

REQUEST FOR PROPOSAL



by

The University of Texas PERMIAN BASIN

for

Selection of a Vendor to Provide

Pouring Rights

related to

UTPB Athletics

RFP No. 742-23-210-2

Submittal Deadline: June 6, 2023

Issued: May 12, 2023

REQUEST FOR PROPOSAL

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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 vendor, hereafter referred to as “**Company**,” to provide pouring rights services for the entire University including, dining halls, Athletics and the Basin Sports Complex. A map(s) of the Campus is attached to this RFP as **APPENDIX FOUR**. The requirement for vending machines and the stocking of the University’s current vending machines is not included as part of this solicitation. This RFP is for pouring right services only and does not incorporate the need or use for the Company to provide vending machine accommodations.

1.3 Objective of Request for Proposal

The University is soliciting proposals in response to this Request for Proposal for Selection of a Vendor to Provide Beverage Services and Supply Beverages for Dining and Concessions with Certain Exclusive Pouring and Sponsorship Rights, **RFP No.742-23-210-2** (this “**RFP**”), from qualified and experienced vendors to provide beverage fountain machines and the necessary beverage services (collectively, “**Services**”) with certain exclusive pouring rights and sponsorship opportunities

The Services, which are more specifically described in **Section 5.4** (Scope of Work) of this RFP, include provision of beverages, dispensing equipment and related supplies for dining and concession operations on Campus operated by University and third-party concessionaires (“University Concessionaires”). In exchange for monetary and non-monetary consideration, the Contractor (if any) (Ref. Section 2.3) selected by University in accordance with the requirements and specifications set forth in this RFP, will be granted certain exclusive rights to have Contractor’s products be the only beverages sold, served, or offered for sale on the Campus by University and/or any of University’s Concessionaires, except as otherwise provided by the Agreement.

The Office of Procurement, on behalf of the University desires to obtain written proposals from companies who wish to obtain Exclusive Soft Drink Pouring Rights for certain related Sponsorship Opportunities for the University campus facilities for the contract period specified herein. In general, and in addition to other needs specified herein, Proposer is requested to submit a Proposal as described in this Request for Proposal (RFP). In return for the specified Exclusive soft drink pouring rights and certain Related Sponsorship Opportunities offered to the Proposer, the Proposer shall provide the University equipment, services, fees and pricing guarantees. Pursuant to the terms of the contract and subject to the exclusions, no competitive products or related items including, but not limited to premium items, shall be made available, sampled, advertised and /or promoted at University (subject to exclusions). The University’s general goal is to improve beverage service and increase net revenues by maximizing the availability of product, offering marketing and sales opportunities, and developing strategies that

benefit the University and the beverage provider. It is anticipated that an exclusive, seven-year agreement for beverages will provide additional revenue to support the Institution. Ultimately, we will create a relationship based upon a shared understanding of these mutual benefits emphasizing active and open communication, and most effectively applying the resources and expertise of each party. Each Proposer may also include in their Proposal any other items, such as programs, innovations, or resources that it believes would benefit the University. The University shall only consider Proposals from financially responsible firms presently engaged in the business of manufacturing, distributing or selling, or licensing the right to manufacture, distribute or sell Soft Drink Beverages available on a nationwide basis and providing support services in conjunction therewith. Information submitted by each proposer will determine which Proposal will best serve the University. Failure of successful Proposer to accept any items of its Proposal as part of the Contract may result in cancellation of the award.”

1.4 Type of Agreement

The Contractor will be required to enter into an agreement with University as further described in Section 4, and in a form substantially similar to the Beverage Vending and Pouring Rights Agreement (the “Beverage Vending and Pouring Rights Agreement”) attached to this RFP as Schedule 1 of Appendix Two and incorporated for all purposes.

As part of this RFP, the Contractor and University will enter in to an agreement for sponsorship rights at specified facilities on Campus, in addition to the Beverage Vending and Pouring Rights Agreement, Contractor will also be required to enter into a separate agreement with University as further described in Section 4, and in a form substantially similar to the Sponsorship Rights Agreement (the “Sponsorship Rights Agreement”) attached to this RFP as Schedule 2 of Appendix Two and incorporated for all purposes.

The Beverage Vending and Pouring Rights Agreement and the Sponsorship Rights Agreement are sometimes collectively referred to as the “Agreement.”

1.4 Term of the Agreement

The initial term of the resulting Agreement will be for five (5) 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.

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

The Sponsorship Rights Agreement and the Beverage Vending and Pouring Rights Agreement will expire on the same date with the same option to extend

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 **Tuesday, June 06, 2023 (Submittal Deadline)**.

2.2 RFP Contact Information and Questions

Interested parties may direct questions about this RFP to:

*Contact: Elsa Montalvo
Director of Purchasing*

*Phone: (432) 552-2795
Email to: Montalvo_e@utpb.edu
Subject Line: RFP No.742-23-210-2*

*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 **5:00p.m. Central Time Friday, May 05, 2023 (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 Financial Package	40%
2.3.2.2 Quality of the Proposer's goods or services	20%
2.3.2.3 Extent to which the goods or services meet the University's needs	20%
2.3.2.4 Reputation of the Proposer and of the Proposer's goods or services	10%
2.3.2.5 Proposer's past relationship with University	5%
2.3.2.6 Proposer's exceptions to the terms and conditions set forth in Section 4 of this RFP	5%

2.4 Key Events Schedule

Date RFP Issued	May 12, 2023
Pre-Proposal Conference (ref. Section 2.6)	May 23, 2023, 1:00 pm (cst)
Question Deadline (ref. Section 2.2)	May 26 2023, 5:00 pm (cst)
Submittal Deadline	2:00 p.m. Central Time on June 06, 2023 (ref. Section 2.1)

2.5 Historically Underutilized Businesses

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

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

Questions regarding the HSP may be directed to:

*Contact: Elsa Montalvo
HUB 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 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**) as a separate attachment titled HSP

Any proposal submitted in response to this RFP that is not accompanied by a separate HSP attachment 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 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 electronic 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

University will hold a pre-proposal conference at **1:00 p.m.**, Central Time on **May 23, 2023, in Room 1200 of Kirk Building** (ref. **APPENDIX FOUR – Campus Map**). The pre-proposal conference will allow all Proposers an opportunity to ask University's representatives relevant questions and clarify provisions of this RFP.

SECTION 3

SUBMISSION OF PROPOSAL

3.1 Number of Copies

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

3.2 Submission

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

University of Texas Permian Basin
4901 E. University Blvd.
Odessa, TX 79762
ATT: E. Montalvo
Office of Purchasing
MB# 4270
RFP# 742-23-210-2

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 Sample Agreement (ref. **APPENDIX TWO**);
- 3.4.1.3 Proposal Requirements (ref. **APPENDIX ONE**);
- 3.4.1.4 Notice to Proposers (ref. **Section 2**).

3.5 Submittal Checklist

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

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

SECTION 4

GENERAL TERMS AND CONDITIONS

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

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SECTION 5

SPECIFICATIONS AND ADDITIONAL QUESTIONS

5.1 General

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

5.2 Additional Questions Specific to this RFP

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

- 5.2.1 If Proposer takes exception to any terms or conditions set forth in **APPENDIX TWO**, Proposer must submit a list of the exceptions.
- 5.2.2 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 FIVE**. *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.***
- 5.2.3 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 SEVEN, 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.**
- 5.2.4 PROPOSER MUST PROVIDE A DETAILED LIST OF ANY AND ALL SPONSORSHIP BENEFITS PROPOSER ANTICIPATES UNIVERSITY WILL GRANT CONTRACTOR IN CONNECTION WITH THE SPONSORSHIP AGREEMENT. PROPOSER'S REQUESTED SPONSORSHIP BENEFITS WILL BE SUBJECT TO AVAILABILITY AND APPROVAL BY UNIVERSITY. A DETAILED DESCRIPTION OF UNIVERSITY APPROVED SPONSORSHIP BENEFITS WILL BE LISTED IN **EXHIBIT A** OF THE SPONSORSHIP AGREEMENT. University anticipates sponsorship benefits will satisfy qualified sponsorship requirements under applicable the Internal Revenue Code and the Treasury Regulations.
- 5.2.5 *Proposer understands all sponsorship benefits University grants Contractor will satisfy qualified sponsorship requirements of the Internal Revenue Code and the Treasury Regulations.*
- 5.2.6 Confirm Proposer understands that logos Proposer may use in connection with rights University conveys to Proposer under the Agreement, are restricted to Proposer's name, address, telephone number, web site address, logo, recognized slogan, and/or product pictures.
- 5.2.6.1 Demonstrated ability to provide beverage pouring services.
Proposals must describe the Proposer's experience in the operation of Beverage & Vending Services for Dining and Concessions with Certain Exclusive Pouring and Sponsorship Rights and the manner in which Proposer would operate beverage vending and dispensing services for the University campus community.

5.2.6.2 Service and Maintenance Support.

Proposals must describe in detail the Proposer's plan for scheduled and unscheduled maintenance and any other required mechanical support of beverage vending and dispensing machines.

5.2.7 Nutritional Practices.

Contractor will provide a variety of nutritional options in its Beverages products such as bottled water; unsweetened Beverages; non-caloric Beverages, artificially sweetened Beverages; and caloric beverages with some nutritional benefits ("Healthy Products"). University desires that at least twenty-five percent (25%) of Contractor's Beverage product will consist of Healthy Products.

Proposer should describe its Healthy Product line and the Healthy Products Proposer plans to offer in completion of the Services.

5.3 Scope of Work

Contractor will provide the following services to University:

5.3.1 Overview

Contractor will supply fountain machine pouring services and other related beverage services to the University and University Concessionaires all in accordance with the terms of the agreement (ref. **APPENDIX TWO**).

5.3.2 Beverage Vending

Vending Machine services are **NOT** requested or included in this RFP Scope of Work and will **NOT** be provided by awarded Contractor in relation to this RFP solicitation.

5.3.3 Fountain Beverages

Contractor will provide Beverages for all vending, dining and concession operations on Campus operated by the University and/or Concessionaires utilized by the University (collectively "**Fountain Operations**"). Contractor will provide all Beverages reasonably required to ensure professional Fountain Operations on Campus as well as University's Basin Sports Complex. Contractor will provide a full range of Beverage products, brands, and sizes in its Fountain Operations. Contractor's duties will include delivery of all Fountain Beverage products to the University Campus, as well as to the Basin Sports Complex when requested by UTPB Athletics for University sporting events.

Proposer should identify in its Proposal the range of Beverage products, brands, and sizes that Proposer plans to incorporate into its Fountain Operations.

5.3.4 Nutritional Practices

Contractor will provide a variety of nutritional options in its Beverage products such as bottled water, unsweetened Beverages, non-caloric Beverages, artificially sweetened Beverages, and caloric Beverages with some nutritional benefits ("**Healthy Products**"). University desires that at least twenty-five (25%) of Contractor's Beverage products consists of Healthy Products.

Proposer should describe its Healthy Product line and the Healthy Products Proposer plans to offer in completion of the Services

5.3.5 Pre-Existing Contracts

Contractor acknowledges pre-existing contracts as described in section 1.2.

Note: Our vending machine services are currently being provided by Golden Brew and the awarded Contractor will be required to provide products that can operate with Golden Brew's vending machines. Current Concessionaire: Chartwells

5.4 Additional Questions Specific to this RFP

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

5.4.1 Demonstrate ability to provide Fountain Beverage products.

Proposals must describe in detail the Proposer's experience in providing Fountain Beverage products to other customers and the manner in which Proposer has provided in the past and would provide products while servicing the University and the Basin Sports Complex.

5.4.2 Number of locations and Beverage vending machines on campus.

Not applicable to this solicitation

5.4.3 A Proposal must describe the Proposer's healthy product line and the Healthy Products Proposer plans to offer in completion of the Services. Specify % of Healthy Products to be offered in vending machines.

5.4.4 A Proposal must describe the Healthy Product options that Proposer plans to offer UTPB and UTPB controlled properties, such as the Basin Sports Complex (ref. **5.4.4**)

5.4.5 A Proposal must provide the range of Beverage products, brands, and sizes that Proposer offers to incorporate into its Fountain Operations.

5.4.6 Proposer must describe in its proposal the method and process by which University shall be able to verify or audit gross sales revenue reported by Proposer if it is selected as the Contractor.

5.5 Consideration

In response to Section 6 of this RFP, Proposers must submit a Financial Consideration Proposal as described below. The following items should be included in the Financial Consideration Proposal:

5.5.1 Sponsorship Opportunities. It is the University's intent to explore and pursue innovative ways for individual vendors to support Athletics and Campus Wide programs, initiatives, and events to the mutual benefit of both parties.

Such initiatives along with a brief description and qualification that the Proposer believes would be of value to the University should be included with the proposal submission for consideration.

5.5.1.1 Sponsorship Fee. University seeks sponsorship in support of a) University sponsored (Campus Wide) events and b) Athletics as further described herein. In consideration for sponsorship payments, the successful Proposer will be granted rights to display certain sponsorship and advertising messages on the scoreboards identified in RFP Section 5.6.1.

5.5.1.2. Product Donation. University seeks a) annual donation of product for University sponsored (Campus Wide) events and b) annual donation of product and beverage related equipment ("Sponsorship Support") for Athletic teams, and hospitality for working press, stats crew, and game officials. Events listed will occur annually unless otherwise specified. Athletics also hosts an average of two conference championships per year in sports other than those listed herein.

University desires Proposer deliver to University free of cost or expense from time-to-time, within seventy-two (72) hours after written request by University, a quantity of Contractor's Beverage products; provided that the quantity of the Beverage products will be specified in University's written request, and further provided that the maximum quantity of Beverage products that Contractor would be obligated to deliver to University in any contract year would be previously specified in the Agreements.

5.5.2. Advertising and Marketing Fee. The Contractor will pay a fee to the University for the opportunity to advertise and market Contractor signage and/or products on Campus in conjunction with University events or in support of Athletic Teams.

5.5.3 Royalty. The Contractor will pay to University royalties (collectively, the “Royalty”) on each sale of each Product sold on Campus, including the sale of vending Product and the sale of each mix syrup bag sold by Contractor as follows:

(a) Vending Royalty. Contractor will pay University a Royalty on gross revenue generated by Work. The term “gross revenue” means gross revenue before exclusion of applicable sales taxes.

(b) Minimum Annual Royalty Guarantee. Guaranteed royalty from annual sales from Contractor’s vending machines – See Section 3.1.1 in the Beverage Vending and Pouring Rights Contract in APPENDIX TWO.

5.5.4. Pouring Rights. Proposer must propose an annual Pouring Rights Fee that it will pay to University in consideration of University granting Contractor the exclusive right to supply all Beverages to be sold on Campus by University or University’s Concessionaires.

5.5.5 Innovation. If applicable, Proposer should provide to the University any innovative support for the intercollegiate athletic program/student-athletes as it relates to how best to support recovery post-workout and/or post-competition.

5.5.6 Product Support and Fueling Station. If applicable, Proposer should work with the University to create a fueling station for student-athletes. Stock pre- and/or post-work out supplements and nutrition to maximize recovery. In Proposal, items to include but not limited to: gummies, protein bars, protein powders and/or shakes, milk-based products, isotonic beverages, isotonic beverage powder/mix.

5.5.7 Fueling Station. If applicable, Proposal should include product refrigerators in the fueling station with additional refrigerator units throughout the athletic department.

5.5.8 Branded Sideline Kits/Carts. If applicable, Proposal should include annual allotment of sideline kits/carts for practice and competition. Include but not limited to: 500 water bottles each year, branded towels, ice chests, coolers, etc.

5.5.9 Product Donations – Donations by the pouring rights holder, to the University of soon-to-be expired products

ROYALTY, FEES & IMPLEMENTATION SCHEDULE

Proposal of: _____
 (Proposer Name)

To: University of Texas Permian Basin

RFP No.: 742-23-210-2

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 five (5) years with the initial term of the Agreement proposed to begin on __TBD_____, 2023, and proposed to expire on __TBD_____, 2028. University may elect to renew the Agreement for up to two (2) additional one (1) year terms.

6.2 Pricing for Work and Expenses

TO BE COMPLETED WITH AND SUBMITTED AS PART OF PROPOSER’S SUBMITTAL.

a. Proposer must provide Pricing for each proposed product in its product line.

	Carbonated _____oz*	Carbonated _____oz*	Non-Carbonated _____oz*	Water _____oz*	Isotonic _____oz*	Juices _____oz*	Other _____oz*
Year 1	\$	\$	\$	\$	\$	\$	\$
Year 2	\$	\$	\$	\$	\$	\$	\$
Year 3	\$	\$	\$	\$	\$	\$	\$
Year 4	\$	\$	\$	\$	\$	\$	\$
Year 5	\$	\$	\$	\$	\$	\$	\$
Renewal Term							
Year 6-7	\$	\$	\$	\$	\$	\$	\$

b. Proposer confirms that it will pay University the Annual Royalty based on the percentage specified below per unit of product vended (based on scaled sales volume of cases of product sold)

	< XXX Cases Sold	> XXX Cases Sold
Year 1	%	%
Year 2	%	%
Year 3	%	%
Year 4	%	%
Year 5	%	%
Renewal Term:		
Year 6-7	%	%

c. Proposer will pay to University a Minimum Royalty Guarantee from annual sales of vended Beverages.

	Minimum Guarantee
Year 1	\$
Year 2	\$
Year 3	\$
Year 4	\$
Year 5	\$
Renewal Term:	
Year 6-7	\$
Total	\$

6.3 Concession Product and Supply Pricing:

Proposer will sell to University and University Concessionaires beverages and supplies at Pricing set forth below: (Proposer will provide Pricing for each proposed product in its product line.)

TO BE COMPLETED WITH AND SUBMITTED AS PART OF PROPOSER'S SUBMITTAL.

a. Proposer must provide Pricing for each proposed product in its product line.

	Carbonated _____oz*	Carbonated _____oz*	Non- Carbonated _____oz*	Water _____oz*	Isotonic _____oz*	Juices _____oz*	Other _____oz*
Year 1	\$	\$	\$	\$	\$	\$	\$
Year 2	\$	\$	\$	\$	\$	\$	\$
Year 3	\$	\$	\$	\$	\$	\$	\$

Year 4	\$	\$	\$	\$	\$	\$	\$
Year 5	\$	\$	\$	\$	\$	\$	\$
Renewal Term							
Year 6-7	\$	\$	\$	\$	\$	\$	\$

b. Proposer will pay to University an Annual Royalty as a percentage financial return to University based on the annual amount University purchases in beverages and supplies.

	Annual Royalty %
Year 1	%
Year 2	%
Year 3	%
Year 4	%
Year 5	%
Renewal Term:	
Year 6-7	%

6.4 Annual Exclusivity Rights Fee:

Proposer will pay to University an Annual Exclusivity Rights Fee for the exclusive right to have Proposer's products be the only beverages, sold, served, or offered for sale on the Campus by University and/or any of University's Concessionaires, except as otherwise provided by the Agreement.

The Annual Exclusivity Rights Fee for the renewal period may be a higher amount, but may not be a lower amount than the Annual Exclusivity Rights Fee for the initial term.

TO BE COMPLETED WITH AND SUBMITTED AS PART OF PROPOSER'S SUBMITTAL

	Exclusivity Rights Fee
Year 1	\$
Year 2	\$
Year 3	\$
Year 4	\$
Year 5	\$
Renewal Term:	
Year 6-7	\$ _____
Total	\$ _____

6.5 Annual Sponsorship Fee:

Proposer will pay to University an Annual Sponsorship Fee for the exclusivity privileges concerning promotional recognition to be proposed by the contractor as follows:

The Annual Sponsorship Fee for the renewal period may be a higher amount, but cannot be a lower amount than the annual fee for the initial term.

TO BE COMPLETED WITH AND SUBMITTED AS PART OF PROPOSER'S PROPOSAL.

	Annual Sponsorship Fee	Other Fee
Year 1	\$	\$
Year 2	\$	\$
Year 3	\$	\$
Year 4	\$	\$
Year 5	\$	\$
Renewal Term:		
Year 6-7	\$	\$
Total	\$	\$

6.6 Non-Monetary Sponsorship Support:

TO BE COMPLETED WITH AND SUBMITTED AS PART OF PROPOSER'S PROPOSAL.

Sponsor will provide University with non-monetary sponsorship support ("**Sponsorship Support**") equal to _____ Dollars (\$_____) for each Agreement Year during the term of the Agreement.

Sponsorship Support for the renewal period may be a higher amount, but may not be a lower amount, than the annual support for the initial term.

<u>Year</u>	<u>Annual Sponsorship Support</u>
Initial term- Five Years	

6.7 Facility and Capital Improvement Contributions:

Proposer will pay to University an annual facility and capital improvement contribution ("**Facility and Capital Improvement Contribution**").

The contribution for the renewal period may be a higher amount, but cannot be a lower amount than the initial term.

TO BE COMPLETED WITH AND SUBMITTED AS PART OF PROPOSER’S PROPOSAL.

Facility & Capital Improvement Contributions	
Initial Up front Contribution	\$
Year 2	\$
Year 3	\$
Year 4	\$
Year 5	\$
Renewal Term:	\$
Year 6-7	\$
Total	\$

6.8 Pursuant to Section 6.5 during Agreement Year 1, Proposer will provide University with marketing support for enhancements to University Bookstore and other retail areas as requested by the University. (“Marketing Support”) with a value of _____ Dollars (\$ _____) (“Marketing Fund”). Marketing Support will include: printed and promotional materials but not limited to.

Marketing Fund	
Year 1	\$
Year 2	\$
Year 3	\$
Year 4	\$
Year 5	\$
Renewal Term:	\$
Year 6-7	\$
Total	\$

6.9 Other Monetary Compensation

Other Monetary Compensation
--

Year 1	\$
Year 2	\$
Year 3	\$
Year 4	\$
Year 5	\$
Renewal Term:	\$
Year 6-7	\$
Total	\$

6.10 Other Non-Monetary Compensation

Other Non- Monetary Compensation

Year 1	\$
Year 2	\$
Year 3	\$
Year 4	\$
Year 5	\$
Renewal Term:	\$
Year 6-7	\$
Total	\$
Total	\$

6.11 Other Consideration

6.12 Discounts

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

6.13 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**

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SECTION 1

GENERAL INFORMATION

1.1 Purpose

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

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

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

1.2 Inquiries and Interpretations

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

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

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

1.3 Public Information

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

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

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

Not used

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.: 742-23-210-2

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.: _____

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 AGREEMENTS

SCHEDULE 1 - BEVERAGE VENDING AND POURING RIGHTS AGREEMENT

SCHEDULE 2 - SPONSORSHIP RIGHTS AGREEMENT

SEE ATTACHMENTS

APPENDIX THREE

HUB SUBCONTRACTING PLAN

Proposer must submit a completed HUB Subcontracting Plan with its proposal in accordance with **Section 2.5** of the RFP.

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

APPENDIX FOUR

CAMPUS MAPS – ODESSA & MIDLAND

The University of Texas Permian Basin



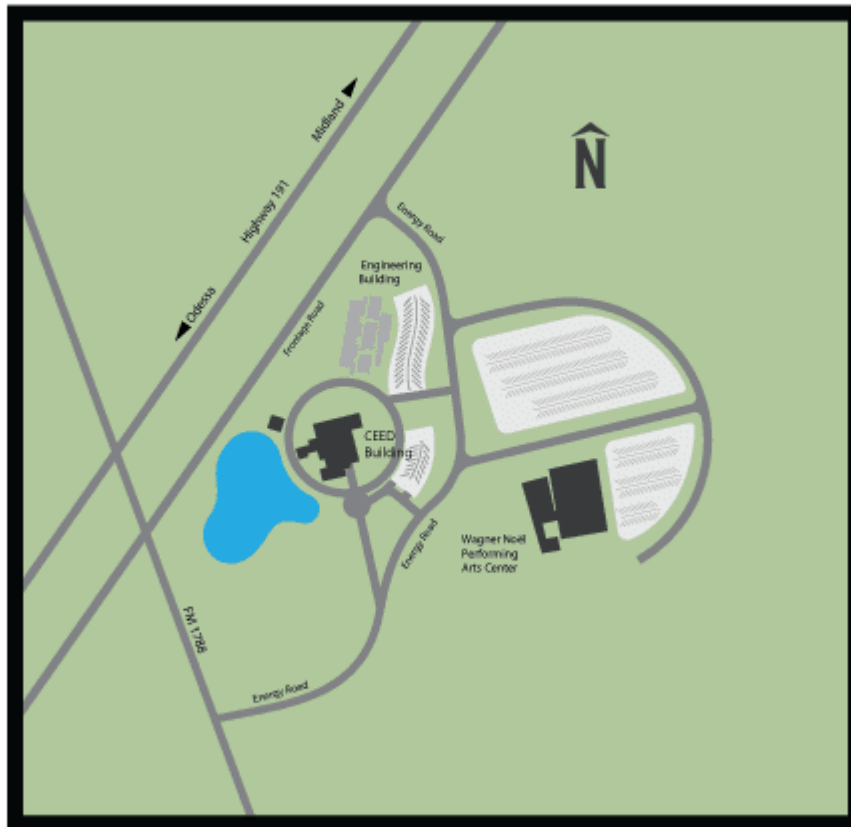
- 1. Mesa Building
 - ★ Admissions & Financial Aid Offices
 - ☼ Prometric Test Center
 - ☺ Welcome Center
- 2. Gym Complex
- 3. Thermal Energy Plant
- 4. D. Kirk Edwards Family Human Performance Center
- 5. Charles A. Sorber Visual Arts Studios
- 6. J. Conrad Dunagan Library/Lecture Center
- 7. Student Activity Center
 - ☒ UTPB Child Care Center
 - ☒ Starbucks Coffee + Cafe
 - ☒ Blackstone LaunchPad
 - ☒ Innovation and Makerspace
 - ◆ Esports/Student Lounge

- 8. Science & Technology Building
- 9. Geosciences Building
- 10. Pool
- 11. Founders Building Counseling Center Physical Plant
- 12. Falcon House (Student Mailboxes)
- 13. Student Housing
- 14. Ellen Noël Art Museum
- 15. Shepperd Leadership Institute and Presidential Archives
- 16. Fire Station 3 (City of Odessa)
- 17. PETEX

- 18. Intramural Field
- 19. Ted & Jan Roden Baseball Field
- 20. Softball Field
- 21. Parker Ranch House
- 22. Residence/Dining Hall
- 23. STEM Academy
- 24. Tennis Center
- 25. Junior League Jurassic Jungle Splash Park
- 26. UTPB Playground
- 27. The Basin Sports Complex at UTPB

- Buildings
- Parking
- Student Housing
- Sports Fields
- Visitor Parking
- Campus Dining

The University of Texas Permian Basin Midland Campus



APPENDIX FIVE

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

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

CERTIFICATE OF INTERESTED PARTIES		FORM 1295	
Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.		OFFICE USE ONLY	
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.		Must file online at www.ethics.state.tx.us/File	
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.			
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.			
4 Name of Interested Party		City, State, Country (place of business)	
		Nature of Interest (check applicable)	
		Controlling	Intermediary
5 Check only if there is an Interested Party. <input type="checkbox"/>			
6 UNSWORN DECLARATION My name is _____, and my date of birth is _____. My address _____ (street) _____ (city) _____ (state) _____ (zip code) _____ (country). I declare under penalty of perjury that the foregoing is true and correct. Executed in _____ County, State of _____, on the _____ day of _____, 20____. (month) (year)			
_____ Signature of authorized agent of contracting business entity (Declarant)			
ADD ADDITIONAL PAGES AS NECESSARY			

APPENDIX SIX

PERFORMANCE BOND

Surety Bond No. _____

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF §

That we, _____, as Principal, and _____, as Surety, are hereby held and firmly bound unto the State of Texas as Obligee in the penal sum of _____ (\$ _____) for payment whereof the said Principal and Surety bind themselves, their heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The conditions of this obligation are such that whereas the Principal entered into a certain contract, hereto attached, and made a part hereof, with the State of Texas, acting by and through _____, dated _____, 20____, for _____.

NOW THEREFORE, the condition of this obligation is such that, if the Principal shall faithfully perform the said contract in accordance with the plans and specifications and contract documents, and shall fully indemnify and save harmless the State of Texas from all cost and damage which the State of Texas may suffer by reason of Principal's default or failure so to do and shall fully reimburse and repay the State of Texas all outlay and expense which the State of Texas may incur in making good any such default, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

In the event that the Principal is declared in default under the said contract, the Surety will within Fifteen (15) days of the State of Texas' declaration of such default take over and assume completion of said contract and become entitled to the payment of the balance of the contract price. Conditioned upon the Surety's faithful performance of its obligations, the liability of the Surety for the Principal's default shall not exceed the penalty of this bond.

The Surety agrees to pay to the State of Texas upon demand all loss and expense, including attorney's fees, incurred by the State of Texas by reason of or on account of any breach of this obligation by the Surety.

Provided further, that if any legal action be filed upon this bond, venue shall lie in the county where the said contract is to be performed.

Provided further, that the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the said contract, or to the work to be performed thereunder, or the specifications accompanying the same, shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition, to the terms of the said contract or to the work or to the specifications.

By signature hereon, if the amount of this bond exceeds \$100,000, then the Surety attests that at the time the bond was executed (and Surety shall provide the Obligee with evidence of the following):

- (1) **it was a holder of a certificate of authority from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law; or**
- (2) had reinsured any liability in excess of \$100,000 by a reinsurer holding a certificate of authority from the United States Secretary of the Treasury.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals this _____ day of _____ in the year _____, the name and corporate seal of each corporate party being hereto affixed, and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(SEAL) _____
Principal

ATTEST:

By: _____ By: _____

(Typed Name and Title) (Typed Name and Title)

(SEAL) _____
Surety

ATTEST:

By: _____ By: _____

(Typed Name and Title) (Typed Name and Title)

Surety's Texas Local Recording
or Resident Agent:

Surety's Home Office Agent or Servicing Agent:

(Signature)

Name: _____

(Typed Name)

Title: _____

License No. _____

File No. _____

Address: _____

Address: _____

Telephone No.: _____

Telephone No.: _

APPENDIX SEVEN
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 set forth in [1 TAC Chapter 213](#), and [1 TAC §206.70](#) (ref. [Subchapter M, Chapter 2054, Government Code](#).) To the extent Contractor becomes aware that 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 EIRs satisfy the EIR Accessibility Warranty or (2) replace 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.