

REQUEST FOR PROPOSAL



by

The University of Texas PERMIAN BASIN

for

Selection of a Vendor to Provide

Busing Services

related to

UTPB Athletics

RFP No. 742-22-202-2

Submittal Deadline: Tuesday, July 12, 2022

Issued: Friday, June 17, 2022

REQUEST FOR PROPOSAL

TABLE OF CONTENTS

SECTION 1: INTRODUCTION 3

SECTION 2: NOTICE TO PROPOSER 4

SECTION 3: SUBMISSION OF PROPOSAL 8

SECTION 4: TERMS AND CONDITIONS 10

SECTION 5: SPECIFICATIONS AND ADDITIONAL QUESTIONS 11

SECTION 6: PRICING AND DELIVERY SCHEDULE 13

Attachments:

- APPENDIX ONE: PROPOSAL REQUIREMENTS
- APPENDIX TWO: AGREEMENT
- APPENDIX THREE: HUB SUBCONTRACTING PLAN
- APPENDIX FIVE: ACCESS BY INDIVIDUALS WITH DISABILITIES

SECTION 1

INTRODUCTION

1.1 Description of University

The Texas Legislature established the University of Texas Permian Basin in 1969 as an upper-level institution, offering junior, senior and graduate level classes. Courses were first taught in the fall of 1973. In 1991, UTPB was granted authority by the legislature to offer freshman and sophomore level classes. Currently, UTPB offers degrees in 36 undergraduate programs and 23 Graduate areas of study. The University of Texas Permian Basin has become a leader in on-line education and offers many degrees completely on-line at the undergraduate and graduate level. UTPB also has a robust and active on-campus student life with more than 50 student organizations. Enrollment for fall 2021 is approximately 6,000 with about 600 students residing on campus. Accredited programs include Petroleum Engineering (ABET), Mechanical Engineering (ABET), Teacher Certification (CAEP), Music (NASM), Social Work (CSWE), Business (AACSB), and Nursing (CCNE).

Athletics programs at UTPB consist of 16 NCAA Division II athletic teams involving over 400 student-athletes. UTPB is a member of the Lone Star Conference, one of the traditionally strongest conferences in the country. UTPB is both a Hispanic Serving Institution (HSI) and a Minority Serving Institution (MSI) and was recently named a First Gen Forward campus. To find out more about UT Permian Basin, please visit www.utpb.edu

1.2 Background and Special Circumstances

The University of Texas Permian Basin is seeking a qualified contractor to provide busing and transportation services for the UTPB Athletics Sports Team Travel for fall 2022 – Spring 2023.

1.3 Objective of Request for Proposal

The University of Texas Permian Basin (**University**) is soliciting proposals from qualified vendors to perform work (**Work**) more specifically described in **Section 5.4 (Refer to Exhibit A - Scope of Work)** of this Request for Proposal (**RFP**).

1.4 Term of the Agreement

The initial term of the resulting Agreement will be for three (3) years, and thereafter the University shall have the right, at its option, to renew the Agreement for another two (2) one-year extensions assuming mutually agreeable terms and pricing.

Note: The resulting agreement will be considered an exclusive agreement between the University and the awarded vendor based on the evaluation of this RFP.

1.5 Group Purchase Authority

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

SECTION 2

NOTICE TO PROPOSER

2.1 Submittal Deadline

University will accept proposals until 2:00 p.m. Central Time, on **Thursday, July 12, 2022 (Submittal Deadline)**.

2.2 RFP Contact Information and Questions

Interested parties may direct questions about this RFP to:

Morgan Eaton
Assistant Director of Purchasing
Phone: (432) 552-2792
Email to: Eaton_M@utpb.edu
Subject Line: RFP No.742-22-202-2

*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 **5:00 p.m. Central Time Friday, June 24, 2022 (Question Deadline)**, or (ii) if questions relate to Historically Underutilized Businesses, in accordance with **Section 2.5**.*

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

2.3 Criteria for Selection

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

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

The evaluation of proposals and the selection of Contractor will be based on the information provided in the proposal. University may consider additional information if University determines the information is relevant. Criteria to be considered by University in evaluating proposals and selecting Contractor, will be these factors:

2.3.1 Threshold Criteria Not Scored

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

2.3.2 Scored Criteria

- 2.3.2.1 Cost of goods and services; **(35 points)**
- 2.3.2.2 Reputation of the Proposer and of the Proposer's goods or services; **(10 points)**
- 2.3.2.3 Quality of the Proposer's goods or services; **(15 points)**
- 2.3.2.4 Extent to which the goods or services meet the University's needs; **(20 points)**
- 2.3.2.5 Proposer's past relationship with the University; **(5 points)**
- 2.3.2.6 Total long-term cost to the University of acquiring the Proposer's goods or services **(5 points)**
- 2.3.2.7 Any other relevant factors that a private business entity would consider in selecting a vendor **(5 points)**
- 2.3.2.8 Proposer's exceptions to the terms and conditions set forth in **Section 4 (5 points)**

2.4 Key Events Schedule

Date RFP Issued	Friday, June 17, 2022
Question Deadline	5:00 p.m. Central Time on Friday, June 24, 2022 (ref. Section 2.2)
Submittal Deadline	2:00 p.m. Central Time on Thursday, July 12, 2022 (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 Texas Administrative Code \(TAC\) §20.285](#), and has determined that subcontracting opportunities are not probable under this RFP.
- 2.5.3 A HUB Subcontracting Plan (**HSP**) is a required part of the proposal. The HSP will be developed and administered in accordance with University's Policy on Utilization of Historically Underutilized Businesses, attached as **APPENDIX THREE**.

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

Questions regarding the HSP may be directed to:

Contact: Elsa Montalvo, Director of Purchasing
HUB Program Coordinator
Phone: (432) 552-2795
Email: Montalvo_E@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(ies) of Proposer's HSP**, or
- (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) or separate attachments with the top outside surface clearly indicating:

- 2.5.4.1 RFP No. 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**.

2.5.5 University may offer Proposer an opportunity to seek informal review of its draft HSP by University's HUB Office before the Submittal Deadline. If University extends this offer, details will be provided at the Pre-Proposal Conference (ref. **Section 2.6**) or by other means. Informal review is designed to help address questions Proposer may have about how to complete its HSP properly. Concurrence or comment on Proposer's draft HSP by University will *not* constitute formal approval of the HSP, and will *not* eliminate the need for Proposer to submit its final HSP to University as instructed by **Section 2.5**.

2.6 Pre-Proposal Conference

NONE

SECTION 3

SUBMISSION OF PROPOSAL

3.1 Number of Copies

Proposer must submit (a) one (1) complete paper copy of its *entire* proposal, and (b) *one (1) complete electronic copy of its entire proposal in a single .pdf file on a flash drive*. An *original* signature by an authorized officer of Proposer must appear on the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) of the submitted paper copy of the proposal.

Or

Electronic submittal of entire proposal can be submitted to the email listed below.

3.2 Submission

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

Contact: Morgan Eaton - Assistant Director of Purchasing
UTPB Purchasing Department
The University of Texas Permian Basin
Address: 4901 E. University Blvd. Odessa, TX 79762
Phone: (432) 552-2792
Email to: Eaton_M@utpb.edu
Subject Line: RFP No.742-22-202-2

3.3 Proposal Validity Period

Each proposal must state that it will remain valid for University's acceptance for a minimum of ninety (90) 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 (**APPENDIX THREE**).

SECTION 4

GENERAL TERMS AND CONDITIONS

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

SECTION 5

SPECIFICATIONS AND ADDITIONAL QUESTIONS

5.1 General

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

Communications with the University:

(a) The University will assign a direct contact for charter buses as the UTPB representative to act as the liaison between the contractor and the University. All questions or concerns regarding the bus contract must be addressed to the charter bus liaison in writing, email preferred. The charter bus liaison will coordinate with the designated contractor's representative to discuss planning, schedule changes and any issues that arise.

(b) It is imperative that communication between the contractor's representative and the University's liaison be open and reliable to facilitate the following: (1) Status updates regarding any and all athletic travel details as necessary or required by the University and at the University's discretion or by a request from the University at any time. (2) Timely access to bus schedules upon request or submitted by scheduled date if deemed necessary by the University and information regarding bus maintenance and repair as needed or requested.

5.2 Not Used

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. [§2252.908, Government Code](#)) and [1 TAC §§46.1 through 46.5](#)) as implemented by the Texas Ethics Commission (**TEC**), including, among other things, providing TEC and University with information required on the form promulgated by TEC and set forth in **APPENDIX EIGHT**. *Proposer may learn more about these disclosure requirements, including applicable exceptions and use of the TEC electronic filing system, by reviewing [§2252.908, Government Code](#), and information on the TEC website at https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php. **The Certificate of Interested Parties must only be submitted by Contractor upon delivery to University of a signed Agreement.***
- 5.3.3 In its proposal, Proposer must indicate whether it will consent to include in the Agreement the "Access by Individuals with Disabilities" language that is set forth in **APPENDIX FIVE, Access by Individuals with Disabilities**. If Proposer objects to the inclusion of the "Access by Individuals with Disabilities" language in the Agreement, Proposer must, as part of its proposal, specifically identify and describe in detail all of the reasons for Proposer's objection. **NOTE: A GENERAL OBJECTION IS NOT AN ACCEPTABLE RESPONSE TO THIS QUESTION.**
- 5.3.4 Provide a fleet listing with the following minimum information for each vehicle: date of manufacture, passenger capacity, and special features (restroom, A/C and heat, DVD/VCR, TV, WIFI, etc).
- 5.3.5 Provide a detailed description of respondent's preventive maintenance program including replacement policy for worn or defective equipment. Include a description of how respondent deals with breakdowns on the road or at destination sites away from the home facility. Contractor must certify that it is in compliance with all Department of Transportation maintenance requirements and be able to provide documents if requested by University.

- 5.3.6 Provide a current copy of the respondent's company's Federal Highway Administration Carrier Profile (MCS 90B).

5.4 Scope of Work

Contractor will provide the following services to University:

- 5.4.1 Buses to be used for university related functions only.
- 5.4.2 Charter bus services required will include transportation for day trips and overnight trips within the Permian Basin, other Texas areas and areas outside the State of Texas (tentative schedule is attached to the RFP email).
- 5.4.3 All employees of the Contractor shall be appropriately dressed in uniform, courteous and well-mannered at all times.
- 5.4.4 Contractor shall have sufficient resources to be able to work multiple jobs at the same time.
- 5.4.5 Buses must be of late model, air conditioned and heated.
- 5.4.6 Buses must be equipped with a clean, operating restroom, if necessary, for overnight trips.
- 5.4.7 The Contractor may be required to provide individual bus maintenance records regarding inspection and repair at any time during the term of the contract.
- 5.4.8 Driver must show orders and have a University employee sign off on the manifest prior to boarding the bus.
- 5.4.9 The bus driver must remain with the bus at all times. If the driver must leave the bus at the point of destination or any stops in route, the bus MUST be secured and locked.
- 5.4.10 No one other than the driver or any individuals that are considered passengers shall be allowed access on the bus during the charter.
- 5.4.11 All buses should be equipped with microphone/PA system.
- 5.4.12 All buses should be equipped with radio to radio communication between buses (drivers may communicate through cell phones if needed, but not while driving, however, they may use Bluetooth earpieces).
- 5.4.13 Ample storage compartments must be available.
- 5.4.14 Ability to promote University logo on the side of buses
- 5.4.15 All buses should be equipped with reclining seats.
- 5.4.16 Ample spacing between seating to accommodate larger athletes (this could be discussed).
- 5.4.17 Internet/Wi-Fi connections to be provided.
- 5.4.18 Ability to plug in laptops/iPads into entertainment system with streaming capabilities.
- 5.4.19 All buses should have satellite capabilities.
- 5.4.20 Some trip request may require on-board video/DVD players. The Contractor should honor this request.
- 5.4.21 Orders
 - 5.4.13.1 Orders may be placed by the individual campus department on an as needed basis.
 - 5.4.13.2 Orders will be places and billed as per the University's issued Purchase Order.
 - 5.4.13.3 The terms and conditions set forth in this Solicitation shall be considered contractual and Contractor contracts will not be allowed. UTPB will not sign any documents other than itinerary; no order forms, terms and conditions, etc.

5.4.22 Invoicing

5.4.14.1 Invoices to include requesting department names, date(s) of event, destination location, actual number of miles incurred, number of hours incurred, and must include the University Purchase Order number.

5.4.14.2 All invoices MUST be itemized as per pricing on proposal.

5.3.14.3 If charging tolls, parking, etc., Contractor must provide receipts with the invoice in order to be reimbursed.

5.4.15 Cancellation

5.4.15.1 There will be a maximum of three (3) changes allowed per department per scheduled event without penalty.

5.4.15.2 Cancellations made twenty-four (24) hours or more prior to the event will not be charged a fee.

5.4.15.3 Cancellations due to inclement weather or other unforeseen incidents will not be subject to any penalties. University mandated cancellation or schedule change, etc. will not be subject to any penalties if cancelled or changed within forty-eight (48) hours **after** scheduling the charter.

5.4.16 Special Proposer Representations

By submission of Proposal, Proposer represents their company to complete and fulfill the following requirements as indicate:

5.4.16.1 That well maintained and clean buses will be provided.

5.4.16.2 That all buses and equipment necessary to fulfill this charter bus contract will be provided in a well maintained, clean, in good working order, and conform with proper standards of the industry.

5.4.16.3 That all driving staff provided are properly certified and licenses under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rule and regulations.

5.4.16.4 That all driving staff provided have been drug tested in compliance with any applicable laws, rules and regulations of any authority having jurisdiction, fi so required by such laws, rules and regulations.

5.4.16.5 That all driving staff provided confirm to all applicable requirements for motor carrier drivers.

5.4.16.6 That all driving staff provided are prepared with routing information.

5.4.16.7 That all driving staff will refrain from the use of tobacco products while on campus, during routes, or in view of students and participants. Tobacco products include cigarettes, cigars, pipes, smokeless tobacco, e-cigarettes, and chewing tobacco. Any tobacco products possessed by drivers shall be out of sight at all times when on duty, on University grounds, or in the bus. This policy also prohibits the appearance of tobacco products, tobacco use or tobacco brands on drivers' clothes.

5.4.16.8 That it will disqualify as a bus driver any person who has committed: Any felony crime involving the physical neglect of a child, the physical injury or death of a child, sexual exploitation of a child; sexual offenses where a minor is the victim; promoting prostitution of a minor; the sale or purchase or a minor child or violation of similar laws; any crimes involving the use of a motor vehicle. The responsibility for checking bus drivers' criminal backgrounds to ensure they have not been convicted of any of the aforementioned or related crimes is an ongoing responsibility, which lies solely upon Proposer.

5.4.16.9 That it will inform the University of any delays or potential delays as soon as possible. Communication of any delays is very important. Parents and family are often waiting for participants at the designated pick-up point(s). Therefore, the bus in transit must communicate immediately with University staff if a delay is occurring or is likely to occur.

5.4.16.10 That all the services performed by the Proposer under or pursuant to this contract shall be of the standard and quality which prevail among similar business and organizations or superior knowledge

and skill engaged in providing similar services under the same or similar circumstances.

5.4.16.11 That Proposer acknowledges that the University may allow the use of the Proposer's standard forms (such as acknowledgements or orders and invoices) to administer its dealings under this Agreement for convenience purposes but all provisions thereof shall be deemed stricken.

5.4.16.12 Proposer acknowledges that no subcontracting is to be permitted unless written consent is received from the University Procurement and HUB Office.

5.4.16.13 Proposer acknowledges that if subcontracting is necessary, Proposer agrees that the subcontractor will provide equipment, services and has insurance comparable to, equivalent to or better than Proposer. Proposer remains liable to University for subcontractor's acts or omissions hereunder.

5.4.16.14 Proposer warrants that all laws, rules and regulations of duly constituted authorities having jurisdiction over its activities shall be complied with by the Proposer and its drivers.

5.3.16.15 Except for the obligation of the University to pay the Proposer pursuant to the terms of the contract, the University shall have no liability to the Proposer or to anyone claiming through or under the Proposer by reason of the execution or performance of this contract.

5.4.17 Gas Price Changes

Pricing submitted should include the estimated cost of gas for transportation. Gas pricing adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The University may consider sources, such as the Consumer Price Index; Producer Price Index; Commodity Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase or decrease in pricing; and any other data the University deems relevant for renegotiations. Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement. During this time, the Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period. If a mutual agreement cannot be met, the University has the right to terminate the agreement with the Contractor for the benefit of the University due to unsustainable and unmanageable price increases.

SECTION 6

PRICING AND DELIVERY SCHEDULE

Pricing:

Minimum – 46 Seat Charter Bus

Item	Description	Unit of Measure	Unit Price
1	Hourly Rate:	Hour	\$
	Minimum Hours per Trip:	Hour	Hours
2	Daily Rate:	Day	\$
3	Mileage Rate:	Per Mile	\$
	Indicate when mileage rate will apply:		

Minimum – 56 Seat Charter Bus

Item	Description	Unit of Measure	Unit Price
1	Hourly Rate:	Hour	\$
	Minimum Hours per Trip:	Hour	Hours
2	Daily Rate:	Day	\$
3	Mileage Rate:	Per Mile	\$
	Indicate when mileage rate will apply:		

Minimum – 26 Seat Mini Bus

Item	Description	Unit of Measure	Unit Price
1	Hourly Rate:	Hour	\$
	Minimum Hours per Trip:	Hour	Hours
2	Daily Rate:	Day	\$
3	Mileage Rate:	Per Mile	\$
	Indicate when mileage rate will apply:		

Minimum – 36 Seat Mini Bus

Item	Description	Unit of Measure	Unit Price
1	Hourly Rate:	Hour	\$
	Minimum Hours per Trip:	Hour	Hours
2	Daily Rate:	Day	\$
3	Mileage Rate:	Per Mile	\$
	Indicate when mileage rate will apply:		

Minimum – 40 Seat Mini Bus

Item	Description	Unit of Measure	Unit Price
1	Hourly Rate:	Hour	\$
	Minimum Hours per Trip:	Hour	Hours
2	Daily Rate:	Day	\$
3	Mileage Rate:	Per Mile	\$
	Indicate when mileage rate will apply:		

Additional Fees

Item	Description	Unit of Measure	Unit Price
16	Second Driver Fee	Total	\$
	Indicate when a second driver fee would apply:		
17	Overnight Rate – any trip over 24 hours	Day	\$
18	Fuel Surcharge – if applicable	Per Mile	\$
	Indicate when a fuel surcharge would apply:		

TENTATIVE SCHEDULE

Sport	Game Date	Location	Departure Date	Return Date	Notes
Football	3-Sep	Midland, TX/ Grande	3-Sep	3-Sep	
Football	10-Sep	Midland, TX/ Grande	10-Sep	10-Sep	
Football	17-Sep	Midland, TX/ Grande	17-Sep	17-Sep	
Football	24-Sep	Monmouth, Oregon	23-Sep	24-Sep	Charter to Airport
Football	1-Oct	Canyon, Texas	30-Sep	1-Oct	
Football	1-Oct	Odessa, TX/ Ratliff	1-Oct	1-Oct	
Football	15-Oct	Kingsville, Texas	14-Oct	15-Oct	
Football	22-Oct	Odessa, TX/ Ratliff	22-Oct	22-Oct	
Football	29-Oct	Portales, New Mexico	28-Oct	29-Oct	
Football	5-Nov	Midland, TX/ Grande	5-Nov	5-Nov	
Football	12-Nov	Ellensburg, Washington	11-Nov	12-Nov	Charter to Airport
Volleyball	2-Sep	Lubbock, Texas	1-Sep		
Volleyball	3-Sep	Lubbock, Texas		3-Sep	
Volleyball	8-Sep	Dallas, Texas	7-Sep		
Volleyball	9-Sep	Dallas, Texas			
Volleyball	10-Sep	Dallas, Texas		10-Sep	
Volleyball	17-Sep	San Angelo, Texas	16-Sep	17-Sep	
Volleyball	30-Sep	Lawton, Oklahoma	29-Sep		
Volleyball	1-Oct	Canyon, Texas		1-Oct	
Volleyball	3-Oct	Silver City, New Mexico	2-Oct	3-Oct	
Volleyball	14-Oct	San Antonio, Texas	13-Oct		
Volleyball	15-Oct	Austin, Texas		15-Oct	
Volleyball	28-Oct	Oklahoma City, Oklahoma	27-Oct		
Volleyball	29-Oct	Fort Smith, Arkansas		29-Oct	
Men's Soccer	7-Sep	Nampa, Idaho	7-Oct		
Men's Soccer		Tournament		10-Sep	
Men's Soccer	17-Sep	Tyler, Texas	16-Sep	17-Sep	
Men's Soccer	28-Sep	San Antonio, Texas	27-Sep	28-Sep	
Men's Soccer	5-Oct	Laredo, Texas	4-Oct	5-Oct	
Men's Soccer	12-Oct	Dallas, Texas	11-Oct	12-Oct	
Men's Soccer	22-Oct	Oklahoma City, Oklahoma	21-Oct	22-Oct	
Men's Soccer	29-Oct	Lubbock, Texas	28-Oct	29-Oct	
Women's Soccer	2-Sep	Plainview, Texas	1-Sep	2-Sep	
Women's Soccer	9-Sep	Stephenville, Texas	8-Sep	9-Sep	
Women's Soccer	17-Sep	Tyler, Texas	16-Sep	17-Sep	
Women's Soccer	21-Sep	Canyon, Texas	20-Sep	21-Sep	
Women's Soccer	1-Oct	Denton, Texas	30-Sep	1-Oct	
Women's Soccer	5-Oct	Wichita Falls, Texas	4-Oct	5-Oct	
Women's Soccer	12-Oct	Portales, New Mexico	11-Oct	12-Oct	
Women's Soccer	22-Oct	Oklahoma City, Oklahoma	21-Oct	22-Oct	

Men's Basketball	11-Nov	Silver City, New Mexico	10-Nov	
Men's Basketball	12-Nov	Silver City, New Mexico		12-Nov
Men's Basketball	18-Nov	Fort Lewis, Colorado	17-Nov	
Men's Basketball	19-Nov	Fort Lewis, Colorado		19-Nov
Men's Basketball	8-Dec	Oklahoma City, Oklahoma	7-Dec	
Men's Basketball	10-Dec	Fort Smith, Arkansas		10-Dec
Men's Basketball	30-Dec	Portales, New Mexico	29-Dec	
Men's Basketball	1-Jan	Silver City, New Mexico		1-Jan
Men's Basketball	19-Jan	Austin, Texas	18-Jan	
Men's Basketball	21-Jan	San Antonio, Texas		21-Jan
Men's Basketball	4-Feb	Lubbock, Texas	3-Feb	4-Feb
Men's Basketball	9-Feb	Wichita Falls, Texas	8-Feb	
Men's Basketball	11-Feb	Lawton, Oklahoma		11-Feb
Men's Basketball	23-Feb	San Angelo, Texas	22-Feb	23-Feb
Women's Basketball	11-Nov	Grand Junction, Colorado	10-Nov	
Women's Basketball	12-Nov	Grand Junction, Colorado		12-Nov
Women's Basketball	25-Nov	Denver, Colorado	25-Nov	
Women's Basketball	26-Nov	Lakewood, Colorado		26-Nov
Women's Basketball	8-Dec	Oklahoma City, Oklahoma	7-Dec	
Women's Basketball	10-Dec	Fort Smith, Arkansas		10-Dec
Women's Basketball	30-Dec	Portales, New Mexico	29-Dec	
Women's Basketball	1-Jan	Silver City, New Mexico		1-Jan
Women's Basketball	19-Jan	Austin, Texas	18-Jan	
Women's Basketball	21-Jan	San Antonio, Texas		21-Jan
Women's Basketball	4-Feb	Lubbock, Texas	3-Feb	4-Feb
Women's Basketball	9-Feb	Wichita Falls, Texas	8-Feb	
Women's Basketball	11-Feb	Lawton, Oklahoma		11-Feb
Women's Basketball	23-Feb	San Angelo, Texas	22-Feb	23-Feb
Cross Country	5-Nov	Wichita Falls, Texas	4-Nov	5-Nov
Softball	10-Feb	Lawton, Oklahoma	9-Feb	
Softball	11-Feb	Lawton, Oklahoma		11-Feb
Softball	25-Feb	Canyon, Texas	24-Feb	
Softball	26-Feb	Canyon, Texas		26-Feb
Softball	11-Mar	Wichita Falls, Texas	10-Mar	
Softball	12-Mar	Wichita Falls, Texas		12-Mar

Softball	21-Mar	Oklahoma City, Oklahoma	20-Mar	
Softball	22-Mar	Oklahoma City, Oklahoma		22-Mar
Softball	31-Mar	Kingsville, Texas	30-Mar	
Softball	1-Apr	Kingsville, Texas		1-Apr
Softball	11-Apr	Silver City, New Mexico	10-Apr	
Softball	12-Apr	Silver City, New Mexico		12-Apr
Softball	21-Apr	Laredo, Texas	20-Apr	
Softball	22-Apr	Laredo, Texas		22-Apr
Baseball	2-Feb	San Antonio, Texas	1-Feb	
Baseball	3-Feb	San Antonio, Texas		
Baseball	4-Feb	San Antonio, Texas		4-Feb
Baseball	23-Feb	San Angelo, Texas	22-Feb	
Baseball	24-Feb	San Angelo, Texas		
Baseball	25-Feb	San Angelo, Texas		25-Feb
Baseball	2-Mar	Kingsville, Texas	1-Mar	
Baseball	3-Mar	Kingsville, Texas		
Baseball	4-Mar	Kingsville, Texas		4-Mar
Baseball	16-Mar	Canyon, Texas	15-Mar	
Baseball	17-Mar	Canyon, Texas		
Baseball	18-Mar	Canyon, Texas		18-Mar
Baseball	30-Mar	Lawton, Oklahoma	29-Mar	
Baseball	31-Mar	Lawton, Oklahoma		
Baseball	1-Apr	Lawton, Oklahoma		1-Apr
Baseball	20-Apr	Fort Smith, Arkansas	19-Apr	
Baseball	21-Apr	Fort Smith, Arkansas		
Baseball	22-Apr	Fort Smith, Arkansas		22-Apr

Proposal of: _____
(Proposer Name)

To: University of Texas Permian Basin

RFP No.: 742-22-202-2

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

6.2 Pricing for Work and Expenses

University will *not* reimburse Contractor for expenses.

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

Services need to be in place by _____, 2022

6.5 Payment Terms

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

Indicate below the prompt payment discount that Proposer offers:

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

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

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

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

APPENDIX ONE
PROPOSAL REQUIREMENTS

TABLE OF CONTENTS

SECTION 1: GENERAL INFORMATION 15

SECTION 2: EXECUTION OF OFFER 18

SECTION 3: PROPOSER'S GENERAL QUESTIONNAIRE 21

SECTION 4: ADDENDA CHECKLIST 23

SECTION 1

GENERAL INFORMATION

1.1 Purpose

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

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

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

1.2 Inquiries and Interpretations

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

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

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

1.3 Public Information

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

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

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

1.4 Type of Agreement

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

1.5 Proposal Evaluation Process

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

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

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

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

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

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

1.6 Proposer's Acceptance of RFP Terms

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

1.7 Solicitation for Proposal and Proposal Preparation Costs

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

1.8 Proposal Requirements and General Instructions

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

1.9 Preparation and Submittal Instructions

1.9.1 Specifications and Additional Questions

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

1.9.2 Execution of Offer

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

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 §§[2107.008](#) and [2252.903](#), *Government Code*, any payments owing to Proposer under the Agreement may be applied directly to any debt or delinquency that Proposer owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until such debt or delinquency is paid in full.
- 2.1.12 Any terms, conditions, or documents attached to or referenced in Proposer's proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP, and (b) do not place any requirements on University that are not set forth in this RFP. Submission of a proposal is Proposer's good faith intent to enter into the Agreement with University as specified in this RFP and that Proposer's intent is not contingent upon University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.
- 2.1.13 Pursuant to [Chapter 2271, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 2.1.14 Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Proposer certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.
- 2.1.15 Pursuant to Chapter 2274, *Texas Government Code (enacted by SB 19, 87th Texas Legislature, Regular Session (2021))*, Proposer verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of any contract or agreement resulting from this RFP against a firearm entity or firearm trade association. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this verification is inaccurate.

- 2.1.16 Pursuant to Chapter 2274, *Texas Government Code* (enacted by [SB 13, 87th Texas Legislature, Regular Session \(2021\)](#)), Proposer verifies (1) it does not boycott energy companies and (2) it will not boycott energy companies during the term of any contract or agreement resulting from this RFP. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this verification is inaccurate.
- 2.1.17 Pursuant to Section 161.0085, *Texas Health and Safety Code* (enacted by [SB 968, 87th Texas Legislature, Regular Session \(2021\)](#)), Proposer certifies that it does not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Proposer's business. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.
- 2.2 No Benefit to Public Servants.** Proposer has not given or offered to give, nor does Proposer intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its proposal. Failure to sign this [Execution of Offer](#), or signing with a false statement, may void the submitted proposal or any resulting Agreement, and Proposer may be removed from all proposer lists at University.
- 2.3 Tax Certification.** Proposer is not currently delinquent in the payment of any taxes due under [Chapter 171, Tax Code](#), or Proposer is exempt from the payment of those taxes, or Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at University's option, may result in termination of any resulting Agreement.
- 2.4 Antitrust Certification.** Neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, nor anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in [§15.01 et seq., Business and Commerce Code](#), or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
- 2.5 Authority Certification.** The individual signing this document and the documents made a part of this RFP, is authorized to sign the documents on behalf of Proposer and to bind Proposer under any resulting Agreement.
- 2.6 Child Support Certification.** Under [§231.006, Family Code](#), relating to child support, the individual or business entity named in Proposer's proposal is not ineligible to receive award of the Agreement, and any Agreements resulting from this RFP may be terminated if this certification is inaccurate.
- 2.7 Relationship Certifications.**
- No relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Proposer that is a sole proprietorship, the officers or directors of any Proposer that is a corporation, the partners of any Proposer that is a partnership, the joint venturers of any Proposer that is a joint venture, or the members or managers of any Proposer that is a limited liability company, on one hand, and an employee of any member institution of UT System, on the other hand, other than the relationships which have been previously disclosed to University in writing.
 - Proposer has not been an employee of any member institution of UT System within the immediate twelve (12) months prior to the Submittal Deadline.
 - No person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in Proposer's proposal or any contract resulting from this RFP (ref. [§669.003, Government Code](#)).
 - All disclosures by Proposer in connection with this certification will be subject to administrative review and approval before University enters into any Agreement resulting from this RFP with Proposer.
- 2.8 Compliance with Equal Employment Opportunity Laws.** Proposer is in compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 2.9 Compliance with Safety Standards.** All products and services offered by Proposer to University in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law ([Public Law 91-596](#)) and the *Texas Hazard Communication Act*, [Chapter 502, Health and Safety Code](#), and all related regulations in effect or proposed as of the date of this RFP.
- 2.10 Exceptions to Certifications.** Proposer will and has disclosed, as part of its proposal, any exceptions to the information stated in this [Execution of Offer](#). All information will be subject to administrative review and approval prior to the time University makes an award or enters into any Agreement with Proposer.
- 2.11 Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act Certification.** If Proposer will sell or lease computer equipment to University under any Agreement resulting from this RFP then, pursuant to [§361.965\(c\), Health & Safety Code](#), Proposer is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in [Chapter 361, Subchapter Y, Health & Safety Code](#), and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in [30 TAC Chapter 328, §361.952\(2\), Health & Safety Code](#), states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term "computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.
- 2.12 Conflict of Interest Certification.**
- Proposer is not a debarred vendor or the principal of a debarred vendor (i.e. owner, proprietor, sole or majority shareholder, director, president, managing partner, etc.) either at the state or federal level.
 - Proposer's provision of services or other performance under any Agreement resulting from this RFP will not constitute an actual or potential conflict of interest.
 - Proposer has disclosed any personnel who are related to any current or former employees of University.
 - Proposer has not given, nor does Proposer intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to an officer or employee of University in connection with this RFP.
- 2.13 Not Used**

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

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

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

2.16 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.: 742-22-193-2

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

Submitted and Certified By:

(Proposer Institution's Name)

(Signature of Duly Authorized Representative)

(Printed Name/Title)

(Date Signed)

(Proposer's Street Address)

(City, State, Zip Code)

(Telephone Number)

(FAX Number)

SECTION 3

PROPOSER'S GENERAL QUESTIONNAIRE

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

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

3.1 Proposer Profile

3.1.1 Legal name of Proposer company:

Address of principal place of business:

Address of office that would be providing service under the Agreement:

Number of years in Business: _____

State of incorporation: _____

Number of Employees: _____

Annual Revenues Volume: _____

Name of Parent Corporation, if any _____

NOTE: If Proposer is a subsidiary, University prefers to enter into a contract or agreement with the Parent Corporation or to receive assurances of performance from the Parent Corporation.

3.1.2 State whether Proposer will provide a copy of its financial statements for the past two (2) years, if requested by University.

3.1.3 Proposer will provide a financial rating of the Proposer entity and any related documentation (such as a Dunn and Bradstreet analysis) that indicates the financial stability of Proposer.

3.1.4 Is Proposer currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, Proposer will explain the expected impact, both in organizational and directional terms.

3.1.5 Proposer will provide any details of all past or pending litigation or claims filed against Proposer that would affect its performance under the Agreement with University (if any).

3.1.6 Is Proposer currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, Proposer will specify the pertinent date(s), details, circumstances, and describe the current prospects for resolution.

3.1.7 Proposer will provide a customer reference list of no less than three (3) organizations with which Proposer currently has contracts and/or to which Proposer has previously provided services (within the past five (5) years) of a type and scope similar to those required by University's RFP. Proposer will include in its customer reference list the customer's company name, contact person, telephone number, project description, length of business relationship, and background of services provided by Proposer.

- 3.1.8 Does any relationship exist (whether by family kinship, business association, capital funding agreement, or any other such relationship) between Proposer and any employee of University? If yes, Proposer will explain.
- 3.1.9 Proposer will provide the name and Social Security Number for each person having at least 25% ownership interest in Proposer. This disclosure is mandatory pursuant to [§231.006, Family Code](#), and will be used for the purpose of determining whether an owner of Proposer with an ownership interest of at least 25% is more than 30 days delinquent in paying child support. Further disclosure of this information is governed by the *Texas Public Information Act* (ref. [Chapter 552, Government Code](#)), and other applicable law.

3.2 Approach to Work

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

3.3 General Requirements

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

3.4 Service Support

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

3.5 Quality Assurance

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

3.6 Miscellaneous

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

SECTION 4

ADDENDA CHECKLIST

Proposal of: _____
(Proposer Name)

To: University

RFP No.: 742-22-202-2

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
(SAMPLE ONLY)

AGREEMENT BETWEEN UNIVERSITY AND CONTRACTOR

This Agreement between University and Contractor (**Agreement**) is made and entered into effective as of _____, 20 (Effective Date), by and between **The University of Texas Permian Basin**, an agency and institution of higher education established under the laws of the State of Texas (**University**), and _____, a _____ (**Contractor**), Federal Tax Identification Number _____

University and Contractor hereby agree as follows:

1. Scope of Work.

- 1.1 Contractor will perform the scope of the work (**Work**) in **Exhibit A**, Scope of Work, to the satisfaction of University and in accordance with the schedule (**Schedule**) for Work in **Exhibit B**, Schedule. Time is of the essence in connection with this Agreement. University will have no obligation to accept late performance or waive timely performance by Contractor.
- 1.2 Contractor will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local, laws, statutes, regulations and ordinances (collectively, **Applicable Laws**), for the performance of Work.
- 1.3 Upon execution of this Agreement, all services previously performed by Contractor on behalf of University and included in the description of Work, will become a part of Work and will be subject to the terms and conditions of this Agreement.

2. The Project.

The Work will be provided in connection with _____ and all other related, necessary and appropriate services (**Project**).

3. Time for Commencement and Completion.

The term (**Initial Term**) of this Agreement will begin on the Effective Date and expire on _____, 20____. University will have the option to renew this Agreement for _____ (____) additional _____ (____) year terms (each a **Renewal Term**). The Initial Term and each Renewal Term are collectively referred to as the **Term**.

4. Contractor's Obligations.

- 4.1 Contractor will perform Work in compliance with (a) all Applicable Laws, and (b) the Board of Regents of The University of Texas System *Rules and Regulations* (<http://www.utsystem.edu/offices/board-regents/regents-rules-and-regulations>) the policies of The University of Texas System (<http://www.utsystem.edu/board-of-regents/policy-library>); and the institutional rules, regulations and policies of University() (collectively, **University Rules**). Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for the firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, *Chapter 15, Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor's response to University's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.
- 4.2 Contractor represents and warrants that (a) it will use its best efforts to perform Work in a good and workmanlike manner and in accordance with the highest standards of Contractor's profession or business, and (b) all Work to be performed will be of the quality that prevails among similar businesses of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances.
- 4.3 Contractor will call to University's attention in writing all information in any materials supplied to Contractor (by University or any other party) that Contractor regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.
- 4.4 University at all times is relying on Contractor's skill and knowledge in performing Work. Contractor represents and warrants that Work will be accurate and free from any material defects. Contractor's duties and obligations under this Agreement will not be in any way diminished by reason of any approval by University. Contractor will not be released from any liability by reason of any approval by University.
- 4.5 Contractor will, at its own cost, correct all material defects in Work as soon as practical after Contractor becomes aware of the defects. If Contractor fails to correct material defects in Work within a reasonable time, then University may correct the defective Work at Contractor's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Work that University may have at law or in equity.
- 4.6 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will cause all persons connected with Contractor directly in charge of Work to be duly registered and licensed under all Applicable Laws. Contractor will assign to the Project a designated representative who will be responsible for administration and coordination of Work. Contractor will furnish efficient business administration and coordination and perform Work in an expeditious and economical manner consistent with the interests of University.

- 4.7 Contractor represents and warrants it is duly organized, validly existing and in good standing under the laws of the state of its organization; it is duly authorized and in good standing to conduct business in the State of Texas; it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 4.8 Contractor represents and warrants that neither the execution and delivery of this Agreement by Contractor nor the performance of its duties and obligations under this Agreement will (a) result in the violation of any provision of its organizational documents; (b) result in the violation of any provision of any agreement by which it is bound; or (c) conflict with any order or decree of any court or other body or authority having jurisdiction.
- 4.9 **Not Used**
- 4.10 Contractor represents and warrants that: (i) Work will be performed solely by Contractor, its full-time or part-time employees during the course of their employment, or independent contractors who have assigned in writing all right, title and interest in their work to Contractor (for the benefit of University); (ii) University will receive free, good and clear title to all Work Material developed under this Agreement; (iii) Work Material and the intellectual property rights protecting Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges and other restrictions; (iv) Work Material will not infringe upon or violate any patent, copyright, trade secret, trademark, service mark or other property right of any former employer, independent contractor, client or other third party; and (v) the use, reproduction, distribution, or modification of Work Material will not violate the rights of any third parties in Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.
- 4.11 If this Agreement requires Contractor's presence on University's premises or in University's facilities, Contractor agrees to cause its employees, representatives, agents, or subcontractors to become aware of, fully informed about, and in full compliance with all applicable University Rules, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.
- 4.12 Contractor, at its sole cost and expense, will comply with all requirements of [Subchapter C, Chapter 2252, Texas Government Code](#), including the provision of financial statements, payment statements derived from sales tax reports, and bonds.
- 4.12.1 In accordance with [§2252.062, Texas Government Code](#), Contractor will submit to University two (2) copies of Contractor's most recent financial statement prepared by a certified public accountant on the Effective Date.

4.12.2 In accordance with [§2252.063, Texas Government Code](#), Contractor will submit to University, no later than the 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.

4.12.3 In accordance with [§2252.064, Texas Government Code](#), Contractor will provide University with a performance bond for each contract year during the Term. The amount of the performance bond for the first contract year during the Term will be equal to _____. Thereafter, the amount of the performance bond will be adjusted at the beginning of each contract year to _____. 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 the prompt and faithful performance of Work and all of Contractor's other duties and obligations under this Agreement.

5. The Contract Amount.

5.1 So long as Contractor has provided University with its current and accurate Federal Tax Identification Number in writing, University will pay Contractor for the performance of Work in accordance with **Exhibit C**, Payment for Services.

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

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

6. Payment Terms.

6.1 At least ten (10) days before the end of each month during the Term, Contractor will submit to University an invoice covering Work performed for University to that date, in compliance with **Exhibit C**, Payment for Services. Each invoice will be accompanied by documentation that University may reasonably request to support the invoice amount. University will pay Contractor for Work in accordance with [Chapter 2251, Texas Government Code](#).

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

Upon approval of the Final Invoice by University, University will pay (**Final Payment**) to Contractor the amount due under the Final Invoice.

- 6.3 Notwithstanding any provision of this Agreement to the contrary, University will not be obligated to make any payment (whether a Progress Payment or Final Payment) to Contractor if Contractor is in default under this Agreement.
- 6.4 The cumulative amount of all Progress Payments and the Final Payment (defined below) will not exceed the Contract Amount in **Exhibit C**, Payment for Services.
- 6.5 No payment made by University will (a) be construed to be final acceptance or approval of that part of the Work to which the payment relates, or (b) relieve Contractor of any of its duties or obligations under this Agreement.
- 6.6 The acceptance of Final Payment by Contractor will constitute a waiver of all claims by Contractor except those previously made in writing and identified by Contractor as unsettled at the time of the Final Invoice for payment.
- 6.7 University will have the right to verify the details in Contractor's invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Contractor at mutually convenient times; (b) examining any reports with respect to the Project; and (c) other reasonable action.
- 6.8 [Section 51.012, Texas Education Code](#), authorizes University to make payments through electronic funds transfer methods. Contractor agrees to accept payments from University through those methods, including the automated clearing house system (ACH). Contractor agrees to provide Contractor's banking information to University in writing on Contractor letterhead signed by an authorized representative of Contractor. Prior to the first payment, University will confirm Contractor's banking information. Changes to Contractor's bank information must be communicated to University in accordance with **Section 12.14** in writing at least thirty (30) days before the effective date of the change and must include an [IRS Form W-9](#) signed by an authorized representative of Contractor.
- 6.9 **Not Used**

7. Ownership and Use of Work Material.

- 7.1 All **tools, software, programs**, drawings, specifications, plans, computations, sketches, data, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by Contractor or any subcontractors in connection with Work (collectively, **Work Material**), whether or not accepted or rejected by University, are the sole property of University and for its exclusive use and re-use at any time without further compensation and without any restrictions.
- 7.2 Contractor grants and assigns to University all rights and claims of whatever nature and whether now or hereafter arising in and to Work Material and will cooperate fully with University in any steps University may take to obtain or enforce patent, copyright, trademark or like protections with respect to Work Material.
- 7.3 Contractor will deliver all Work Material to University upon expiration or termination of this Agreement. University will have the right to use Work Material for the completion of Work or otherwise. University may, at all times, retain the originals of Work Material. Work Material will

not be used by any person other than University on other projects unless expressly authorized by University in writing.

- 7.4 Work Material will not be used or published by Contractor or any other party unless expressly authorized by University in writing. Contractor will treat all Work Material as confidential.
- 7.5 All title and interest in Work Material will vest in University and will be deemed to be work made for hire and made in the course of Work rendered under this Agreement. To the extent that title to any Work Material may not, by operation of law, vest in University or Work Material may not be considered works made for hire, Contractor irrevocably assigns, conveys and transfers to University and its successors, licensees and assigns, all rights, title and interest worldwide in and to Work Material and all proprietary rights therein, including all copyrights, trademarks, service marks, patents, trade secrets, moral rights, all contract and licensing rights and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known. In the event Contractor has any rights in Work Material which cannot be assigned, Contractor agrees to waive enforcement worldwide of the rights against University, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to University with the right to sublicense. These rights are assignable by University.
- 7.6 Contractor IP is the sole property of Contractor (or its licensor) and Contractor (or its licensor) will at all times retain sole and exclusive title to and ownership of Contractor IP. Contractor grants University a non-exclusive, worldwide, perpetual, irrevocable, sub-licensable, royalty-free license to use Contractor IP in connection with the Work and Contractor's services related to the Work. "**Contractor IP**" means all tools, software and programs owned by Contractor (licensed to Contractor by a third party licensor) that (1) existed prior to the Effective Date and the commencement of the Work; (2) are not related to the Work or to Contractor's services in connection with the Work; or (3) were created by Contractor (or its licensor) totally separate from the Work or Contractor's services in connection with the Work.
7. University grants Contractor a non-exclusive, worldwide, perpetual, irrevocable, sub-licensable, royalty-free license to the Work Product Improvements to Contractor IP. "**Work Product Improvements to Contractor IP**" means Work Material comprising an improvement, enhancement or modification to Contractor IP, whether or not patentable, copyrightable as a derivative work, or otherwise protectable as intellectual property.

8. Default and Termination

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

- 8.2 University may, without cause, terminate this Agreement at any time upon giving seven (7) days' advance written notice to Contractor. Upon termination pursuant to this Section, Contractor will be entitled to payment of an amount that will compensate Contractor for Work satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement; provided, that, Contractor has delivered all Work Material to University. Notwithstanding any provision in this Agreement to the contrary, University will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice, that could have been avoided or mitigated by Contractor.
- 8.3 Termination under **Sections 8.1 or 8.2** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.
- 8.4 If Contractor fails to cure any default within fifteen (15) days after receiving written notice of the default, University will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Contractor under this Agreement, any and all reasonable expenses incurred in connection with University's curative actions.
- 8.5 In the event that this Agreement is terminated, then within thirty (30) days after termination, Contractor will reimburse University for all fees paid by University to Contractor that were (a) not earned by Contractor prior to termination, or (b) for goods or services that University did not receive from Contractor prior to termination.

SAMPLE

9. Indemnification

9.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY AND, THE UNIVERSITY OF TEXAS SYSTEM, AND RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY, **INDEMNITEES**) FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, 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.

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

10. Relationship of the Parties.

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

11. Insurance.

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

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

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

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

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

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

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

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

If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

11.1.4 Umbrella/Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence and aggregate with a deductible of no more than \$10,000. The Umbrella/Excess Liability policy will be excess over and at least as broad as the underlying coverage as required under sections 11.1.1 Employer's Liability; 11.1.2 Commercial General Liability; 11.1.3 Business Auto Liability. Inception and expiration dates will be the same as the underlying policies. Drop down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.] [Note: Limit amount should be adequate to cover University's exposure. Appropriate limit will depend on the subject matter of this Agreement.]

11.1.5 **Not Used**

11.1.6 **Not Used**

11.1.7 **Not Used**

11.1.8 **Not Used**

11.1.9 **Not Used**

SAMPLE

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

11.2 Contractor will deliver to University:

11.2.1 After the execution and delivery of this Agreement and prior to the performance of any Work by Contractor, evidence of insurance on a Texas Department of Insurance (TDI) approved certificate form (the Acord form is a TDI-approved form) verifying the existence and actual limits of all required insurance policies; and, if the coverage period shown on the current certificate form ends during the Term, then prior to the end of the coverage period, a new certificate form verifying the continued existence of all required insurance policies.

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

11.2.1.2 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System, The University of Texas System] and University. **All insurance policies** will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System, and University. No policy will be canceled until after thirty (30) days' unconditional written notice to University. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to University thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this **Section 11**.

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

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

*Name: Lail Grant
Address: 4901 E. University Blvd. Odessa, Tx. 79762
Phone Number: (432) 552-2491
Email Address: Grant_L@utpb.edu*

11.3 Contractor's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by University or The University of Texas System. Contractor's or subcontractor's insurance will be kept in force until all Work has been fully performed and accepted by University in writing except as provided in this **Section 11.3**.

11.3.1 **Not Used**

11.3.2 **Not Used**

12. **Miscellaneous.**

12.1 **Assignment and Subcontracting.** Except as specifically provided in **Exhibit E**, Historically Underutilized Business Subcontracting Plan, Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on University; and (b) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Applicable Laws, including [Chapter 2161, Texas Government Code](#), and [34 TAC §§20.285\(g\)\(5\), 20.585 and 20.586](#). The benefits and burdens of this Agreement are assignable by University.

12.2 **Texas Family Code Child Support Certification.** Pursuant to [§231.006, Texas Family Code](#), Contractor certifies it is not ineligible to receive the award of or payments under this Agreement, and acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

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

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

12.5 **Loss of Funding.** Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (**Legislature**) and/or allocation of funds by the Board of Regents of The University of Texas System (**Board**). If Legislature fails to appropriate or allot necessary funds, or Board fails to allocate necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond University's control.

12.6 **Entire Agreement; Modifications.** This Agreement (including all exhibits, schedules, supplements and other attachments (collectively, **Exhibits**)) supersedes all prior

agreements, written or oral, between Contractor and University and will constitute the entire agreement and understanding between the parties with respect to its subject matter. This Agreement and each of its provisions will be binding upon the parties, and may not be waived, modified, amended or altered, except by a writing signed by University and Contractor. All Exhibits are attached to this Agreement and incorporated for all purposes.

- 12.7 **Force Majeure.** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (**force majeure occurrence**). Provided, however, in the event of a force majeure occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that University may continue to provide healthcare, research and other mission critical services during the occurrence.
- 12.8 **Captions.** The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
- 12.9 **Venue; Governing Law.** 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.
- 12.10 **Waivers.** No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.
- 12.11 **Not Used**
- 12.12 **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

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

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

If to University: University of Texas Purchasing Department
4901 E. University Blvd.
Odessa, Tx 79762
Email: Montalvo_E@utpb.edu
Attention: Elsa Montalvo

with copy to: University of Texas Athletics
4901 E. University Blvd.
Odessa, Tx 79762
Email: Dooley_T@utpb.edu
Attention: Todd Dooley

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 intendsto deliver written notice to University pursuant to [§2251.054, Texas Government Code](#), then Contractor will send that notice to University as follows:

University of Texas Purchasing Department
4901 E. University Blvd.
Odessa, Tx 79762
Email: Montalvo_E@utpb.edu
Attention: Elsa Montalvo

with copy to University of Texas Athletics
4901 E. University Blvd.
Odessa, Tx 79762
Email: Dooley_T@utpb.edu
Attention: Todd Dooley

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

- 12.15 **Severability.** In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.
- 12.16 **State Auditor's Office.** Contractor understands acceptance of funds under this Agreement constitutes acceptance of authority of the Texas State Auditor's Office or any successor agency (**Auditor**), to conduct an audit or investigation in connection with those funds (ref. §§[51.9335\(c\)](#), [73.115\(c\)](#) and [74.008\(c\)](#), *Texas Education Code*). Contractor agrees to cooperate with Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.
- 12.17 **Limitation of Liability.** EXCEPT FOR UNIVERSITY'S OBLIGATION (IF ANY) TO PAY CONTRACTOR CERTAIN FEES AND EXPENSES UNIVERSITY WILL HAVE NO LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING ANY DUTY OR OBLIGATION OF UNIVERSITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR, NO PRESENT OR FUTURE AFFILIATED ENTERPRISE, SUBCONTRACTOR, AGENT, OFFICER, DIRECTOR, EMPLOYEE, REPRESENTATIVE, ATTORNEY OR REGENT OF UNIVERSITY, OR THE UNIVERSITY OF TEXAS SYSTEM, OR ANYONE CLAIMING UNDER UNIVERSITY HAS OR WILL HAVE ANY PERSONAL LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.

Contractor will receive no financial compensation for delay or hindrance to Work. In no event will University be liable to Contractor or its employees, agents, representatives or subcontractors, for any damages arising out of or associated with any delay or hindrance to Work, regardless of the source of the delay or hindrance, including a force majeure occurrence, and even if such delay or hindrance results from, arises out of, or is due, in whole or in part, to the negligence, breach of contract or other fault of University. Contractor's sole remedy in any such case will be an extension of time.

In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, neither party will be entitled to recover attorneys' fees, costs or other related expenses from the other party.

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

12.19 **Breach of Contract Claims.** 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 (i) neither execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit; and (ii) University has not waived its right to seek redress in the courts.

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

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

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

12.19.1.3 Compliance with the contested case process provided in [subchapter C](#) of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under [Chapter 107, Texas Civil Practices and Remedies Code](#). The parties hereto specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit and (ii) University has not waived its right to seek redress in the courts.

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

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

12.20 **Undocumented Workers.** The *Immigration and Nationality Act* ([8 USC §1324a](#)) (**Immigration Act**) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the [Form I-9 Employment Eligibility Verification Form \(I-9 Form\)](#) as the document to be used for employment eligibility verification ([8 CFR §274a](#)). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by Applicable Laws. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by Applicable Laws, University may terminate this Agreement in accordance with **Section 8**. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

- 12.21 **Limitations.** THE PARTIES ARE AWARE THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS (**LIMITATIONS**) ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THIS AGREEMENT, INCLUDING TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY, AND TERMS AND CONDITIONS RELATED TO LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
- 12.22 **Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy at University's Standards of Conduct Guide at <https://www.utpb.edu/university-offices/compliance-and-accommodations/conflict-of-interest/index> and applicable state ethics laws and rules at https://www.utpb.edu/university-offices/operating-procedures/docs/part_i.pdf. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, University's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement. Further, Contractor agrees to comply with [§2252.908, Texas Government Code \(Disclosure of Interested Parties Statute\)](#), and [1 TAC §§46.1 through 46.5 \(Disclosure of Interested Parties Regulations\)](#), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC and University with information required on the form promulgated by TEC. Contractor may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php.]
- 12.23 **State of Texas Computer Equipment Recycling Program Certification.** Pursuant to [§361.965, Texas Health and Safety Code](#), Contractor certifies that it is full compliance with the *State of Texas Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act*, [Subchapter Y, Chapter 361, Texas Health and Safety Code](#), and the rules adopted by the Texas Commission on Environmental Quality under that Act at [30 TAC §§328.131 through 328.155](#). Contractor acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 12.24 **Enforcement.** Contractor agrees and acknowledges that University is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to performing Work. Contractor's services provide a peculiar value to University. University cannot be reasonably or adequately compensated in damages for the loss of Contractor's services. Accordingly, Contractor acknowledges and agrees that a breach by Contractor of the provisions of this Agreement will cause University irreparable injury and damage. Contractor, therefore, expressly agrees that University will be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.

12.25 **Not Used**

12.26 **Not Used**

12.27 **Historically Underutilized Business Subcontracting Plan. Contractor will use good faith efforts to subcontract work performed under this Agreement in accordance with the Historically Underutilized Business Subcontracting Plan (HSP) (ref. Exhibit E). Except as specifically provided in the HSP, Contractor will not subcontract any of its duties or obligations under this Agreement, in whole or in part. This Agreement is subject to [34 TAC §20.285](#). Contractor will comply with all of its duties and obligations under [34 TAC §20.285](#). In addition to other rights and remedies, University may exercise all rights and remedies authorized by [34 TAC §20.285](#).**

SAMPLE

Historically Underutilized Business Subcontracting Plan. Contractor agrees to use good faith efforts to subcontract Work in accordance with the Historically Underutilized Business Subcontracting Plan (HSP)(ref. **Exhibit E**). Contractor agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to University in the format required by the Statewide Procurement and Statewide Support Services Division of the Texas Comptroller of Public Accounts or successor entity (collectively, **SPSS**). Submission of compliance reports will be required as a condition for payment under this Agreement. If University determines that Contractor has failed to subcontract as set out in the HSP, University will notify Contractor of any deficiencies and give Contractor an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. If University determines that Contractor failed to implement the HSP in good faith, University, in addition to any other remedies, may report nonperformance to the SPSS in accordance with 34 TAC §§20.285(g)(5), 20.585 and 20.586. University may also revoke this Agreement for breach and make a claim against Contractor.

12.27.1 **Changes to the HSP.** If at any time during the Term, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with 34 TAC §20.285; (b) the changes must be reviewed and approved by University; and (c) if University approves changes to the HSP, this Agreement must be amended in accordance with **Section 12.6** to replace the HSP with the revised subcontracting plan.

12.27.2 **Expansion of Work.** If University expands the scope of Work through a change order or any other amendment, University will determine if the additional Work contains probable subcontracting opportunities *not* identified in the initial solicitation for Work. If University determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34 TAC §20.285 before (a) this Agreement may be amended to include the additional Work; or (b) Contractor may perform the additional Work. If Contractor subcontracts any of the additional subcontracting opportunities identified by University without prior authorization and without complying with 34 TAC §20.285, Contractor will be deemed to be in breach of this Agreement under **Section 8** and will be subject to any remedial actions provided by Applicable Laws, including [Chapter 2161, Texas Government Code](#), and 34 TAC §20.285. University may report nonperformance under this Agreement to the SPSS in accordance with [34 TAC §§20.285\(g\)\(5\), 20.585 and 20.586.](#)]

- 12.28 **MANDATORY CRIMINAL BACKGROUND CHECK PROVISION FOR U.T. SYSTEM ADMINISTRATION CONTRACTS THAT INVOLVE WORK PERFORMED ON PREMISES OF THE U.T. SYSTEM ADMINISTRATION COMPLEX IN AUSTIN, AS REQUIRED BY INT109: Responsibility for Individuals Performing Work; Criminal Background Checks.** Each individual who is assigned to perform Work under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing Work under this Agreement. Prior to commencing Work, Contractor will (1) provide University with a list (**List**) of all individuals who may be assigned to perform Work on University's premises and (2) have an appropriate criminal background screening performed on all the individuals on the List. Contractor will determine on a case-by-case basis whether each individual assigned to perform Work is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University's premises who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform Work on University's premises.

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

Responsibility for Individuals Performing Work; Criminal Background Checks. Each individual who is assigned to perform Work under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing Work under this Agreement. Prior to commencing Work, Contractor will (1) provide University with a list (**List**) of all individuals who may be assigned to perform Work, and (2) have an appropriate criminal background screening performed on all the individuals. Contractor will determine on a case-by-case basis whether each individual assigned to perform Work is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University's campus who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform Work.

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

- 12.29 **Quality Assurance.** Contractor will (a) comply with all applicable standards of the Joint Commission (**Joint Commission**); (b) implement and monitor a quality assurance process that complies with Joint Commission standards; (c) comply with applicable Joint Commission privileging standards for licensed independent practitioners; (d) upon request, provide assurance to University of a licensed independent practitioner's privileging file; and (e) provide University with periodic reports of its quality assurance indicators and/or permit University to conduct periodic quality assurance audits of Work.

- 12.30 **Not Used**
- 12.31 **Debarment.** Contractor confirms that neither Contractor nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States (U.S.) federal government procurement or nonprocurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs (<http://www.sam.gov/>) issued by the U.S. General Services Administration. "Principals" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Contractor will provide immediate written notification to University if, at any time prior to award, Contractor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when University executes this Agreement. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to the other remedies available to University, University may terminate this Agreement for default by Contractor.
- 12.32 **Not Used**
- 12.33 **Access to Documents.** To the extent applicable to this Agreement, in accordance with §1861(v)(l)(i) of the Social Security Act ([42 USC §1395x](#)) as amended, and the provisions of [42 CFR §420.300 et seq](#), Contractor will allow, during and for a period of not less than four (4) years after the expiration or termination of this Agreement, access to this Agreement and its books, documents, and records; and contracts between Contractor and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.
- 12.34 **Affirmative Action. Exhibit**, Affirmative Action Compliance Program, contains a writtencopy of Contractor's Civil Rights "Affirmative Action Compliance Program," or if Contractor isnot required to have such a written program, the reason Contractor is not subject to such requirement.
- 12.35 **OSHA Compliance.** To the extent applicable to the services to be performed under this Agreement, Contractor represents and warrants, that all articles and services furnished under this Agreement meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law ([Public Law 91-596](#)) and its regulations in effect or proposed as of the date of this Agreement.
- 12.36 **Discrimination Prohibited.** UNIVERSITY AND CONTRACTOR WILL ABIDE BY THE REQUIREMENTS OF [41 CFR §§60-1.4\(A\)](#), [60-300.5\(A\)](#) AND [60-741.5\(A\)](#) (COLLECTIVELY, **REGULATIONS**). THE REGULATIONS (1) PROHIBIT DISCRIMINATION AGAINST QUALIFIED INDIVIDUALS BASED ON THEIR STATUS AS PROTECTED VETERANS OR INDIVIDUALS WITH DISABILITIES, AND (2) PROHIBIT DISCRIMINATION AGAINST ALL INDIVIDUALS BASED ON THEIR RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN. MOREOVER, THE REGULATIONS REQUIRE THAT UNIVERSITY AND CONTRACTOR TAKE AFFIRMATIVE ACTION TO EMPLOY AND ADVANCE IN EMPLOYMENT, INDIVIDUALS WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, PROTECTED VETERAN STATUS OR DISABILITY.
- 12.37 **Not Used**
- 12.38 **Not Used**
- 12.39 **Contractor Certification regarding Boycotting Israel.** Pursuant to [Chapter 2271, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and

(2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

12.40 **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. **[Note 1: [Subchapter F, Chapter 2252, Texas Government Code](#), requires University to implement a process to compare Contractor's name(s) to the various lists designated in Section 2252.152, Government Code, before execution of this Agreement.]** **[Note 2: This Section only applies to a contract with a for-profit entity. [Section 2252.151\(1\), Texas Government Code](#), defines "company" to have the meaning assigned by Section 806.001, Texas Government Code. [Senate Bill 253](#) (85th Regular Session) moved Section 806.001 to [Section 2270.0001, Texas Government Code](#). Section 2270.0001 defines "company" as a for-profit entity.]**

12.41 **Translations.** This Agreement may be translated into various languages and executed by the parties; however, the English language version is the original and controlling agreement, and all other language versions are translations for information purposes only. If the terms and conditions of the original English language Agreement conflict with those in any foreign language translation of this Agreement, the original English language Agreement will prevail.

12.42 **Not Used**

12.43 **Not Used**

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

- (1) preserve all contracting information (ref. [Section 552.003\(7\), Texas Government Code](#)) related to this Agreement as provided by the records retention requirements applicable to University for the duration of this Agreement;
- (2) promptly provide to the University any contracting information related to this Agreement that is in the custody or possession of Contractor on request of the University; and
- (3) on completion of this Agreement, either:
 - (A) provide at no cost to the University all contracting information related to this Agreement that is in the custody or possession of Contractor, or
 - (B) preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to the University.

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

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

that the entity has taken adequate steps to ensure future compliance with the requirements of Subchapter J.

If Contractor fails to comply with the requirements of Subchapter J applicable to Contractor, then University shall provide written notice to Contractor stating the requirement(s) of Subchapter J that Contractor has violated. Such notice will also advise Contractor that University may terminate this Agreement without further obligation to Contractor if (a) Contractor does not cure the violation on or before the 10th business day after the date the University provides the notice, (b) the University determines that Contractor has intentionally or knowingly failed to comply with a requirement of that Subchapter J, and (c) the University determines that Contractor has not taken adequate steps to ensure future compliance with the requirements of Subchapter

J. For purposes of the above, Contractor has taken adequate steps to ensure future compliance with Subchapter J if: (1) Contractor produces contracting information requested by the University that is in the custody or possession of Contractor not later than the 10th business day after the date the University makes the request and (2) Contractor establishes a records management program to enable Contractor to comply with Subchapter J.

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

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

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

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

12.47.1 a Chinese, Iranian, North Korean, or Russian company or (b) a company of a designated country. Contractor acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate

12.49 Not Used

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

UNIVERSITY:

CONTRACTOR:

THE UNIVERSITY OF TEXAS PERMIAN BASIN

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Attest: _____
Corporate Secretary

Attach:

EXHIBIT A – Scope of Work

EXHIBIT B – Schedule

EXHIBIT C – Payment for Services

EXHIBIT D – HUB Subcontracting Plan

SAMPLE

EXHIBIT A

SCOPE OF WORK

Contractor will provide the following services to University:

- 5.4.23 Buses to be used for university related functions only.
- 5.4.24 Charter bus services required will include transportation for day trips and overnight trips within the Permian Basin, other Texas areas and areas outside the State of Texas (tentative schedule is attached to the RFP email).
- 5.4.25 All employees of the Contractor shall be appropriately dressed in uniform, courteous and well-mannered at all times.
- 5.4.26 Contractor shall have sufficient resources to be able to work multiple jobs at the same time.
- 5.4.27 Buses must be of late model, air conditioned and heated.
- 5.4.28 Buses must be equipped with a clean, operating restroom, if necessary, for overnight trips.
- 5.4.29 The Contractor may be required to provide individual bus maintenance records regarding inspection and repair at any time during the term of the contract.
- 5.4.30 Driver must show orders and have a University employee sign off on the manifest prior to boarding the bus.
- 5.4.31 The bus driver must remain with the bus at all times. If the driver must leave the bus at the point of destination or any stops in route, the bus MUST be secured and locked.
- 5.4.32 No one other than the driver or any individuals that are considered passengers shall be allowed access on the bus during the charter.
- 5.4.33 All buses should be equipped with microphone/PA system.
- 5.4.34 All buses should be equipped with radio to radio communication between buses (drivers may communicate through cell phones if needed, but not while driving, however, they may use Bluetooth earpieces).
- 5.4.35 Ample storage compartments must be available.
- 5.4.36 Ability to promote University logo on the side of buses
- 5.4.37 All buses should be equipped with reclining seats.
- 5.4.38 Ample spacing between seating to accommodate larger athletes (this could be discussed).
- 5.4.39 Internet/Wi-Fi connections to be provided.
- 5.4.40 Ability to plug in laptops/iPads into entertainment system with streaming capabilities.
- 5.4.41 All buses should have satellite capabilities.
- 5.4.42 Some trip request may require on-board video/DVD players. The Contractor should honor this request.
- 5.4.43 Orders
 - 5.4.13.1 Orders may be placed by the individual campus department on an as needed basis.
 - 5.4.13.2 Orders will be places and billed as per the University's issued Purchase Order.
 - 5.4.13.3 The terms and conditions set forth in this Solicitation shall be considered contractual and Contractor contracts will not be allowed. UTPB will not sign any documents other than itinerary; no order forms, terms and conditions, etc.
- 5.4.44 Invoicing

5.4.14.1 Invoices to include requesting department names, date(s) of event, destination location, actual number of miles incurred, number of hours incurred, and must include the University Purchase Order number.

5.4.14.2 All invoices MUST be itemized as per pricing on proposal.

5.3.14.3 If charging tolls, parking, etc., Contractor must provide receipts with the invoice in order to be reimbursed.

5.4.15 Cancellation

5.4.15.1 There will be a maximum of three (3) changes allowed per department per scheduled event without penalty.

5.4.15.2 Cancellations made twenty-four (24) hours or more prior to the event will not be charged a fee.

5.4.15.3 Cancellations due to inclement weather or other unforeseen incidents will not be subject to any penalties. University mandated cancellation or schedule change, etc. will not be subject to any penalties if cancelled or changed within forty-eight (48) hours **after** scheduling the charter.

5.4.16 Special Proposer Representations

By submission of Proposal, Proposer represents their company to complete and fulfill the following requirements as indicate:

5.4.16.1 That well maintained and clean buses will be provided.

5.4.16.2 That all buses and equipment necessary to fulfill this charter bus contract will be provided in a well maintained, clean, in good working order, and conform with proper standards of the industry.

5.4.16.3 That all driving staff provided are properly certified and licenses under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rule and regulations.

5.4.16.4 That all driving staff provided have been drug tested in compliance with any applicable laws, rules and regulations of any authority having jurisdiction, fi so required by such laws, rules and regulations.

5.4.16.5 That all driving staff provided confirm to all applicable requirements for motor carrier drivers.

5.4.16.6 That all driving staff provided are prepared with routing information.

5.4.16.7 That all driving staff will refrain from the use of tobacco products while on campus, during routes, or in view of students and participants. Tobacco products include cigarettes, cigars, pipes, smokeless tobacco, e-cigarettes, and chewing tobacco. Any tobacco products possessed by drivers shall be out of sight at all times when on duty, on University grounds, or in the bus. This policy also prohibits the appearance of tobacco products, tobacco use or tobacco brands on drivers' clothes.

5.4.16.8 That it will disqualify as a bus driver any person who has committed: Any felony crime involving the physical neglect of a child, the physical injury or death of a child, sexual exploitation of a child; sexual offenses where a minor is the victim; promoting prostitution of a minor; the sale or purchase or a minor child or violation of similar laws; any crimes involving the use of a motor vehicle. The responsibility for checking bus drivers' criminal backgrounds to ensure they have not been convicted of any of the aforementioned or related crimes is an ongoing responsibility, which lies solely upon Proposer.

5.4.16.9 That it will inform the University of any delays or potential delays as soon as possible. Communication of any delays is very important. Parents and family are often waiting for participants at the designated pick-up point(s). Therefore, the bus in transit must communicate immediately with University staff if a delay is occurring or is likely to occur.

5.4.16.10 That all the services performed by the Proposer under or pursuant to this contract shall be of the standard and quality which prevail among similar business and organizations or superior knowledge and skill engaged in providing similar services under the same or similar circumstances.

- 5.4.16.11 That Proposer acknowledges that the University may allow the use of the Proposer's standard forms (such as acknowledgements or orders and invoices) to administer its dealings under this Agreement for convenience purposes but all provisions thereof shall be deemed stricken.
- 5.4.16.12 Proposer acknowledges that no subcontracting is to be permitted unless written consent is received from the University Procurement and HUB Office.
- 5.4.16.13 Proposer acknowledges that if subcontracting is necessary, Proposer agrees that the subcontractor will provide equipment, services and has insurance comparable to, equivalent to or better than Proposer. Proposer remains liable to University for subcontractor's acts or omissions hereunder.
- 5.4.16.14 Proposer warrants that all laws, rules and regulations of duly constituted authorities having jurisdiction over its activities shall be complied with by the Proposer and its drivers.
- 5.3.16.15 Except for the obligation of the University to pay the Proposer pursuant to the terms of the contract, the University shall have no liability to the Proposer or to anyone claiming through or under the Proposer by reason of the execution or performance of this contract.

5.4.17 Gas Price Changes

Pricing submitted should include the estimated cost of gas for transportation. Gas pricing adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The University may consider sources, such as the Consumer Price Index; Producer Price Index; Commodity Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase or decrease in pricing; and any other data the University deems relevant for renegotiations. Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement. During this time, the Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period. If a mutual agreement cannot be met, the University has the right to terminate the agreement with the Contractor for the benefit of the University due to unsustainable and unmanageable price increases.

EXHIBIT B

TENTATIVE SCHEDULE

Sport	Game Date	Location	Departure Date	Return Date	Notes
Football	3-Sep	Midland, TX/ Grande	3-Sep	3-Sep	
Football	10-Sep	Midland, TX/ Grande	10-Sep	10-Sep	
Football	17-Sep	Midland, TX/ Grande	17-Sep	17-Sep	
Football	24-Sep	Monmouth, Oregon	23-Sep	24-Sep	Charter to Airport
Football	1-Oct	Canyon, Texas	30-Sep	1-Oct	
Football	1-Oct	Odessa, TX/ Ratliff	1-Oct	1-Oct	
Football	15-Oct	Kingsville, Texas	14-Oct	15-Oct	
Football	22-Oct	Odessa, TX/ Ratliff	22-Oct	22-Oct	
Football	29-Oct	Portales, New Mexico	28-Oct	29-Oct	
Football	5-Nov	Midland, TX/ Grande	5-Nov	5-Nov	
Football	12-Nov	Ellensburg, Washington	11-Nov	12-Nov	Charter to Airport
Volleyball	2-Sep	Lubbock, Texas	1-Sep		
Volleyball	3-Sep	Lubbock, Texas		3-Sep	
Volleyball	8-Sep	Dallas, Texas	7-Sep		
Volleyball	9-Sep	Dallas, Texas			
Volleyball	10-Sep	Dallas, Texas		10-Sep	
Volleyball	17-Sep	San Angelo, Texas	16-Sep	17-Sep	
Volleyball	30-Sep	Lawton, Oklahoma	29-Sep		
Volleyball	1-Oct	Canyon, Texas		1-Oct	
Volleyball	3-Oct	Silver City, New Mexico	2-Oct	3-Oct	
Volleyball	14-Oct	San Antonio, Texas	13-Oct		
Volleyball	15-Oct	Austin, Texas		15-Oct	
Volleyball	28-Oct	Oklahoma City, Oklahoma	27-Oct		
Volleyball	29-Oct	Fort Smith, Arkansas		29-Oct	
Men's Soccer	7-Sep	Nampa, Idaho	7-Oct		
Men's Soccer		Tournament		10-Sep	
Men's Soccer	17-Sep	Tyler, Texas	16-Sep	17-Sep	
Men's Soccer	28-Sep	San Antonio, Texas	27-Sep	28-Sep	
Men's Soccer	5-Oct	Laredo, Texas	4-Oct	5-Oct	
Men's Soccer	12-Oct	Dallas, Texas	11-Oct	12-Oct	
Men's Soccer	22-Oct	Oklahoma City, Oklahoma	21-Oct	22-Oct	
Men's Soccer	29-Oct	Lubbock, Texas	28-Oct	29-Oct	
Women's Soccer	2-Sep	Plainview, Texas	1-Sep	2-Sep	
Women's Soccer	9-Sep	Stephenville, Texas	8-Sep	9-Sep	
Women's Soccer	17-Sep	Tyler, Texas	16-Sep	17-Sep	
Women's Soccer	21-Sep	Canyon, Texas	20-Sep	21-Sep	
Women's Soccer	1-Oct	Denton, Texas	30-Sep	1-Oct	
Women's Soccer	5-Oct	Wichita Falls, Texas	4-Oct	5-Oct	
Women's Soccer	12-Oct	Portales, New Mexico	11-Oct	12-Oct	
Women's Soccer	22-Oct	Oklahoma City, Oklahoma	21-Oct	22-Oct	

Men's Basketball	11-Nov	Silver City, New Mexico	10-Nov	
Men's Basketball	12-Nov	Silver City, New Mexico		12-Nov
Men's Basketball	18-Nov	Fort Lewis, Colorado	17-Nov	
Men's Basketball	19-Nov	Fort Lewis, Colorado		19-Nov
Men's Basketball	8-Dec	Oklahoma City,		
Men's Basketball	10-Dec	Oklahoma	7-Dec	
Men's Basketball	10-Dec	Fort Smith, Arkansas		10-Dec
Men's Basketball	30-Dec	Portales, New Mexico	29-Dec	
Men's Basketball	1-Jan	Silver City, New Mexico		1-Jan
Men's Basketball	19-Jan	Austin, Texas	18-Jan	
Men's Basketball	21-Jan	San Antonio, Texas		21-Jan
Men's Basketball	4-Feb	Lubbock, Texas	3-Feb	4-Feb
Men's Basketball	9-Feb	Wichita Falls, Texas	8-Feb	
Men's Basketball	11-Feb	Lawton, Oklahoma		11-Feb
Men's Basketball	23-Feb	San Angelo, Texas	22-Feb	23-Feb
Women's Basketball	11-Nov	Grand Junction, Colorado	10-Nov	
Women's Basketball	12-Nov	Grand Junction, Colorado		12-Nov
Women's Basketball	25-Nov	Denver, Colorado	25-Nov	
Women's Basketball	26-Nov	Lakewood, Colorado		26-Nov
Women's Basketball	8-Dec	Oklahoma City,		
Women's Basketball	10-Dec	Oklahoma	7-Dec	
Women's Basketball	10-Dec	Fort Smith, Arkansas		10-Dec
Women's Basketball	30-Dec	Portales, New Mexico	29-Dec	
Women's Basketball	1-Jan	Silver City, New Mexico		1-Jan
Women's Basketball	19-Jan	Austin, Texas	18-Jan	
Women's Basketball	21-Jan	San Antonio, Texas		21-Jan
Women's Basketball	4-Feb	Lubbock, Texas	3-Feb	4-Feb
Women's Basketball	9-Feb	Wichita Falls, Texas	8-Feb	
Women's Basketball	11-Feb	Lawton, Oklahoma		11-Feb
Women's Basketball	23-Feb	San Angelo, Texas	22-Feb	23-Feb
Cross Country	5-Nov	Wichita Falls, Texas	4-Nov	5-Nov
Softball	10-Feb	Lawton, Oklahoma	9-Feb	
Softball	11-Feb	Lawton, Oklahoma		11-Feb
Softball	25-Feb	Canyon, Texas	24-Feb	
Softball	26-Feb	Canyon, Texas		26-Feb
Softball	11-Mar	Wichita Falls, Texas	10-Mar	
Softball	12-Mar	Wichita Falls, Texas		12-Mar

Softball	21-Mar	Oklahoma City, Oklahoma	20-Mar	
Softball	22-Mar	Oklahoma City, Oklahoma		22-Mar
Softball	31-Mar	Kingsville, Texas	30-Mar	
Softball	1-Apr	Kingsville, Texas		1-Apr
Softball	11-Apr	Silver City, New Mexico	10-Apr	
Softball	12-Apr	Silver City, New Mexico		12-Apr
Softball	21-Apr	Laredo, Texas	20-Apr	
Softball	22-Apr	Laredo, Texas		22-Apr
Baseball	2-Feb	San Antonio, Texas	1-Feb	
Baseball	3-Feb	San Antonio, Texas		
Baseball	4-Feb	San Antonio, Texas		4-Feb
Baseball	23-Feb	San Angelo, Texas	22-Feb	
Baseball	24-Feb	San Angelo, Texas		
Baseball	25-Feb	San Angelo, Texas		25-Feb
Baseball	2-Mar	Kingsville, Texas	1-Mar	
Baseball	3-Mar	Kingsville, Texas		
Baseball	4-Mar	Kingsville, Texas		4-Mar
Baseball	16-Mar	Canyon, Texas	15-Mar	
Baseball	17-Mar	Canyon, Texas		
Baseball	18-Mar	Canyon, Texas		18-Mar
Baseball	30-Mar	Lawton, Oklahoma	29-Mar	
Baseball	31-Mar	Lawton, Oklahoma		
Baseball	1-Apr	Lawton, Oklahoma		1-Apr
Baseball	20-Apr	Fort Smith, Arkansas	19-Apr	
Baseball	21-Apr	Fort Smith, Arkansas		
Baseball	22-Apr	Fort Smith, Arkansas		22-Apr

EXHIBIT C

PAYMENT FOR SERVICES

SERVICE FEES:

Provide pricing and information on the following items, in accordance with the instructions, terms and conditions, and requirements / specifications contained in this Solicitation.

Vendors must provide “ceiling” rates for Charter Bus Services, in accordance with the specifications outlined herein. Ceiling rates shall be firm for the term of the contract.

Minimum – 46 Seat Charter Bus

Item	Description	Unit of Measure	Unit Price
1	Hourly Rate:	Hour	\$
	Minimum Hours per Trip:	Hour	Hours
2	Daily Rate:	Day	\$
3	Mileage Rate:	Per Mile	\$
	Indicate when mileage rate will apply:		

Minimum – 56 Seat Charter Bus

Item	Description	Unit of Measure	Unit Price
1	Hourly Rate:	Hour	\$
	Minimum Hours per Trip:	Hour	Hours
2	Daily Rate:	Day	\$
3	Mileage Rate:	Per Mile	\$
	Indicate when mileage rate will apply:		

Minimum – 26 Seat Mini Bus

Item	Description	Unit of Measure	Unit Price
1	Hourly Rate:	Hour	\$
	Minimum Hours per Trip:	Hour	Hours
2	Daily Rate:	Day	\$
3	Mileage Rate:	Per Mile	\$
	Indicate when mileage rate will apply:		

Minimum – 36 Seat Mini Bus

Item	Description	Unit of Measure	Unit Price
1	Hourly Rate:	Hour	\$
	Minimum Hours per Trip:	Hour	Hours
2	Daily Rate:	Day	\$
3	Mileage Rate:	Per Mile	\$
	Indicate when mileage rate will apply:		

Minimum – 40 Seat Mini Bus

Item	Description	Unit of Measure	Unit Price
1	Hourly Rate:	Hour	\$
	Minimum Hours per Trip:	Hour	Hours
2	Daily Rate:	Day	\$
3	Mileage Rate:	Per Mile	\$
	Indicate when mileage rate will apply:		

Additional Fees

Item	Description	Unit of Measure	Unit Price
16	Second Driver Fee	Total	\$
	Indicate when a second driver fee would apply:		
17	Overnight Rate – any trip over 24 hours	Day	\$
18	Fuel Surcharge – if applicable	Per Mile	\$
	Indicate when a fuel surcharge would apply:		

If University submits, in advance, a written request for additional services not contemplated or reasonably inferred by this Agreement, Contractor will be paid for actual hours incurred by Contractor’s personnel directly and solely in support of the additional services at the Rates provided above.

EXHIBIT D

HUB SUBCONTRACTING PLAN

APPENDIX THREE

HUB SUBCONTRACTING PLAN

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

APPENDIX FIVE

ACCESS BY INDIVIDUALS WITH DISABILITIES

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