to contract. Submission of a proposal by Proposer in response to this RFP will not create a contract between University and Proposer. University has made no representation or warranty, written or oral, that one or more contracts with University will be awarded under this RFP. Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
 - 2.1.3 Proposer is a reputable company that is lawfully and regularly engaged in providing Work.
 - 2.1.4 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform Work.
 - 2.1.5 Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances relating to performance of Work.
 - 2.1.6 Proposer understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in the Agreement under which Proposer will be required to operate.
 - 2.1.7 Proposer will not delegate any of its duties or responsibilities under this RFP or the Agreement to any sub-contractor, except as expressly provided in the Agreement.
 - 2.1.8 Proposer will maintain any insurance coverage required by the Agreement during the entire term.
 - 2.1.9 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. University will rely on such statements, information and representations in selecting Contractor. If selected by University, Proposer will notify University immediately of any material change in any matters with regard to which Proposer has made a statement or representation or provided information.
 - 2.1.10 PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, UT SYSTEM, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF PROPOSER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROPOSER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.
 - 2.1.11 Pursuant to Sections [2107.008](#) and [2252.903](#), *Government Code*, any payments owing to Proposer under the Agreement may be applied directly to any debt or delinquency that Proposer owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until such debt or delinquency is paid in full.
 - 2.1.12 Any terms, conditions, or documents attached to or referenced in Proposer's proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP, and (b) do not place any requirements on University that are not set forth in this RFP. Submission of a proposal is Proposer's good faith intent to enter into the Agreement with University as specified in this RFP and that Proposer's intent is not contingent upon University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.
- 2.2 No Benefit to Public Servants.** Proposer has not given or offered to give, nor does Proposer intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting Agreement, and Proposer may be removed from all proposer lists at University.
- 2.3 Tax Certification.** Proposer is not currently delinquent in the payment of any taxes due under [Chapter 171, Tax Code](#), or Proposer is exempt from the payment of those taxes, or Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at University's option, may result in termination of any resulting Agreement.
- 2.4 Antitrust Certification.** Neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, nor anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in [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.
- 2.5 Authority Certification.** The individual signing this document and the documents made a part of this RFP, is authorized to sign the documents on behalf of Proposer and to bind Proposer under any resulting Agreement.
- 2.6 Child Support Certification.** Under [Section 231.006, Family Code](#), relating to child support, the individual or business entity named in Proposer's proposal is not ineligible to receive award of the Agreement, and any Agreements resulting from this RFP may be terminated if this certification is inaccurate.

- 2.7 Relationship Certifications.**
- No relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Proposer that is a sole proprietorship, the officers or directors of any Proposer that is a corporation, the partners of any Proposer that is a partnership, the joint venturers of any Proposer that is a joint venture, or the members or managers of any Proposer that is a limited liability company, on one hand, and an employee of any member institution of UT System, on the other hand, other than the relationships which have been previously disclosed to University in writing.
 - Proposer has not been an employee of any member institution of UT System within the immediate twelve (12) months prior to the Submittal Deadline.
 - No person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in Proposer's proposal or any contract resulting from this RFP (ref. [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 any Agreement resulting from this RFP with Proposer.
- 2.8 Compliance with Equal Employment Opportunity Laws.** Proposer is in compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 2.9 Compliance with Safety Standards.** All products and services offered by Proposer to University in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law ([Public Law 91-596](#)) and the *Texas Hazard Communication Act*, [Chapter 502, Health and Safety Code](#), and all related regulations in effect or proposed as of the date of this RFP.
- 2.10 Exceptions to Certifications.** Proposer will and has disclosed, as part of its proposal, any exceptions to the information stated in this [Execution of Offer](#). All information will be subject to administrative review and approval prior to the time University makes an award or enters into any Agreement with Proposer.
- 2.11 Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act Certification.** If Proposer will sell or lease computer equipment to University under any Agreement resulting from this RFP then, pursuant to [Section 361.965\(c\), Health & Safety Code](#), Proposer is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in [Chapter 361, Subchapter Y, Health & Safety Code](#), and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in [30 TAC Chapter 328, 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.
- 2.12 Conflict of Interest Certification.**
- Proposer is not a debarred vendor or the principal of a debarred vendor (i.e. owner, proprietor, sole or majority shareholder, director, president, managing partner, etc.) either at the state or federal level.
 - Proposer's provision of services or other performance under any Agreement resulting from this RFP will not constitute an actual or potential conflict of interest.
 - Proposer has disclosed any personnel who are related to any current or former employees of University.
 - Proposer has not given, nor does Proposer intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to an officer or employee of University in connection with this RFP.

2.13 Proposer should complete the following information:

If Proposer is a Corporation, then State of Incorporation: _____

If Proposer is a Corporation then Proposer's Corporate Charter Number: _____

RFP No.: 742-21-174-2

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)

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* (ref. [Chapter 552, Government Code](#)), and other applicable law.

3.2 Approach to Work

- 3.2.1 Proposer will provide a statement of the Proposer's service approach and will describe any unique benefits to University from doing business with Proposer. Proposer will briefly describe its approach for each of the required services identified in **Section 5.4** Scope of Work of this RFP.
- 3.2.2 Proposer will provide an estimate of the earliest starting date for services following execution of the Agreement.
- 3.2.3 Proposer will submit a work plan with key dates and milestones. The work plan should include:
- 3.2.3.1 Identification of tasks to be performed;
 - 3.2.3.2 Time frames to perform the identified tasks;
 - 3.2.3.3 Project management methodology;
 - 3.2.3.4 Implementation strategy; and
 - 3.2.3.5 The expected time frame in which the services would be implemented.
- 3.2.4 Proposer will describe the types of reports or other written documents Proposer will provide (if any) and the frequency of reporting, if more frequent than required in this RFP. Proposer will include samples of reports and documents if appropriate.

3.3 General Requirements

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

3.4 Service Support

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

3.5 Quality Assurance

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

3.6 Miscellaneous

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

SECTION 4
ADDENDA CHECKLIST

Proposal of: _____
(Proposer Name)

To: University

RFP No.: 742-21-174-2

Ladies and Gentlemen:

The undersigned Proposer hereby acknowledges receipt of the following Addenda to the captioned RFP (*initial blanks for any Addenda issued*).

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

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

APPENDIX TWO

THIS STANDARD VENDING MACHINE SERVICES CONTRACT MUST BE PROCESSED IN ACCORDANCE WITH [UTS 130, VENDING MACHINE SERVICES CONTRACTS](#).

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

RECITALS

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

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

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

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

TERMS AND CONDITIONS

Section 1. **TERM AND EXTENSION**

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

This Agreement may be extended for up to _____ (__) years, by written agreement of University and Contractor.

Section 2. **CONTRACTOR'S OBLIGATIONS**

- 2.1 Preparation Activities; Schedule. Contractor's activities (**Preparation Activities**) to be performed in preparation to provide vending machine operations on Campus and the related schedule for performance of the Preparation Activities are set forth in **Exhibit A** attached and incorporated for all purposes.
- 2.2 Commencement of Work. Beginning on the Effective Date, Contractor will, in accordance with the terms and conditions of this Agreement, commence performance of vending machine operations at Campus locations (collectively, **Locations**) more particularly identified in **Exhibit B** attached and incorporated for all purposes, through Contractor's vending machines and related equipment (collectively, **Equipment**) dispensing the products (collectively, **Products**) listed in **Exhibit C** attached and incorporated for all purposes. The Preparation Activities, vending machine operations and all other services, duties and obligations required to be performed by Contractor under this Agreement will sometimes be collectively referred to as "**Services**."

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

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

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

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

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

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

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

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

2.5 Products.

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

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

list of all coded markings and explanatory “keys.” Contractor will deliver to University an updated version of that report within five (5) days after Contractor changes the coding system or any explanatory “key.”

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

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

2.6 Equipment.

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

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

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

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

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

2.7 Refunds. Contractor will provide University with a cash fund in the amount of **\$100.00** which will be used by University for making refund payments available at Campus locations designated by University. Contractor will make additional funds available to University as required to maintain fund at a level adequate to pay refunds promptly upon submission of a refund claim. Contractor will supply a written form, mutually agreeable to both parties, to be used as a voucher for submitting refund claims. The form will include space for claimants to identify (1) the type of Equipment, (2) the Location, (3) the amount of the loss, (4) a description of how the loss occurred, (5) the date of the loss, (6) the claimant's name and signature, and (7) the date of the refund claim.

2.8 Auxiliary Enterprise.

Contractor, at its sole cost and expense, will comply with all requirements of [Subchapter C, Chapter 2252, Texas Government Code](#), including the provision of financial statements, payment statements derived from sales tax reports, and bonds.

- 2.8.1 Financial Statement. In accordance with [§2252.062, Texas Government Code](#), Contractor will submit to University on or before the Effective Date, two (2) copies of Contractor's most recent financial statement prepared by a certified public accountant on the Effective Date.
- 2.8.2 Payment Statement. In accordance with [§2252.063, Texas Government Code](#), Contractor will submit to University, no later than the 15th day after the end of each contract year, an annual payment statement derived from all of Contractor's sales tax reports for its operations during the preceding contract year. The annual payment statement must be certified by a certified public accountant licensed in the State of Texas. "**Contract year**" means that period of time beginning on the Effective Date and ending _____, 20____ and each twelve (12) month period thereafter, during the term of this Agreement.
- 2.8.3 Performance Bond. In accordance with [§2252.064, Texas Government Code](#), Contractor will provide University with a performance bond for each contract year during the term of this Agreement. The amount of the performance bond during the term of this Agreement will be equal to Thirty Thousand Dollars (**\$30,000.00**). The performance bond will be issued by a surety company authorized to do business in the State of Texas and acceptable to University in all respects. The performance bond will be made payable to University and conditioned upon Contractor's prompt and faithful performance of Work.
- 2.9 Costs of Operation. Contractor will pay all costs for installing, operating, stocking, servicing, and replacing the Equipment; provided, however, subject to **Section 2.3**, University will provide Contractor with electricity and water for operation of Equipment on Campus. University will not be responsible for any money shortages that result from theft, burglary, inoperable or malfunctioning Equipment, or any other cause.
- 2.10 Energy-Saving; Energy Management. Pursuant to [§2165.058, Texas Government Code](#):
- 2.10.1 Internal Energy Saving or Management Device. Contractor will activate and maintain any internal energy saving or energy-management device or option that is already part of or contained in the Equipment.
- 2.10.2 External Energy Saving or Management Device. Contractor will use an external energy-saving or energy-management device in all Equipment that (a) operates with a compressor, and (b) does not have an activated and operational internal energy-saving or energy-management device or option.
- 2.10.3 Expenses. Contractor is responsible for any and all expenses associated with the acquisition, installation, or maintenance of all energy-saving devices required by this Section.
- 2.10.4 Exception. This **Section 2.10** does not apply to any Equipment that contains a perishable food product, as defined by [§96.001, Texas Civil Practice and Remedies Code](#).
- 2.11 Signs. Contractor will not post signs or posters at the Locations or elsewhere on Campus. Contractor may only engage in marketing or promotional activity on Campus, that in each instance, (a) fully complies with Applicable Laws and University Rules, (b) has received University's advance written approval, and (c) qualifies as "use or acknowledgement" as defined in [Treasury Regulations 1.513-4\(c\)\(iv\)](#).
- 2.12 Student Evaluation. Contractor will comply with requirements of [§51.945, Texas Education Code](#), and all University Rules regarding students' involvement in the evaluation of the performance of Contractor, by periodically holding meetings or forums to provide University's students with a reasonable opportunity to discuss the performance of Contractor. Contractor will obtain University's prior written approval concerning the date, time and location for each meeting or forum at least thirty (30) days in advance.

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

- 2.13.1 Right to Refuse Entry and Eject. University has the right to (a) require identification from any person on University's Campus, (b) refuse entry to persons having no legitimate business on Campus, and (c) eject any undesirable person refusing to leave peaceably on request. Contractor will cooperate with all authorized University representatives in the exercise of University's rights described in this Section.
- 2.13.2 Identification Badge. Contractor will provide each of Contractor's employees, representatives, agents and subcontractors with an identification badge and will cause each employee, representative, agent and subcontractor to prominently display the badge on his or her person at all times while on Campus.
- 2.13.3 Background Check. Each individual who is assigned to perform any of Contractor's duties and obligations under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor and previously approved by University in writing. Contractor is responsible for the performance of all individuals performing Work under this Agreement. Prior to commencing any Work on Campus, Contractor will at its expense (a) provide University with a list ("**List**") of all individuals who may be assigned to perform Work, and (b) have an appropriate criminal background screening performed concerning each individual. Contractor will determine on a case-by-case basis whether each individual is qualified to provide Work. Contractor will not knowingly assign any individual to provide Work who has a history of criminal conduct unacceptable for a university campus, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform Work.
- 2.13.4 Certification. Prior to commencing any Work under this Agreement, Contractor will provide University a letter signed by an authorized representative of Contractor certifying compliance with **Section 2.13.3**. Contractor will provide University with an updated certification letter each time there is a change in the individuals assigned to perform Work.

Section 3.

ROYALTY PAYMENTS, RECORDS AND REPORTS

- 3.1 Royalty. Contractor will pay University a royalty (**Royalty**) on gross revenue generated by Work, all as more particularly provided in **Exhibit D** attached and incorporated for all purposes. The term "**gross revenue**" means gross revenue before exclusion of applicable sales taxes.
- 3.2 Payment and Report. Contractor will pay University the Royalty on or before the 10th day of the month that follows the month in which the Royalty was earned. Contractor will make all Royalty checks payable to "The University of Texas Permian Basin," and will deliver the monthly payments to University's Office for Business Affairs, accompanied by a written report for the preceding month, showing the Royalty due and the dollar amount of gross revenue (a) from each piece of Equipment, and (b) from each Location. The report will also contain a summary showing all monthly and year-to-date gross revenue generated by Contractor as a result of Services.
- 3.3 Accurate Records. Contractor will keep accurate records of all sales on Campus. Contractor will make all records related to the Services available to University upon written request during the Term of this Agreement and for up to four (4) years after the expiration or termination of this Agreement. Contractor will permit authorized representatives of University to accompany Contractor's employees during cash collection and counting activities and to randomly examine the receipts of Equipment operated by Contractor.
- 3.4 Form of Reports. All reports required or given under this Agreement will be presented in forms satisfactory to University in all respects.
- 3.5 Payment Card Industry Standards University is required to validate compliance on a periodic basis with all applicable Payment Card Industry Data Security Standards (collectively, **PCI DSS**), including Payment Application Data Security Standards (collectively, **PA DSS**), promulgated by the Payment Card Industry Security Standards Council (**PCI SSC**). The compliance validation process requires University to undergo an assessment of (1) all system components used to process, store or transmit cardholder data, and any other components that reside on the same network segment as those system components, as well as (2) all related processes used to process, store or transmit cardholder data, (collectively, **System Components in Scope**). Some or all System Components in Scope have been outsourced to Contractor under this Agreement. Contractor will cause its agents and subcontractors to comply with all terms of this Section applicable to Contractor. Contractor will achieve and maintain

compliance under the current versions of PCI DSS and PA DSS published on the PCI SSC website for service providers and payment applications. As evidence of compliance, Contractor will provide to University on or before the Effective Date and within ten (10) days after each anniversary of the Effective Date during the term of this Agreement, a copy of Contractor's annual attestation of compliance signed by a Qualified Security Assessor (QSA) as more particularly described on the PCI SSC website.

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

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

Section 4.
LICENSES, TAXES, APPLICABLE LAWS AND UNIVERSITY RULES

- 4.1 Licenses and Taxes. Contractor will obtain, maintain in effect, and pay the cost of all licenses, permits, certifications, and inspections required in connection with Contractor's performance of Work. Contractor will pay all taxes (including sales, excise and payroll taxes), payroll deductions, employee benefits, fines, penalties, or other payments required by Applicable Laws in connection with Contractor's performance of Work. Contractor will file proper sales tax returns with and remit sales tax payments to the Texas Comptroller of Public Accounts.
- 4.2 Applicable Laws and University Rules. Contractor will comply with, and will cause its employees, representatives, agents, and subcontractors to comply with, all Applicable Laws and University Rules.
- 4.3 Health and Safety Inspections. CONTRACTOR WILL PROVIDE UNIVERSITY WITH COPIES OF ALL HEALTH AND SAFETY INSPECTION REPORTS RELATED TO THE SERVICES IN ANY WAY WITHIN **THREE (3)** DAYS AFTER CONTRACTOR RECEIVES THE REPORTS.
- 4.4 Remedies. In the event University reasonably believes that Contractor is not in compliance with Applicable Laws and reasonably determines that a violation of Applicable Laws creates an imminent health hazard or immediate threat to the health and safety of University's Campus community or the public, University may immediately (a) perform any cleaning or other services deemed necessary by University (Contractor will reimburse University for all reasonable costs, including overtime costs.), (b) report Contractor's non-compliance with Applicable Laws to any governmental body or authority, and (c) *at University's option*, (i) require Contractor to cure the violation within a timeframe that is acceptable to University, or (ii) suspend Contractor's performance of Work, and/or (iii) terminate this Agreement *without notice or opportunity to cure*. Upon receipt of written notice of suspension or termination of this Agreement, Contractor will immediately cease performance of Work under this Agreement.

Section 5.
INSURANCE

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

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

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

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

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

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

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

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

5.2 Contractor will deliver to University:

5.2.1 Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all required insurance policies after the execution and delivery of this Agreement and prior to the performance of any Services by Contractor under this Agreement. Additional evidence of insurance will be provided verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

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

5.2.1.2 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System and University. **All insurance policies** will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System and University. No policy will be canceled until after thirty (30) days' unconditional written notice to University. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to University thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this **Section 5**.

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

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

Name: Diana Rodriguez
Assistant Director of Purchasing

Address: The University of Texas Permian Basin
4901 E. University Blvd.
Odessa, TX 79762

Facsimile Number: 432-552-3790
Email Address: purchasing@utpb.edu

5.3 Contractor's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by University or the University of Texas System. Contractor's or subcontractor's insurance will be kept in force until all Services have been fully performed and accepted by University in writing.

Section 6. INDEMNIFICATION

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

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

Section 7. REPRESENTATIONS AND WARRANTIES

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

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

- 7.3 **Payment of Debt or Delinquency to the State.** Pursuant to §§[2107.008](#) and [2252.903](#), *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 7.4 **Texas Family Code Child Support Certification.** Pursuant to [§231.006, Texas Family Code](#), Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 7.5 **No Conflict.** Contractor has not entered into, and during the Term of this Agreement will not enter into, any other agreements that would conflict with Contractor's obligations under this Agreement or prevent it from fully complying with the provisions of this Agreement.
- 7.6 **Undocumented Workers.** The *Immigration and Nationality Act* ([8 United States Code 1324a](#)) (**Immigration Act**) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the [Form I-9 Employment Eligibility Verification Form \(I-9 Form\)](#) as the document to be used for employment eligibility verification ([8 Code of Federal Regulations 274a](#)). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by Applicable Laws, University may terminate this Agreement in accordance with **Section 10**. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.
- 7.7 **Contractor Certification regarding Boycotting Israel.** Pursuant to [Chapter 2270, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 7.8 **Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Section 8. RELATIONSHIP OF PARTIES

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

Section 9.
NOTICES

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

If to University: The University of Texas Permian Basin
Purchasing Department
4901 E. University Blvd
Odessa, TX 79762
Attention: Diana Rodriguez

with copy to: *The University of Texas Permian Basin*
Business Affairs
4901 E. University Blvd
Odessa, TX 79762
Attention: Cesario Valenzuela

If to Contractor: _____

Fax: _____

Email: _____

Attention: _____

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

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

The University of Texas Permian Basin
Purchasing Department
4901 E. University Blvd.
Odessa, TX 79762
Attention: Assistant Director of Purchasing
Fax: 432-552-3790
Email: purchasing@utpb.edu

with copy to: The University of Texas Permian Basin
Business Affairs
4901 E. University Blvd.
Odessa, TX 79762
Attention: Vice-President for Business Affairs
Email: valenzuela_c@utpb.edu

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

Section 10.
DEFAULT AND TERMINATION

- 10.1 Termination Without Cause. This Agreement may be terminated by University *without cause* by giving Contractor not less than forty-five (45) days written notice of University's intention to terminate this Agreement as of a specified date. In the event this Agreement is terminated by University before the end of the then current contract year, the Royalty will be paid by Contractor to University (on a pro-rata basis through the effective date of termination) in accordance with **Section 3** of this Agreement.
- 10.2 Termination for Default. Except as provided in **Section 4.4**, in the event of a material failure by a party to this Agreement to perform in accordance with the terms of this Agreement (**default**), the other party may terminate this Agreement upon thirty (30) days' written notice of termination setting forth the nature of the default; provided, that, the default is through no fault of the terminating party. Termination will not be effective if the default is fully cured prior to the end of the thirty (30) day period. If Contractor fails to cure any default within thirty (30) days after receiving written notice of default, University will be entitled (but will not be obligated) to cure the default and will have the right, at University's option, to collect any and all reasonable expenses incurred in connection with the curative actions from Contractor or to set off the expenses against any amounts due to Contractor under this Agreement.
- 10.3 No Release of Liability. Termination of this Agreement under **Sections 4.4, 10.1** or **10.2** will not relieve Contractor or any of its employees, representatives, agents, or subcontractors from liability for any default under the terms of this Agreement or any other act or omission.
- 10.4 Transition Period. If this Agreement expires or is terminated for any reason, then at University's option, Contractor will continue to perform Services in accordance with the terms of this Agreement until University contracts with a new qualified and experienced vendor(s) to perform Services or is able to perform Services in-house; provided, that, Contractor will not be required to continue performing Work for more than three (3) months after expiration or termination of this Agreement. Contractor will cooperate with, and assist, University's efforts to transition Services to another vendor(s) or to perform Services in-house.
- 10.5 Continuing Obligations. The expiration or termination of this Agreement will not relieve either party of any obligations under this Agreement that by their nature survive expiration or termination.

Section 11.
NO OTHER RIGHTS

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

Section 12.
ASSIGNMENT AND SUBCONTRACTING

- 12.1 Assignment and Subcontracting. Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on University; and (b) be a default under this Agreement for which Contractor will be subject to all remedial actions provided by Texas law, including [Chapter 2161, Texas Government Code](#), and 34 TAC §§[20.285\(g\)\(5\)](#), [20.585](#) and [20.586](#). The benefits and burdens of this Agreement are assignable by University.
- 12.2 Historically Underutilized Business Subcontracting Plan. Contractor will use good faith efforts to subcontract Work in accordance with the Historically Underutilized Business Subcontracting Plan (**HSP**) (ref. **Exhibit E**). Contractor will maintain business records documenting its compliance with the HSP and submit a monthly compliance report to University in the format required by the Statewide Procurement and Statewide Support Services Division of the Texas Comptroller of Public Accounts or successor entity (collectively, **TPSS**). Submission of compliance reports will be required as a condition for any payments by University under this Agreement. If University determines that Contractor has failed to subcontract as set out in the HSP, University will notify Contractor of any deficiencies and give Contractor

an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. If University determines that Contractor failed to implement the HSP in good faith, University, in addition to any other remedies, may report nonperformance to TPSS in accordance with Texas law, including 34 TAC §§[20.285\(g\)\(5\)](#), [20.585](#) and [20.586](#). University may also terminate this Agreement for default and make a claim against Contractor.

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

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

Section 13. **MERGER AND AMENDMENT**

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

Section 14. **BREACH OF CONTRACT CLAIMS**

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

Section 15. **GENERAL PROVISIONS**

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

15.2 Venue; Governing Law. 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 the parties, and all claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.

15.3 Time for Performance. Time is of the essence with regard to this Agreement and Contractor's performance of Work. Contractor will complete all Preparation Activities, commence delivery of Work and perform Work to the satisfaction of University in accordance with the schedules, deadlines and other terms and conditions set forth in this

Agreement. University will have no obligation to accept late performance or to waive timely performance by Contractor.

- 15.4 University's Right to Audit. At any time during the Term of this Agreement and for a period of four (4) years after the termination or expiration of this Agreement, University or a duly authorized representative of University, UT System, or the State of Texas, at its expense, will have the right to audit Contractor's records and books relevant to all services provided under this Agreement. In the event an audit reveals any errors or underpayments to University, Contractor will pay to University the full amount of the underpayments within thirty (30) days after being notified in writing of the audit findings.
- 15.5 Force Majeure. Neither party will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character
- 15.6 Ethics Matters, No Financial Interest. Contractor and its employees, representatives, agents, and subcontractors have read and understand University's Conflicts of Interest Policy available at <https://www.utsystem.edu/documents/docs/policies-rules/ut-system-administration-standards-conduct-guide>, and applicable state ethics laws and rules available at <http://utsystem.edu/offices/general-counsel/ethics>. Neither Contractor nor its employees, representatives, agents, or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, provisions described by University's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.
- 15.7 Severability; Titles. In case any provision of this Agreement is, for any reason, held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included in this Agreement. Captions and titles of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
- 15.8 Loss of Funding. University's performance of its duties and obligations under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (**Legislature**) and/or allocation of funds by the Board of Regents of The University of Texas System (**Board**). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.
- 15.9 Limitations. THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, **LIMITATIONS**), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
- 15.10 Confidentiality and Safeguarding of University Records; Press Releases; Public Information. Under this Agreement, Contractor may (a) create, (b) receive from or on behalf of University, or (c) have access to, records or record systems (collectively, **University Records**). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws, including the Gramm-Leach-Bliley Act ([Public Law No: 106-102](#)) and the Family Educational Rights and Privacy Act, [20 U.S.C. §1232g](#) (**FERPA**). If University Records are subject to FERPA, (a) University designates Contractor as a University official with a legitimate educational interest in University Records, and (b) Contractor acknowledges that its improper disclosure or redisclosure of personally identifiable information from University Records will result in Contractor's exclusion from eligibility to contract with University for at least five (5) years. Contractor represents, warrants, and agrees that it will: (a) hold University Records in strict confidence and will not use or disclose University Records except as (i) permitted or required by this Agreement, (ii) required by Applicable Laws, or (iii) otherwise authorized by University in writing; (b) safeguard University Records according to reasonable administrative, physical and technical standards (such as standards established by (i) the National Institute of Standards and Technology and (ii) the Center for Internet Security, as well as the Payment Card Industry Data

Security Standards) that are no less rigorous than the standards by which Contractor protects its own confidential information; (c) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all Applicable Laws, including FERPA and the Gramm-Leach Bliley Act, and the terms of this Agreement; and (d) comply with University Rules regarding access to and use of University's computer systems. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.

- 15.10.1 Notice of Impermissible Use. If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to University within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide University with all information requested by University regarding the impermissible use or disclosure.
- 15.10.2 Return of University Records. Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of University will be (1) returned to University, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Contractor will provide University with written notice of Contractor's intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to University in writing the destruction of University Records.
- 15.10.3 Disclosure. If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this Section.
- 15.10.4 Press Releases. Except when defined as part of the Work, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of University in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of University.
- 15.10.5 Public Information. University strictly adheres to all statutes, court decisions and opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act (TPIA)*, [Chapter 552, Texas Government Code](#). In accordance with [§552.002](#) of TPIA and [§2252.907, Texas Government Code](#), and at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public.
- 15.10.6 Termination. In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.
- 15.10.7 Duration. The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

SECTION 16.

ACCESS BY INDIVIDUALS WITH DISABILITIES

Contractor represents and warrants (**Accessibility Warranty**) that, at all times during the Term, the Equipment will comply with (a) all applicable requirements of the Americans with Disabilities Act, and (b) the applicable standards/specifications:

- 16.1 Usable by People with Disabilities. Contractor's Equipment will be usable by people with disabilities without requiring an end-user to attach assistive technology to the product. Personal headsets for private listening are not assistive technology.

- 16.2 Sufficient Time to Respond. When Equipment requires a timed response, the user will be alerted and given sufficient time to indicate more time is required.
- 16.3 Mechanically Operated Controls. If Equipment utilizes touch screens, contact-sensitive controls, or has mechanically operated controls or keys, then the Equipment will comply with the following, as applicable:
- 16.3.1 All controls and keys will be tactilely discernible without activating the controls or keys.
 - 16.3.2 All controls and keys will be operable with one hand and will not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls and keys will be 5 lbs. (22.2 N) maximum.
 - 16.3.3 If key repeat is supported, the delay before repeat will be adjustable to at least 2 seconds. Key repeat rate will be adjustable to 2 seconds per character.
 - 16.3.4 The status of all locking or toggle controls or keys will be visually discernible, and discernible either through touch or sound.
- 16.4 Color Coding. Equipment will not use color coding as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.
- 16.5 Flicker Rate. Equipment that includes a video screen will be designed to avoid causing that screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz
- 16.6 Freestanding, Non-Portable Equipment. Equipment that is freestanding, non-portable, and intended to be used in one location and which has operable controls will comply with the following:
- 16.6.1 Reference Plane. The position of any operable control will be determined with respect to a vertical plane, which is 48 inches in length, centered on the operable control, and at the maximum protrusion of the Equipment within the 48 inch length.
 - 16.6.2 Height of Control 10 Inches or Less Behind Reference Plane. Where any operable control is 10 inches or less behind the reference plane, the height will be 54 inches maximum and 15 inches minimum above the floor.
 - 16.6.3 Height of Control More Than 10 Inches Behind Reference Plane. Where any operable control is more than 10 inches and not more than 24 inches behind the reference plane, the height will be 46 inches maximum and 15 inches minimum above the floor.
 - 16.6.4 Distance of Control Behind Reference Plane. Operable controls will not be more than 24 inches behind the reference plane.

SECTION 17.
BOARD APPROVAL

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

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

CONTRACTOR

By: _____

Name: _____

Title: _____

Date Signed: _____

UNIVERSITY

By: _____

Name: _____

Title: _____

Date Signed: _____

Attachments:

Exhibit A – Preparation Activities and Schedule

Exhibit B – Campus Locations for Equipment

Exhibit C – Products and Sales Prices

Exhibit D – Vending Royalty Schedule

Exhibit E – HUB Subcontracting Plan

EXHIBIT A

PREPARATION ACTIVITIES AND SCHEDULE

(To be inserted from Contractor's proposal; include a list of all activities to be performed in preparation to provide vending machine operations on Campus and the related schedule)

EXHIBIT B

CAMPUS LOCATIONS FOR EQUIPMENT

MESA BUILDING – 1st Floor Lobby, Devonian Lobby, 1st, 3rd, 4th floor

D. KIRK EDWARDS FAMILY HUMAN PERFORMANCE CENTER

GYMNASIUM COMPLEX

VISUAL ARTS STUDIOS

FOUNDERS BUILDING

INDUSTRIAL TECHNOLOGY BUILDING

SCIENCE AND TECHNOLOGY BUILDING

J. CONRAD DUNAGAN LIBRARY

STUDENT ACTIVITIES CENTER

PARKER RANCH HOUSE/STUDENT HOUSING RECREATION/LAUNDRY ROOM

RESIDENCE HALL – FRONT, 1ST, 2ND, 3RD floor

ENGINEERING BUILDING – 1788 & HWY 191

C. E. E. D. BUILDING – 1788 & HWY 191

WAGNER-NOEL CENTER

DUCK POND - I/S FRNT

NOTE: UNIVERSITY OF TEXAS PERMIAN BASIN reserves the right to add or delete locations as conditions warrant.

EXHIBIT C

PRODUCTS AND PRODUCT PRICING LIST

(TO BE INSERTED FROM CONTRACTOR'S PROPOSAL)

EXHIBIT D

VENDING ROYALTY SCHEDULE

TO BE INSERTED FROM CONTRACTOR'S PROPOSAL

EXHIBIT E

**HUB SUBCONTRACTING PLAN
(HSP) FORMS**

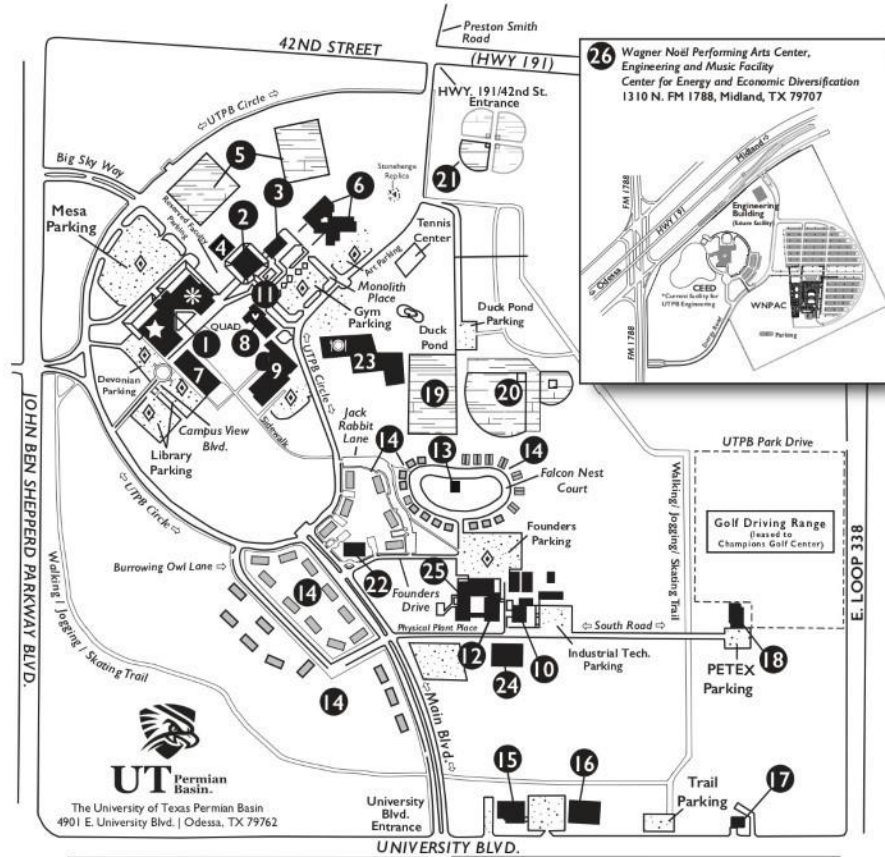
<https://comptroller.texas.gov/purchasing/vendor/hub/forms.php>

APPENDIX FOUR

CAMPUS MAP

CAMPUS MAP. Electronic copy available online at: <https://www.utpb.edu/life-at-utpb/maps-and-directions/campus-map>

The University of Texas of the Permian Basin



Revised 3/7/2017

- | | | |
|--|--|--|
| <ul style="list-style-type: none"> 1. Mesa Building <ul style="list-style-type: none"> ☆ Admissions & Financial Aid Offices * Prometric Test Center 2. Gymnasium Complex 3. Thermal Energy Plant 4. Gym Annex Building 5. Athletic Fields 6. Visual Arts Studios 7. Library/Lecture Center 8. Student Activity Center <ul style="list-style-type: none"> ♥ UTPB Child Care Center 9. Science & Technology Bldg. <ul style="list-style-type: none"> Biology, Chemistry IRD, Computer Science | <ul style="list-style-type: none"> 10. Industrial/Petroleum Technology Building 11. Pool 12. Founders Building <ul style="list-style-type: none"> Counseling Center Physical Plant 13. Falcon House 14. Student Housing 15. Ellen Noel Art Museum 16. JBS Public Leadership Institute <ul style="list-style-type: none"> Presidential Archive 17. Fire Station <ul style="list-style-type: none"> (City of Odessa) 18. PETEX | <ul style="list-style-type: none"> 19. Soccer Practice Field/Intramural 20. Ted & Jan Roden Baseball Field 21. Women's Softball Field 22. Parker Ranch House <ul style="list-style-type: none"> Student Housing Recreation 23. Residence/Dining Hall <ul style="list-style-type: none"> ☺ Food Service 24. S.T.E.M. Charter School 25. EC.I.S.D. Early College High School 26. Wagner Noel Performing Arts Center <ul style="list-style-type: none"> Engineering, Music Facilities 26. Center for Energy and Economic Diversification <ul style="list-style-type: none"> 1310 N. FM 1788, Midland, TX 79707 |
|--|--|--|

APPENDIX FIVE

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

This is a sample Texas Ethics Commission's FORM 1295 – CERTIFICATE OF INTERESTED PARTIES. Contractor must use the Texas Ethics Commission electronic filing web page (at https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html) to complete the most current Certificate of Interested Parties form and submit the form as instructed to the Texas Ethics Commission and University. **The Certificate of Interested Parties will be submitted only by Contractor to University with the signed Agreement.**

CERTIFICATE OF INTERESTED PARTIES		FORM 1295	
Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.		OFFICE USE ONLY	
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.			
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.			
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.			
4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary
5 Check only if there is NO Interested Party. <input type="checkbox"/>			
6 AFFIDAVIT I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.			
<div style="border-bottom: 1px solid black; width: 30%; margin: 0 auto;"></div> Signature of authorized agent of contracting business entity			
AFFIX NOTARY STAMP / SEAL ABOVE			
Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20 _____, to certify which, witness my hand and seal of office.			
<div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="border-bottom: 1px solid black; width: 25%;"></div> <div style="border-bottom: 1px solid black; width: 25%;"></div> <div style="border-bottom: 1px solid black; width: 25%;"></div> </div> Signature of officer administering oath Printed name of officer administering oath Title of officer administering oath			
ADD ADDITIONAL PAGES AS NECESSARY			