

**AGREEMENT BETWEEN UNIVERSITY AND CONTRACTOR****UTA2023-020B**

This Agreement between University and Contractor (**Agreement**) is made and entered into effective as of November 1, 2023 (**Effective Date**), by and between **The University of Texas at Arlington** an agency and institution of higher education established under the laws of the State of Texas (**University**), and The Hiebing Group, Inc. a Wisconsin corporation (**Contractor**).

University and Contractor hereby agree as follows:

**1. Scope of Work.**

1.1 Contractor will perform the scope of the work (**Work**) set forth in **Exhibit A (the “Scope of Work”)**, in accordance with this Agreement and terms and conditions set forth in the Scope of Work.

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.

**2. The Project.**

2.1 The Work will be provided in connection with UTA2023-02B and all other related, necessary and appropriate services (**Project**).

2.2 Upon University’s written request, Contractor may provide University with access to Contractor’s on-line, cloud-based client portal and dashboard (“Dashboard”). University’s access and use of the Dashboard shall be in compliance with the terms and conditions set forth in Exhibit E, which, if University elects to use the Dashboard, shall be deemed incorporated into and made part of this Agreement.

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**3. Time for Commencement and Completion.**

The term (**Initial Term**) of this Agreement will begin on the Effective Date and expire on October 31, 2025. University will have the option to renew this Agreement as follows (each a **Renewal Term**). The Initial Term and each Renewal Term are collectively referred to as the **Term**.

Option Period	Option Duration	Start Date	End Date
1	12 months	November 1, 2025	October 31, 2026
2	12 months	November 1, 2026	October 31, 2027
3	12 months	November 1, 2027	October 31, 2028
4	12 months	November 1, 2028	October 31, 2029
5	12 months	November 1, 2029	October 31, 2030
6	12 months	November 1, 2030	October 31, 2031
7	12 months	November 1, 2031	October 31, 2032
8	12 months	November 1, 2032	October 31, 2033

The Initial Term and each Renewal Term are collectively referred to as the **Term**.

Prices for the initial term are to be firm. At the end of the initial term and each renewal term (if any), the rates may be increased, decreased or remain unchanged. Any price adjustment must be requested by the Contractor in writing, including detailed documentation supporting the increase, at least sixty (60) days prior to the expiration of the current term. Changes, if agreed to, shall be based upon the greater of (a) the percentage change in the Bureau of Labor Statistics' Consumer Price Index (CPI)-All Urban Consumers for Dallas-Fort Worth-Arlington for the previous contract period ([https://www.bls.gov/regions/southwest/news-release/consumerpriceindex\\_dallasfortworth.htm](https://www.bls.gov/regions/southwest/news-release/consumerpriceindex_dallasfortworth.htm)). No change in pricing shall exceed the year-over-year percentage change in the CPI index noted above, unless it is deemed in the best interest of the University based on current market conditions and the best value criteria included in Texas Education Code 51.9335.

**3.1 Transition Period**

Contractor agrees that when this Contract Agreement expires or is terminated for any reason, then, at the University's option, Contractor will continue to perform the Branding and Marketing Services in accordance with the terms, conditions and pricing of this Contract Agreement until the University contracts with another qualified and experienced Contractor(s) to perform the Branding and Marketing Services or, is able to perform the Branding and Marketing Services in-house; provided that the Contractor will not be required to continue performing the Branding and Marketing Services for more than three (3) months after the expiration or termination date of this Contract Agreement.

The Contractor will cooperate with, and assist, the University's efforts to transition to another Contractor(s) or to perform Branding and Marketing Services in-house.

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#### 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 rules, regulations, and policies of The University of Texas System (<https://www.utsystem.edu/sites/policy-library>), and the institutional rules, regulations and policies of University (<https://www.uta.edu/compliance>) (collectively, **University Rules**). Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for Contractor or any such 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.

**NOTE:** How to navigate to "University Policies, Procedures and Forms:

- a. Click on the link: <https://policy.uta.edu/>
  - b. Click on "Business and Finance"
  - c. Click on "Purchase of Goods & Services"
  - d. The policies, procedures and forms are below the icon on this page.
- 4.2 Contractor represents and warrants that (a) it will use commercially reasonable efforts to perform Work in a professional, good and workmanlike manner and in accordance with the highest standards of Contractor's profession or business for similar types of work and pricing, and (b) all Work 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 and pricing.
- 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. Notwithstanding, Contractor shall not have any liability under this Agreement (to University or any third party) under this section. University shall be solely responsible for the accuracy, completeness and propriety of information concerning its organization, products, services or industry, including any information, disclosures or requirements which are imposed upon University as a result of its business activities by any governmental, regulatory or oversight agency, body, tribunal or proceeding, whether within the United States or in any non-United States jurisdiction. University shall review all materials prepared by Contractor under this Agreement to confirm that descriptions and representations, direct or implied, with respect to University's organization, products, services, industry and competitors are accurate and supportable and that such descriptions and representations are in compliance with all legal and regulatory requirements, directives and guidelines. University shall furnish Contractor with adequate substantiation for all such descriptions or representations as Contractor may reasonably request.

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- 4.4 Subject to Universities' duties and obligations set forth in this Agreement and Exhibits and Schedules referenced herein, 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 caused by Contractor or any third party subcontractor engaged by Contractor, as soon as practical after Contractor becomes aware of the defects.
- 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 if and only as required by 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 Subject to Section 7, Contractor represents and warrants that all of Contractor's Personnel contributing to Final Work Material (ref. **Section 7**) under this Agreement will be required to (i) acknowledge in writing the ownership of Contractor (for the benefit of University) of Final Work Material produced by Personnel while performing services pursuant to this Agreement, and (ii) make all assignments necessary to effectuate such ownership of Final Work Material. **Personnel** means any and all persons associated with Contractor who provide any work or work product pursuant to this Agreement, including officers, managers, supervisors, full-time employees, part-time employees, and independent contractors.
- 4.10 Subject to Section 7, 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 Final Work Material developed under this Agreement; (iii) Final Work Material and the intellectual property rights protecting Final Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges and other restrictions; (iv) Apart from any information, content or materials furnished by University or a third party acting on behalf of University, the Final Work Material will not infringe upon or violate any copyright,

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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, and service mark.

- 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 **Intentionally Omitted** - 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.

## 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 Work.
- 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 Contractor will submit to University an invoice covering Work performed for University to that date, in compliance with **Exhibit C**, Payment for Work. 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](#). If University approves the amount or any portion of the amount, University will promptly pay (each a **Progress Payment**) to Contractor the amount approved so long as Contractor is not in default under this Agreement. If University disapproves any invoice amount, University will give Contractor specific reasons for its disapproval in writing.
- 6.2 Within thirty (30) 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.

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- 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 for the particular Work or Final Work Materials that do not comply with this Agreement. University will remain responsible for payment (whether a Progress Payment or Final Payment) for all Work and Final Work Materials that comply with this Agreement.
- 6.4 The cumulative amount of all Progress Payments and the Final Payment (defined above) will not exceed the Contract Amount in **Exhibit C**, Payment for Work.
- 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 Omitted.
- 6.7 University will have the right to verify the details in Contractor's invoices and supporting documentation by requesting additional supporting documentation from Contractor.
- 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 **Intentionally Omitted - Include if University is entitled to a prompt payment discount.**
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 Upon payment of undisputed amounts to Contractor under a particular Statement of Work, all final advertisements, scripts, copy, illustrations, photography, music, video, recordings or other materials prepared by Contractor for University related to such Statement of Work ("Final Work Material"), but excluding Third Party Content and Preexisting Content (as defined below), shall be and remain the property of Contractor until such time University pays Contractor in full. Upon payment in full, all rights, title and interest in and to Final Work Material (subject to the exclusions set out below) that were approved by University shall become the sole and exclusive property of University. Upon request, Contractor, and/or its employees and subcontractors, agree to execute documents reasonably necessary to affect the transfer of such rights to University unless otherwise mutually agreed in writing.

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- 7.3 Contractor will deliver all Final Work Material to University upon expiration or termination of this Agreement. University will have the right to use Final Work Material for the completion of Work or otherwise. University may, at all times, retain the originals of Final Work Material. Final Work Material will not be used by any person other than University on other projects unless expressly authorized by University in writing.
- 7.4 Final Work Material will not be used or published by Contractor or any other party unless expressly authorized by University in writing, provided however, Contractor may use or reference Final Work Material for self-promotion rights. Contractor will treat all Final Work Material as confidential unless and until such Final Work Material becomes public by or on behalf of University through no breach of this Agreement by Contractor.
- 7.5 University acknowledges that Contractor may incorporate certain content or materials into the Work Material and Final Work Material that is owned by Contractor ("Contractor Content") or owned by third party licensors ("Third-Party Content"), including but not limited to fonts, music, audio, video, photos, graphics and animation, and/or ideas prepared for Contractor by its consultants or suppliers and provided to University by Contractor, which are subject to the proprietary rights of Contractor or said third parties. Contractor shall procure, on University's behalf and in University's name, a license to use such Third-Party Content as part of the Final Work Materials. University acknowledges and agrees that the costs and terms of such third-party license may vary. Contractor shall obtain University's prior approval of all terms and conditions of such Third-Party Content licenses prior to using or incorporating such Third-Party Content in Final Work Material. Contractor shall hold harmless, indemnify and defend University from and against any and all claims and/or liabilities arising out of alleged or actual violation of such proprietary rights for which Contractor fails to obtain the necessary rights, licenses or releases on behalf of University. This section shall survive termination of this Agreement. University shall hold harmless, indemnify and defend Contractor from and against any and all claims and/or liabilities arising out of alleged or actual violation of such proprietary by rights by University. This section shall survive termination of this Agreement.

## 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 thirty (30) 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 thirty-day (30-day) period.
- 8.2 University may, without cause, terminate this Agreement at any time upon giving ninety (90) 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 Final Work Material to University upon receipt of Final Payment for such Final Work Material and subject to 8.6 below. Except as set forth in Schedule C, 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.

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- 8.3 Termination under **Sections 8.1 or 8.2** will not relieve either party from liability for any default or breach under this Agreement or any other act or omission of such defaulting or breaching party.
- 8.4 Upon mutual written agreement between the parties, if Contractor fails to cure any default within thirty (30) days after receiving written notice of the default, in lieu of termination, University may receive a credit to offset against future amounts due to Contractor under this Agreement.
- 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 for Work 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.
- 8.6 Upon written request, Contractor shall transfer and make available to University, or University's representative, Final Work Material on hard drive or other media created by Contractor on University's behalf under this Agreement. University shall compensate Contractor for its reasonable time and expenses (including the cost of any media storage, shipping or courier costs) to compile and deliver such files to University. Notwithstanding, Contractor shall have no duty to return or save, and shall not be liable for the storage or preservation of, any Work Material in any form, six (6) months after this Agreement. University acknowledges and agrees that, upon transfer of such files, University assumes any and all liability associated with the use of such materials (and any Third-Party content contained therein) and Contractor shall be forever released from any and all responsibility and liability associated with University's or University's representative's use of such materials after such transfer to University.

## 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, (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.

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- 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. NOTWITHSTANDING, IN FURTHER CONSIDERATION OF THIS AGREEMENT, CONTRACTOR SHALL NOT BE LIABLE TO UNIVERSITY, AND UNIVERSITY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CONTRACTOR FOR AND AGAINST ANY PATENT INFRINGEMENT CLAIM RELATED TO ANY FINAL WORK PRODUCT PREPARED UNDER THIS AGREEMENT, UNIVERSITY'S USE OF ANY FINAL WORK PRODUCT PREPARED UNDER THIS AGREEMENT, OR ANY WORK PERFORMED BY CONTRACTOR FOR UNIVERSITY, INCLUDING ALL COSTS AND LEGAL FEES INCURRED BY CONTRACTOR IN DEFENDING AGAINST A CLAIM OF PATENT INFRINGEMENT. THE UNIVERSITY AGREES TO PAY THE CONTRACTOR FOR SUCH COSTS AND FEES WITHIN 30 DAYS OF RECEIPT OF AN INVOICE FROM CONTRACTOR FOR SUCH COSTS AND FEES. UNIVERSITY SHALL INDEMNIFY AND HOLD CONTRACTOR HARMLESS AND DEFEND CONTRACTOR FROM AND AGAINST ANY AND ALL CLAIMS OR LOSSES ARISING OUT OF ANY FAILURE TO PAY FOR THIRD PARTY VENDOR BILLS.
- 9.3 NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, IT WILL BE THE RESPONSIBILITY OF THE UNIVERSITY TO REVIEW ALL WORK AND WORK MATERIALS PREPARED AND/OR PROVIDED UNDER THIS AGREEMENT TO CONFIRM THE ACCURACY AND LEGALITY OF THE DESCRIPTIONS AND DEPICTIONS OF INFORMATION PERTAINING TO THE UNIVERSITY AND ITS SERVICES, AS WELL AS ANY COMPETITIVE SERVICES DESCRIBED OR DEPICTED, AND CONTRACTOR SHALL NOT BE LIABLE TO THE UNIVERSITY, AND SHALL NOT HAVE ANY DUTY TO INDEMNIFY OR HOLD UNIVERSITY HARMLESS AS A RESULT OF THE UNIVERSITY'S FAILURE TO COMPLY WITH THIS SECTION OR THAT WERE APPROVED BY THE UNIVERSITY PRIOR TO THEIR USE. UNIVERSITY FURTHER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CONTRACTOR AGAINST ANY LIABILITIES AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) THE CONTRACTOR MAY INCUR AS A RESULT OF CLAIMS AND/OR PROCEEDINGS RELATED TO FALSE, DECEPTIVE, OR MISLEADING DESCRIPTION, DEPICTION, OR COMPARISON OF THE UNIVERSITY AND/OR COMPETITIVE PRODUCTS, OR BASED UPON THE UNIVERSITY'S ULTIMATE USE OF THE FINAL WORK MATERIALS THAT WERE APPROVED BY THE UNIVERSITY PRIOR TO THEIR USE.

## 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.

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**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
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 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; and 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.

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11.1.5 Professional Liability (Errors & Omissions) Insurance (including Personal & Advertising Injury coverage) with limits of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate. Such insurance will cover all Work performed by or on behalf of Contractor and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Contractor agrees to purchase an Extended Reporting Period Endorsement, effective twenty-four (24) months after the expiration or cancellation of the policy. No Professional Liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least twenty-four (24) months after the expiration or termination of this Agreement for any reason.

11.1.6

11.1.8 Directors' and Officers' Liability Insurance with limits of not less than \$1,000,000 per claim. The coverage will be continuous for the duration of this Agreement and for not less than twenty-four (24) months following the expiration or termination of this Agreement.

11.1.9 **Intentionally Omitted** - Cyber Liability Insurance

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, The University of Texas System and

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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: Charlie Brooks  
Address: 219 W. Main St.  
Arlington, TX 76010  
Facsimile Number: 817-272-2685  
Email Address: [Charles.brooks@uta.edu](mailto:Charles.brooks@uta.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 Professional Liability Insurance coverage written on a claims-made basis requires Contractor to purchase an Extended Reporting Period Endorsement, effective for twenty-four (24) months after the expiration or cancellation of the policy.

11.3.2 Directors and Officers Liability Insurance coverage written on a claims-made basis requires Contractor to purchase an Extended Reporting Period Endorsement, effective for twenty-four (24) months after the expiration or cancellation of the policy.

## 12. **Miscellaneous.**

12.1 **Assignment and Subcontracting.** Except as specifically provided in **Exhibit D**, 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.

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- 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 education, research and other mission critical services during the occurrence. A force majeure occurrence shall not relieve University of its payment obligations.
- 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.** Tarrant 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

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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 **Confidentiality and Safeguarding of University Records; Press Releases; Public Information.** Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems (collectively, **University Records**). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws.
- 12.11.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to University within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide University with all information requested by University regarding the impermissible use or disclosure.
- 12.11.2 **Return of University Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of University will be (1) returned to University, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Contractor will provide University with written notice of Contractor's intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to University in writing the destruction of University Records.
- 12.11.3 **Disclosure.** If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this **Section 12.11**.
- 12.11.4 **Press Releases.** Except when defined as part of Work, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of University in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of University.
- 12.11.5 **Public Information.** University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act (TPIA)*, [Chapter 552, Texas Government Code](#). In accordance with §§[552.002](#) and [2252.907](#), *Texas Government Code*, and at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public.

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- 12.11.6 Except for University's compliance with a request made pursuant to the **TPIA** (as set forth in 12.11.5 above), University shall not disclose confidential information of Contractor (including but not limited to media rates, agency cost, overhead rates and any compensation information) without the express written consent of Contractor.
- 12.11.6 **Termination.** In addition to any other termination rights in this Agreement and any other rights at law or equity, if a party reasonably determines that the other party has breached any of the restrictions or obligations in this Section, the non-breaching party may immediately terminate this Agreement without notice or opportunity to cure.
- 12.11.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.
- 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 seven (7) years after the expiration or termination of this Agreement or until all audit, claim, and litigation matters are resolved, whichever is later, unless University otherwise instructs Contractor in writing. (Ref. [Section 441.1855 of the Texas Government Code](#).)
- 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:      The University of Texas at Arlington  
                                 Procurement & Strategic Sourcing  
                                 219 W. Main St.  
                                 Arlington, TX 76010  
                                 Fax: 817-272-2685  
                                 Email: [Charles.brooks@uta.edu](mailto:Charles.brooks@uta.edu)  
                                 Attention: Charlie brooks

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*with copy to:* Office of Marketing, Messaging, and Engagement  
University of Texas at Arlington  
701 South Nedderman Dr.  
Arlington, TX 76019  
Email: [Joe.carpenter@uta.edu](mailto:Joe.carpenter@uta.edu)  
Attention: Joe Carpenter

If to Contractor: The Hiebing Group, Inc.  
315 Wisconsin Ave.  
Madison, WI 53703

Fax:  
Email: [ntredinnick@hiebing.com](mailto:ntredinnick@hiebing.com)  
Attention: Nathan Tredinnick

or other person or address as may be given in writing by either party to the other 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 Auditor any information Auditor considers relevant to the investigation or audit. Contractor will include this provision in all contracts with subcontractors. This provision is included pursuant to [Section 2262.154 of the Texas Government Code](#).
- 12.17 **Limitation of Liability.** EXCEPT FOR UNIVERSITY'S OBLIGATION (IF ANY) TO PAY CONTRACTOR CERTAIN FEES AND EXPENSES (INCLUDING EXPENSES AND FEES RELATED TO THIRD PARTY VENDORS AS SET FORTH IN THIS AGREEMENT, SCOPE OF WORK AND CORRESPONDING SCHEDULES AND EXHIBITS), NEITHER PARTY WILL HAVE ANY LIABILITY TO THE OTHER OR TO ANYONE CLAIMING THROUGH OR UNDER THE OTHER PARTY 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.
- 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.**

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- 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.
- 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.

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- 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.

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- 12.21 **Limitations.** To THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAWS, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR BUSINESS OR LOSS OF DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES; AND CONTRACTOR'S MAXIMUM LIABILITY TO UNIVERISTY SHALL BE LIMITED TO AMOUNTS PAID TO CONTRACTOR UNDER THIS AGREEMENT. NOTWITHSTANDING, 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 and the University's Standards of Conduct Guide at [www.uta.edu/compliance](http://www.uta.edu/compliance) and applicable state ethics laws and rules at <https://www.utsystem.edu/offices/systemwide-compliance/ethics>. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, University's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.
- 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 **Intentionally Omitted - Access by Individuals with Disabilities.**

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**12.26 Intentionally Omitted - HIPAA Compliance**

**12.27 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 D**). 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.

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- 12.28 **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.

- 12.29 **Intentionally Omitted - Quality Assurance**

- 12.30 **Certifications of Nonsegregated Facilities and Equal Employment Opportunities Compliance.** Contractor certifies that, except for restrooms and wash rooms and one (1) or more lactation rooms each of which is segregated on the basis of sex: (1) it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained; (2) it will not maintain or provide for its employees any segregated facilities at any of its establishments; and (3) it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. A breach of this certification is a violation of the Equal Opportunity clause. **Segregated facilities** means any waiting rooms, work areas, rest rooms and wash rooms, entertainment areas, and transportation or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise. Contractor further agrees that, except where it has contracts prior to the award with subcontractors exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, Contractor will retain the certifications for each one of its subcontractors in Contractor's files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES - A Certification on Nonsegregated Facilities must be submitted prior to the award of any subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

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Contractor understands that the penalty for making false statements regarding the subject matters of this Section is prescribed in [18 USC §1001](#).

- 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 non-procurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Non-procurement 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 **Office of Inspector General Certification.** Contractor acknowledges that University is prohibited by federal regulations from allowing any employee, representative, agent or subcontractor of Contractor to work on site at University’s premises or facilities if that individual is not eligible to work on federal healthcare programs including Medicare, Medicaid, or other similar federal programs. Therefore, Contractor will not assign any employee, representative, agent or subcontractor that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General (OIG) to work on site at University’s premises or facilities. Contractor will perform an OIG sanctions check quarterly on each of its employees, representatives, agents, and subcontractors during the time the employees, representatives, agents, or subcontractors are assigned to work on site at University’s premises or facilities. Contractor acknowledges that University will require immediate removal of any employee, representative, agent, or subcontractor of Contractor assigned to work at University’s premises or facilities if the employee, representative, agent, or subcontractor is found to be on the OIG’s List of Excluded Individuals. The OIG’s List of Excluded Individuals may be accessed through the following Internet website: <http://exclusions.oig.hhs.gov/>
- 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 **Intentionally Omitted - Affirmative Action**
- 12.35 **Intentionally Omitted - OSHA Compliance**

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- 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 **Intentionally Omitted - Federal Requirements for Telecommunications Equipment or Services**
- 12.40 **Intentionally Omitted - Payment Card Industry Standards**
- 12.41 **External Terms.** This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor's performance or provision of goods or services under this Agreement (**External Terms**). External Terms are null and void and will have no effect under this Agreement, even if University or its employees, contractors, or agents express assent or agreement to External Terms. External Terms include any shrinkwrap, clickwrap, browswrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that University or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Contractor.
- 12.42 **Intentionally Omitted - FERPA Compliance.**
- 12.43 **Contractor Certification regarding Boycotting Israel.** If applicable, 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.
- 12.44 **Contractor Certification regarding Business with Certain Countries and Organizations.** If applicable, 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.
- 12.45 **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.
- 12.46 **Intentionally Omitted - General Data Protection Regulation (GDPR) Applicability.**
- 12.47 **Intentionally Omitted - Cybersecurity Training Program**

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- 12.48 **Intentionally Omitted - Texas Public Information Act - Subchapter J Requirements.**
- 12.49 **Contractor Verification Regarding Discrimination Against Firearm Entities or Trade Associations.** If applicable, Pursuant to Chapter 2274, *Texas Government Code (enacted by [SB 19, 87<sup>th</sup> 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.
- 12.50 **Contractor Verification Regarding Boycotting Energy Companies.** If applicable, Pursuant to Chapter 2274, *Texas Government Code (enacted by [SB 13, 87<sup>th</sup> 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
- 12.51 **Contractor Certification Regarding COVID-19 Vaccination.** If applicable, Pursuant to Section 161.0085, *Texas Health and Safety Code (enacted by [SB 968, 87<sup>th</sup> 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.
- 12.52 **Contractor Certification Relating to Critical Infrastructure. Pursuant to Chapter 2274, Texas Government Code (enacted by [SB 2116, 87<sup>th</sup> 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 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. 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 (a) 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.
- 12.53 **Contractor Representation and Warranty That Cloud Computing Services Will Not Be Provided.** Contractor represents and warrants that neither Contractor nor any Contractor subcontractors or third-party providers will provide cloud computing services either through this Agreement or in furtherance of this Agreement that process (include storing or transmitting) University data.


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

**UNIVERSITY:**

**THE UNIVERSITY OF TEXAS  
AT ARLINGTON**

By: 


Name: Joseph White

Title: Chief Procurement Officer

Date: 12/11/2023

**CONTRACTOR:**

**The Hiebing Group, Inc.**

By: 

Name: Dana Arnold

Title: Chief Growth Officer

Date: 12/08/2023

**Attach:**

**EXHIBIT A** – Scope of Work

**EXHIBIT B** – Schedule

**EXHIBIT C** – Payment for Work

**EXHIBIT D** – HUB Subcontracting Plan

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**EXHIBIT A****SCOPE OF WORK****1. Brand - Research and Discovery**

- 1.1 Review/audit existing brand architecture and creative assets from every University college/school, department, office and/or business unit
- 1.2 Conduct/advise on market research and analysis.
- 1.3 Perform gap analysis and develop recommendations.
- 1.4 Conduct a competitive and comparative analysis.
- 1.5 Develop benchmarks for branding, marketing, advertising, and websites.
- 1.6 Develop project and/or creative briefs to guide the branding concepts.
- 1.7 Develop and implement evaluation plan with identified metrics to measure success of rebranding/branding efforts after launch at milestones mutually selected by Contractor and Requesting Institution.

**2. Brand - Development and Implementation**

- 2.1 Develop brand concept.
- 2.2 Review and test brand approach
- 2.3 With University leadership conduct pre-brand refresh workshops with key internal and/or external stakeholders to socialize and develop new branding concepts.
- 2.4 Develop range of creative executions for brand campaign that may include:
  - 2.4.1 Digital advertising
  - 2.4.2 Social media advertising
  - 2.4.3 Search engine or organic search optimization
  - 2.4.4 Paid search
  - 2.4.5 Print advertising
  - 2.4.6 Video and TV advertising
  - 2.4.7 Audio and Radio advertising
  - 2.4.8 Outdoor advertising
  - 2.4.9 Print collateral
  - 2.4.10 Event materials
  - 2.4.11 Email templates
  - 2.4.12 Landing pages

**3. Marketing Strategies and Campaigns - Development, Implementation and Assessment**

- 3.1 Conduct market research, assessments, benchmarking, and analyses
- 3.2 Conduct audience identification and segmentation
- 3.3 Define goals and develop/implement strategies, tactics and action plans for messaging, tools, timeline, resource allocations and assessments by audience segmentation (local, state, and national audiences)
- 3.4 Compile, write, edit, and format draft plans for review and approval.
- 3.5 Utilize tracking and analytic resources to develop, recommend and implement detailed and comprehensible recommendations.

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- 3.6 Conduct brand strategy workshops with internal and/or external stakeholders to align branding and strategy goals and to assist with implementation.

#### 4. Media Buying Agent

- 4.1 Purchase advertising and/or marketing services on University's behalf
- 4.2 Monitor performance of purchased media and provide regular updates and reports.
- 4.3 Recommend and adjust buys to increase performance and achieve objectives.

#### 5. Social Media and Digital Marketing

- 5.1 Assess and benchmark current social media efforts and recommend adjustments to increase performance and achieve objectives.
- 5.2 Develop, propose and/or implement comprehensive plans to increase traffic and engagement.
- 5.3 Track and monitor ROI for campaigns and make analytics-informed recommendations.
- 5.4 Manage social media channels with approval/oversight.
- 5.5 Develop social media messaging and graphic.
- 5.6 Develop, launch, and optimize paid search campaigns.

#### 6. Messaging Creation and Collateral Design and Development

- 6.1 Develop persuasive and appealing content for a diversity of platforms.
- 6.2 Develop culturally competent messaging, including bilingual messaging other than English, including Spanish.
- 6.3 Develop and execute appealing and brand compliant creative content that may include:
  - 6.3.1 Digital advertising or graphics
  - 6.3.2 Social media advertising or graphics
  - 6.3.3 Outdoor advertising
  - 6.3.4 Complementary landing pages
  - 6.3.5 Videos, including storyboards, scripts, videography/photography, voiceover, music, animation, final production, sound mixing and editing.
  - 6.3.6 Photography
  - 6.3.7 Email templates, headers, or graphics
  - 6.3.8 Print collateral

#### 7. Executive Communications and Presentations

- 7.1 Develop executive-level messaging strategies and content for a diversity of platforms for internal, external and stakeholder audiences.
- 7.2 Develop and execute executive-level and visually appealing brand compliant multimedia presentations and briefings that may include:
  - 7.2.1 PowerPoint/Prezi

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- 7.2.2 Videos, including storyboards, scripts, videography/photography, voiceover, music, animation, final production, sound mixing and editing.
- 7.2.3 Photography
- 7.2.4 Email
- 7.2.5 Print collateral
- 7.2.6 Digital platforms
- 7.2.7 Social-media

## **8. Website/Landing Page Design, Development and Content Strategy**

- 8.1 Develop architecture to support brand and marketing strategies with target audience(s)
- 8.2 Create and optimize content that is engaging, informative and promotes brand strategy.
- 8.3 Create templates, components, and widgets for identified user-interface elements.
- 8.4 Develop content strategy and content development guidelines aligned with and supporting brand strategy.
- 8.5 Content audit and gap analysis
- 8.6 Content roadmap
- 8.7 Content strategy training
- 8.8 Website performance assessment and strategy improvement recommendations
- 8.9 Analytics review, including conducting A/B multivariate testing.
- 8.10 Search Engine Optimization

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**EXHIBIT B****SCHEDULE**

**As determined by the University. The supplier shall provide a proposed schedule for the completion of tasks and submitted deliverables in accordance with the Scope of Work for each agreed upon project as authorized under the terms of this agreement.**

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**EXHIBIT C**

**PAYMENT FOR SERVICES**

**1. Pricing for Work and Expenses – Hourly Rates**

<b>Brand - Research and Discovery</b>	<b>\$ 155.00</b>
<b>Brand - Development and Implementation</b>	<b>\$ 155.00</b>
<b>Marketing Strategies &amp; Campaigns - Development, Implementation &amp; Assessment</b>	<b>\$ 155.00</b>
<b>Media Buying Agent</b>	<b>\$ 155.00</b>
<b>Social Media and Digital Marketing</b>	<b>\$ 155.00</b>
<b>Messaging Creation and Collateral Design and Development</b>	<b>\$ 155.00</b>
<b>Executive Communications and Presentations</b>	<b>\$ 155.00</b>
<b>Website/Landing Page Design, Development and Content Strategy</b>	<b>\$ 155.00</b>

**2. Travel Expenses**

As applicable and allowed within a specific engagement, business-related travel, lodging and/or meal expenses will be reimbursed by University according to the State of Texas rates, rules, and regulations on the below link.

<https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>

Contractor is required to submit all travel receipts when requesting reimbursement. Under no circumstance will the Contractor be reimbursed for alcohol purchases. State travel rates are subject to change without notice and will be adjusted accordingly. Mileage rates will be calculated from point-to-point (Contractor’s place of business to job site) using the State of Texas mileage.

**3. Payment Terms**

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

[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.

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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.

**4. Additional Contractor Compensation and Billing Procedures. University agrees to pay Contractor for Services rendered and expenses incurred on behalf of University. Invoices (by project) will be sent to the University on a monthly basis and will include the following:**

- a. Contractor time spent on University's behalf during the month (billed on an hourly project rate basis against the University-approved project estimates within +/- 10% range). This includes time devoted to all projects whether the particular projects were completed or not during the month. These costs are outlined, by project, on the monthly invoice.
  - b. Outside costs incurred on University's behalf. Contractor will obtain University's approval for all significant outside costs prior to commitment. All outside costs incurred on University's behalf will be billed at net cost according to the following schedule. University further acknowledges and agrees that Contractor shall retain (and University shall not receive any credit or refund for) any financial incentives, points, rebates or cash-back incentives received by Contractor or offered by Contractor's bank and financial institutions that Contractor uses for its general business operations.
    - i. All significant outside costs will be billed on the last business day of the month in which the vendor purchase order is issued or the cost is incurred.
    - ii. Miscellaneous expenses, such as telephone, postage, art materials and supplies, to be billed on the last business day of the month in which the costs are incurred.
    - iii. All travel expenses incurred in servicing University's account will be billed on the last business day of the month in which the costs are incurred.
  - c. Media placement costs incurred on your behalf will be billed at an agreed upon fee-based and/or commission structure (unless otherwise specified under this Agreement or a Scope of Work) according to the following schedule.
    - i. All broadcast, free-standing inserts, newspaper and online media vendor charges will be billed on the last business day of the month prior to the month it is to run, e.g., invoice dated 8/31/2024 will include September 2024 broadcast, newspaper and online media.
    - ii. All out-of-home and magazine media vendor charges will be billed on the last business day of the month two months prior to the run date, e.g., invoice dated 8/31/2024 will include October 2024 free-standing inserts, out-of-home and magazine media.
2. Contractor invoices are due and payable within 30 days of receipt. Past due invoices are subject to a late payment charge of 1% per month on any unpaid balance.
  3. It is understood the University reserves the right to modify, revise, or cancel any Scope of Work, and in the event the University notifies the Contractor that the University wishes to do so, the Contractor will take steps as promptly as practicable to give effect to the University's instructions. In connection with any such action, the University agrees to abide by the terms of this Agreement

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and to compensate the Contractor for Services rendered prior to University providing Contractor with notice of modifications, revisions or cancellations.

4. Provided University is not in material breach of this Agreement, Contractor shall pay all third party vendors (e.g. suppliers, freelancers and other subcontractors) on University's behalf on a timely basis. University acknowledges and agrees that, once Contractor commences a project, University shall be responsible for any fees, out-of-pocket expenses or third party obligations (including penalties, cancellation fees or rebooking fees) incurred by Contractor or billed by a third party vendor even if University requests that Contractor modify or cancel such project, or any portion thereof, including but not limited to fees incurred for contractors or talent booked prior to University providing Contractor with such written modifications or cancellations.

5. In all cases where outside supplier or media placement expenditures are involved, the Contractor will obtain the University's approval before making commitments. Whenever the University requires the Contractor to do so, it will obtain such approvals in writing; if circumstances necessitate that advance approvals be oral, the Contractor will obtain subsequent written confirmations as promptly as practicable. The University, as principal, herein authorizes the Contractor, as agent, to make such commitments and furthermore agrees to be obligated contractually or otherwise for payment of such outside supplier or media placement commitments until such time as the University has made payment to the Contractor. Once payment has been made to the Contractor, the Contractor assumes full responsibility for remitting payment to outside supplier and media vendors within specified terms. Should the University fail to make timely payment to the Contractor, then financial responsibility for payment to outside supplier and media vendors lies with the University and not with the Contractor.

6. University must adhere to 2 week out-clause for media cancellation/shifts, and/or specific program deals which may have shorter or non-cancelable terms. If schedules are cancelled after placement, University agrees to pay 75% of Contractor's fees on the cancelled portion.

## 6.7 Invoicing Instructions

Send Invoices to: Office of Marketing, Messaging, and Engagement  
University of Texas at Arlington  
701 South Nedderman Drive  
Arlington, TX 76019  
Attention: Shunda Dixon  
E-Mail: [shunda.dixon@uta.edu](mailto:shunda.dixon@uta.edu)  
Réf. RFP # : UTA2023-020

With a Copy to: Accounts Payable  
University of Texas at Arlington  
219 W. Main Street  
Arlington, TX 76019  
E-Mail: [accounts\\_payable@uta.edu](mailto:accounts_payable@uta.edu)  
Réf. RFP #:

**NOTE:** Contractor is to provide one (1) combined monthly invoice for scheduled work and for unscheduled work. These invoices should be compiled and sent monthly, as separate line items on one (1) invoice with one (1) PAR (if applicable).

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**EXHIBIT D**

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# HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders' contracts,
- 32.9 percent for all special trade construction contracts,
- 23.7 percent for professional services contracts,
- 26.0 percent for all other services contracts, and
- 21.1 percent for commodities contracts.

-- Agency Special Instructions/Additional Requirements --

In accordance with 34 TAC §20.285(d)(1)(D)(ii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent does not have a continuous contract in place for more than five (5) years shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

In accordance with 34 TAC §20.13(d)(1)(D)(iii), the goals below are the applicable goals for The University of Texas at Arlington only effective September 1, 2020.

- 0.25% - Heavy Construction Contracts
- 18.94% - Building Construction Contracts
- 28.68% - Special Trades Construction Contracts
- 9.11% - Professional Services Contracts
- 6.17% - Other Services Contracts
- 25.04% - Commodities Contracts

THE GOAL FOR THIS PROCUREMENT IS 26%

Respondents shall submit a completed HUB Subcontracting Plan (HSP) to be considered responsive. Failure to submit a completed HSP shall result in the bid, proposal or other expression of interest to be considered Non-responsive.

Prime Contractor Progress Assessment Report (PAR) shall be submitted with each request for payment as a condition of payment.

Please note that phone logs are no longer acceptable documentation of Good Faith Effort. Only fax, email and certified letter are acceptable.

**SECTION 1: RESPONDENT AND REQUISITION INFORMATION**

<p>a. Respondent (Company) Name: <u>Hiebing</u></p> <p>Point of Contact: <u>Nate Tredinnick</u></p> <p>E-mail Address: <u>ntredinnick@hiebing.com</u></p>	<p>State of Texas VID#: <u>1391363835800</u></p> <p>Phone #: <u>808.256.6357</u></p> <p>Fax #: <u>n/a</u></p>
<p>b. Is your company a State of Texas certified HUB? <input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No</p>	
<p>c. Requisition#: <u>REQSL1196069</u> **</p>	<p>Bid Open Date: <u>4.14.23</u> <small>(mm/dd/yyyy)</small></p>

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Enter your company's name here: <b>Hiebing</b>	Requisition#: <b>REQSL1196069</b>
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**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including contracted staffing, goods and services will be subcontracted. Note: In accordance with 34 TAC 520.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- Yes, I will be subcontracting portions of the contract. (If Yes, complete item b of this SECTION and continue to item c of this SECTION.)
- No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If No, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <u>do not</u> have a "continuous contract" in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a "continuous contract" in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
<b>Aggregate percentages of the contract expected to be subcontracted:</b>		<b>0%</b>	<b>0%</b>	<b>0%</b>

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, item b.

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- No (If No, continue to item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you do not have a continuous contract in place with for more than five (5) years, meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

*"Continuous Contract": Any existing written agreement (including any renewals that are enclosed) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run consecutively or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

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Enter your company's name here: Hiebing Requisition#: REQSL1196069

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <u>do not</u> have a "continuous contract" in place for more than the 12 month.	Percentage of the contract expected to be subcontracted to HUBs with which you have a "continuous contract" in place for more than the 12 month.	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
<b>Aggregate percentages of the contract expected to be subcontracted:</b>		<b>0%</b>	<b>0%</b>	<b>0%</b>

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a MUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the MUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and MUB vendor are entering (have entered) into "true" contracts.

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Enter your company's name here: <b>Hiebing</b>	Requisition #: <b>REQL1196069</b>
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**SECTION 3: SELF PERFORMING JUSTIFICATION** (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below explain how your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

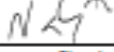
**Hiebing is a full-service marketing, branding & advertising agency and will be fulfilling the entire contract with our own resources, including employees, goods, services, transportation and delivery.**

**If sub-contracting opportunities are identified at a future date, we will immediately contact the project manager and HUB Coordinator and commit to performance of a Good Faith Effort through solicitation of HUB firms and submit an amended HUB Subcontracting Plan.**

**SECTION 4: AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.utexas.edu/offices/business-development/underdivided-business/hub-form>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

	<b>Nathan Tredinnick</b>	<b>Dir. of Business Development</b>	<b>5.8.23</b>
Signature	Printed Name	Title	Date (mm/dd/yyyy)
	<b>ntredinnick@hiebing.com</b>	<b>512.763.2780</b>	
	email address	Phone Number	

**Reminder:**

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

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## HSP Good Faith Effort - Method B (Attachment B) Cont.

Enter your company's name here: <b>Hiebing</b>	Requisition#: <b>REQL1196069</b>
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**SECTION B-4: SUBCONTRACTOR SELECTION**

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, item b, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or Federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <https://mycpe.cpe.state.tx.us/passcmbsearch/passcmbsearch.do>. HUB status code 'A' signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID/EIN, leave their VID/EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
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	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is not a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

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## HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2101, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

<b>SECTION A: PRIME CONTRACTOR'S INFORMATION</b>	
Company Name: _____	State of Texas VID #: _____
Point-of-Contact: <b>Nate Tredinnick</b>	Phone #: <b>608.256.6357</b>
E-mail Address: _____	Fax #: <b>0/0</b>
<b>SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION</b>	
Agency Name: <b>The University of Texas Arlington</b>	Phone #: _____
Point-of-Contact: _____	Bid Open Date: _____ <small>(mm/dd/yyyy)</small>
Requisition #: _____	
<b>SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE DESCRIPTION REQUIREMENTS AND RELATED INFORMATION</b>	
<b>1. Potential Subcontractor's Bid Response Due Date.</b>	
If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than _____ on _____ <small>Central Time Date (mm/dd/yyyy)</small>	
<small>In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).</small>	
<small>(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)</small>	
<b>2. Subcontracting Opportunity Scope of Work:</b> _____	
<b>3. Required Qualifications:</b>	<input type="checkbox"/> - Not Applicable
_____	
<b>4. Bonding/Insurance Requirements:</b>	<input type="checkbox"/> - Not Applicable
_____	
<b>5. Location to review plans/specifications:</b>	<input type="checkbox"/> - Not Applicable
_____	

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**EXHIBIT E****THE HIEBING GROUP  
CLIENT DASHBOARD END-USER LICENSE AGREEMENT**

The following terms govern University's access and use of Hiebing's client dashboard, which consists of the online portal owned and hosted by Contractor that contains data, files, content, software and other materials owned by Contractor and/or its client (the "Dashboard").

1. Dashboard License. Contractor hereby grants to University a limited, revocable, non-exclusive license to access and use the Dashboard strictly for the purpose of University's own internal business purpose.

2. Restrictions on Use/Copying/Modification. University may not share, rent, lease, sublicense or authorize all or any portion of the Dashboard, or its login credentials used to access the Dashboard, to any third party except as may be expressly permitted by Contractor. University shall not: (a) process or permit to be processed in any manner the data or files of any third party through the Dashboard; (b) allow access to the Dashboard through any terminals or computers located outside of University's location or using University's login credentials which have been assigned to University; (d) reverse-engineer, decompile, disassemble or otherwise make any attempt to access the source code of the Dashboard licensed hereunder, in whole or in part; (e) modify, or create derivative works based on the Dashboard licensed hereunder, in whole or in part; or (f) except as expressly permitted by the terms of this EULA, copy all or any part of the Dashboard.

3. Term and Termination. The Term of this EULA shall commence upon University's first Use of the Dashboard in any capacity and shall continue until terminated. University or Contractor may terminate this EULA at any time for any reason or no reason. Termination of this EULA by you shall not terminate or cancel any other agreement between University and Contractor. Upon termination, expiration, or cancellation of this EULA, all University's right to access and use the Dashboard and content available through the Dashboard shall cease, the license granted hereunder shall terminate, and University shall immediately discontinue any and all access and use of the Dashboard.

4. Intellectual Property Rights. The Dashboard, including, without limitation, the information included in its modules, procedures, and functions, their arrangement, organization, program logic, and methods of interaction, and all related documentation (including, without limitation, the Documentation), data formats, output formats, and other aspects thereof and their modifications and enhancements, if any, and the know-how embodied in the Dashboard, is proprietary to Hiebing and may be protected as confidential, trade secret, copyright, trademark or other intellectual property law that is owned or licensed to Hiebing. University shall not disclose or permit the disclosure of any such Proprietary Information, or any flow charts, logic diagrams, user manuals, screenshots, or screens embodying, referencing or summarizing all or any part of such Proprietary Information, to any third party without the prior written consent of Hiebing.

5. NO WARRANTY. THE DASHBOARD IS BEING DELIVERED TO UNIVERSITY "AS IS" AND CONTRACTOR MAKES NO WARRANTY AS TO ITS USE, AVAILABILITY, OR PERFORMANCE, ALONE OR IN COMBINATION WITH ANY SYSTEM, OPERATING SYSTEM OR THIRD-PARTY SOFTWARE. HIEBING DOES NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS UNIVERSITY MAY OBTAIN BY USING THE DASHBOARD. EXCEPT FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO UNIVERSITY IN UNIVERSITY'S JURISDICTION, CONTRACTOR MAKES NO WARRANTIES CONDITIONS, REPRESENTATIONS, OR

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TERMS (EXPRESS OR IMPLIED WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER INCLUDING WITHOUT LIMITATION NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, INTEGRATION, SATISFACTORY QUALITY, OR FITNESS FOR ANY PARTICULAR PURPOSE. CONTRACTOR DOES NOT WARRANT THAT THE DASHBOARD WILL BE FREE OF BUGS OR PROGRAM ERRORS. Hiebing DOES NOT WARRANT THAT THE DASHBOARD WILL BE FREE FROM VIRUSES.

6. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES SHALL CONTRACTOR BE LIABLE TO UNIVERSITY OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR ANY OTHER PECUNIARY LOSS ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE DASHBOARD (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS, DISRUPTION OF BUSINESS, LOSS OF PROFITS, OR ANY OTHER MATTER RELATING TO UNIVERSITY'S USE OR INABILITY TO USE THE DASHBOARD) OR RELATED IN ANY WAY TO THIS EULA OR THE SUBJECT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY CLAIM RELATED TO ALLEGATIONS THAT THE DASHBOARD INFRINGES ANOTHER PARTY'S INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS, WHETHER ARISING UNDER THEORIES OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, OR OTHER THEORY, REGARDLESS WHETHER LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES SHALL HIEBING'S TOTAL LIABILITY TO UNIVERSITY EXCEED THE LICENSE FEES, IF ANY, ACTUALLY RECEIVED BY CONTRACTOR FROM UNIVERSITY HEREUNDER DURING THE CURRENT MONTH OF ANY CLAIM OF LIABILITY LIMITED HEREUNDER. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET FORTH IN THIS SECTION SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE. NO OBLIGATION OR LIABILITY SHALL ARISE FROM HIEBING'S RENDERING OF TECHNICAL OR OTHER ADVICE OR SERVICE IN CONNECTION WITH THIS EULA, INCLUDING, WITHOUT LIMITATION, ADVICE OR SERVICE RELATED TO THE INSTALLATION OR CONFIGURATION OF THE DASHBOARD. SOME STATES AND JURISDICTIONS DO NOT ALLOW EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES AND SO THE ABOVE LIMITS AND EXCLUSIONS MAY NOT APPLY TO UNIVERSITY OR MAY BE LIMITED BY LAW.

7. General Provisions. University may not sell, assign, or otherwise transfer this EULA to any third party without the prior written consent of Contractor. The provisions of this EULA and the attached schedules are severable. If any provision of this EULA or any schedule attached hereto is held to be invalid, illegal, or unenforceable, such provision is to that extent to be deemed omitted and not part of this EULA. The validity, legality, or enforceability of the remaining provisions shall in no way be affected or impaired thereby and shall be valid and enforceable to the maximum extent permitted by law. No modification of this EULA and no waiver of any breach of this EULA shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. No waiver of any breach of this EULA and no course of dealing between the parties shall be construed as a waiver of any subsequent breach of this EULA.

Signature: *Dana Arnold*  
Dana Arnold (Dec 8, 2023 17:01 CST)

Email: darnold@hiebing.com

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