

REQUEST FOR PROPOSAL

by

The University of Texas at Arlington

for

Selection of a Vendor to Provide
UTA2024-019 Athletics Concessions Services

RFP No. **UTA2024-019**

Submittal Deadline: **November 20, 2024**

Issued: **October 17, 2024**

1337023-09-1-51

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SECTION 1

INTRODUCTION**1.1 Description of University**

Founded in 1895, The University of Texas at Arlington is a Carnegie Research-1 “Very High Research Activity” institution with more than 100 years of academic excellence and tradition. It is a comprehensive research, teaching, and public service university whose mission is the advancement of knowledge and the pursuit of excellence.

With a global enrollment of more than 60,000, UT Arlington is the largest university in North Texas. It also has one of the most diverse campus populations in the country. Students come from every state and more than 100 countries, contributing to *U.S. News & World Report* ranking it with the fifth-highest undergraduate ethnic diversity index in the country. UT Arlington is a Hispanic-Serving Institution and is ranked No. 1 in the U.S. for veterans and their families by *Military Times*.

The University has research centers in every discipline and state-of-the-art facilities in Arlington and Fort Worth that enable our faculty and students to help solve the world’s most urgent challenges. Of its 220,000-plus alumni, approximately 65% percent live in North Texas. Their presence helps the University create an annual economic impact of almost \$17.1 billion in the region.

1.2 Background and Special Circumstances

The University of Texas at Arlington has several large, public assembly venues that draw hundreds of thousands of visitors each year; two of which are ball games at Clay Gould Park and Allan Saxe Field (as more specifically detailed in Section 5 Scope of Work) and is seeking Proposals for Concessions Services at these venues: Clay Gould Field and Allan Saxe Stadium.

NOTE: The University reserves the right to make a dual award if deemed to be in the best interest of, and the best value for, our needs.

1.3 Objective of Request for Proposal

The University of Texas at Arlington (**University**) is soliciting proposals from qualified vendors to perform work (**Work**) more specifically described in **Scope of Work** Document of this Request for Proposal (**RFP**).

1.4 Term of the Agreement

The initial term of the resulting Agreement will be for three (3) years and thereafter the University shall have the right, at its option, to renew the Agreement for one (1) additional renewal term of two (2) years.

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 Vendor 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 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). 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.

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1.5 Transition Period

Contractor must agree that when the resulting Contract Agreement of this RFP expires or is terminated for any reason, then, at the University's option, Contractor will continue to perform the **UTA2024-019 Athletics Concessions 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 **UTA2024-019 Athletics Concessions Services** or, is able to perform the UTA2024-019 Athletics Concessions Services in-house; provided that the Contractor will not be required to continue performing the UTA2024-019 Athletics Concessions Services for more than 90 days 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 **UTA2024-019 Athletics Concessions Services** in-house.

1.6 Group Purchase Authority

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

1.7 Addenda and Additional RFP Documents

Any addenda or other subsequently released RFP documents will be posted to the University's online solicitation website www.bidnetdirect.com/arlington (BidNet). They will not be sent directly to potential proposers. It is the Proposer's responsibility to periodically check the BidNet website www.bidnetdirect.com/arlington for additional RFP documents.

1.8 Parking

To be aware of the requirements and options available for parking, employees of companies who park their personal vehicle in UTA parking facilities, or any property owned or controlled by UTA, to perform their duties are encouraged to visit the University's Parking and Transportation Services website at <https://www.uta.edu/pats/parking/contractor-vendor.php>

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SECTION 2

NOTICE TO PROPOSER**2.1 Submittal Deadline**

University will accept proposals until **3:00 p.m.** Central Time, on November 20, 2024 (**Submittal Deadline**).

2.2 RFP Contact Information and Questions

Proposers and other Interested parties must direct all questions or concerns regarding this RFP to the following University contact (the "**University Contact**"). Any direct contact with the end user or other University personnel related to this RFP outside of a Procurement-lead meeting or discussion may be grounds for disqualification of proposal:

Charlie Brooks
Contract Specialist
Email: Charles.brooks@uta.edu
RFP No. UTA2024-019

*The University instructs interested parties to restrict all contact and questions regarding this RFP to written communications delivered (i) in accordance with this Section on or before October 31, 2024 (**Question Deadline**), or (ii) if questions relate to Historically Underutilized Businesses, in accordance with **Section 2.5**.*

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

2.3 Criteria for Selection

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

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

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

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

2.3.1 Threshold Criteria Not Scored

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

2.3.2 Scored Criteria

- 2.3.2.1** Cost of goods and services; **(20%)**
- 2.3.2.2 Reputation of the Proposer and of the Proposer's goods or services; **(20%)**
- 2.3.2.3 Quality of the Proposer's goods or services; **(25%)**
- 2.3.2.4 Extent to which the goods or services meet the University's needs; **(20%)**
- 2.3.2.5 Proposer's past relationship with the Higher Education; **(15%)**

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2.4 Key Events Schedule

Date RFP Issued	October 17, 2024
<u>No Pre-Proposal Conference</u> (ref. Section 2.6)	
Question Deadline (ref. Section 2.2)	October 31, 2024, at 0300 p.m. CST
HUB Subcontracting Training	October 30, 2024, at 02:00 p.m. CST
HUB Subcontracting Plan Courtesy Review Deadline	November 08, 2024, at 03:00 p.m. CST
Submittal Deadline (ref. Section 2.1)	November 20, 2024, at 03:00 p.m. CST

2.5 Historically Underutilized Businesses

2.5.1 All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (**HUBs**) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP, Contractor subcontracts any Work, then Contractor must make a good faith effort to utilize HUBs certified by the Procurement and Support Services Division of the Texas Comptroller of Public Accounts. Proposals that fail to comply with the requirements contained in this **Section 2.5** will constitute a material failure to comply with advertised specifications and will be rejected by University as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP. Proposer acknowledges that, if selected by University, its obligation to make a good faith effort to utilize HUBs when subcontracting any Work will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of Work by the Proposer is subject to review by University to ensure compliance with the HUB program.

NOTE: How to successfully complete the HUB Subcontracting Plan (HSP).

A call-in session will be held on **October 30, 2024**, at **02:00 p.m. Central Prevailing Time** with:

HUB Program Manager
Mario Ramirez

Microsoft Teams
[Join the meeting now](#)
Meeting ID: 216 848 799 70
Passcode: gHfaCi

Dial in by phone
[+1 817-502-2418,251812602#](#) United States, Fort Worth
[Find a local number](#)
Phone conference ID: 251 812 602#

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All methods for completing the plan will be covered in the session with time allotted for questions and answers. We encourage your HSP preparer's attendance of this session to ensure meeting the State of Texas HUB Subcontracting Plan requirements and avoid your bid being disqualified.

2.5.2 University has reviewed this RFP in accordance with [34 TAC §20.285](#), and has determined that subcontracting opportunities are probable under this RFP.

2.5.3 A HUB Subcontracting Plan (**HSP**) is a required part of the proposal. The HSP will be developed and administered in accordance with University's Policy on Utilization of Historically Underutilized Businesses, attached as **APPENDIX THREE**.

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

Questions regarding the HSP may be directed to:

Mario Ramirez
(817) 272-2039
mario.ramirez@uta.edu

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

2.5.4 Proposer must submit all required proposal documents per the instructions provided in the proposal package.

Any proposal submitted in response to this RFP that is not accompanied by all required documents may be rejected by University as non-responsive due to material failure to comply with advertised specifications.

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

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

2.6 **Pre-Proposal Conference and Site Visit**

2.6.1 **The process owner of this RFP has determined that there will not be a Pre-Proposal Meeting.**

2.6.2 **There will be a non-mandatory site visit associated with this solicitation.**

The site visit will be on Friday, November 01, 2024, at 09:00 a.m. CST. The site visit tour will begin at Clay Gould Ballpark; 1400 Allan Saxe Parkway; Arlington, TX 76019. Suppliers are responsible for parking fees when site applicable.

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Because the site visit is conducted in person on campus, please provide the following information:

Respondents must provide the below information no later than Tuesday, October 29, 2024, at 03:00 p.m. CST.

- a. Number of people in party (maximum of two)
- b. If ADA or other accommodations are required.

NOTE: To receive credit for attendance for this Site Visit you are required to e-mail the Contract Specialist, **Charlie Brooks** at charles.brooks@uta.edu.

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SECTION 3

SUBMISSION OF PROPOSAL**3.1 Number of Copies**

Proposer must submit a complete copy of its entire proposal according to the instructions provided in this RFP. A signature by an authorized officer of Proposer must appear on the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) of the submitted proposal.

3.2 Submission

University will not accept proposals submitted by email or fax. All proposals and required documents must be submitted through the University's online portal at www.bidnetdirect.com/arlington.

3.3 Proposal Validity Period

Each proposal must state that it will remain valid for University's acceptance for a minimum of one hundred eighty (180) days after the Submittal Deadline, to allow time for evaluation, selection, and any unforeseen delays.

3.4 Terms and Conditions

3.4.1 Proposer must comply with the requirements and specifications contained in this RFP, including the Terms and Conditions (ref. **Section 4** and **APPENDIX TWO**), the Notice to Proposer (ref. **Section 2**), Proposal Requirements (ref. **APPENDIX ONE**) and the Specifications and Additional Questions (ref. **Section 5**). If there is a conflict among the provisions in this RFP, the provision requiring Proposer to supply the better quality or greater quantity of services will prevail, or if such conflict does not involve quality or quantity, then interpretation will be in the following order of precedence:

- 3.4.1.1. Specifications and Additional Questions (ref. **Section 5**);
- 3.4.1.2. Terms and Conditions (ref. **Section 4** and **APPENDIX TWO**);
- 3.4.1.3. Proposal Requirements (ref. **APPENDIX ONE**);
- 3.4.1.4. Notice to Proposers (ref. **Section 2**).

3.5 Submittal Checklist

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

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

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SECTION 4

GENERAL TERMS AND CONDITIONS

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

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SECTION 5

SPECIFICATIONS AND ADDITIONAL QUESTIONS

5.1 General

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

Contractor will:

- 5.1.1 Comply with all requirements of Subchapter C, Chapter 2252, *Texas Government Code*, as amended, including the provision of financial statements, payment statements derived from sales tax reports, and bonds.
- 5.1.2 Provide all food, alcoholic beverages, and non-alcoholic beverages to be served or provided in connection with Contractor's performance of the Services and Contractor's other duties and obligations under the terms of the Agreement.
- 5.1.3 Provide all paper products and kitchen supplies necessary for the performance of the Services and Contractor's other duties and obligations under the terms of this Agreement.
- 5.1.4 Provide all management and non-management personnel (including the payment of all salaries and fringe benefits due to the personnel) necessary for the performance of the Services and Contractor's other duties and obligations under the terms of this Agreement.
- 5.1.5 Provide uniforms and name tags (satisfactory to University in all respects) for Contractor's personnel in accordance with the terms of the Agreement;
- 5.1.6 Provide all laundry supplies, equipment, and services necessary for the performance of the Services and Contractor's other duties and obligations under the terms of the Agreement.
- 5.1.7 Provide all janitorial supplies, equipment, and services necessary for the maintenance and cleaning of inside surfaces, furnishings, equipment, front doors, glass wall partitions, restrooms, walls, ceilings, loading docks, floors and vents associated with the Space or related to the performance of the Services or Contractor's other duties and obligations under the terms of this Agreement. All floors will be stripped and waxed and all vents will be cleaned, at least three (3) times per contract year;
- 5.1.8 Replace all lost or damaged dinnerware, flatware, glassware, trays, and other kitchen and serving utensils (collectively, "**Smallware's**") necessary to maintain the Smallware's inventory at the levels provided by University on the Effective Date of this Agreement. A comprehensive inventory of the Smallware's provided **Section 5.4** and incorporated for all purposes.
- 5.1.9 Provide all Smallware's not furnished by University that are necessary for the performance of the Services and Contractor's other duties and obligations under the terms of the Agreement;
- 5.1.10 Obtain any and all approvals, licenses, filings, registrations and permits required by federal, state or local law for the performance of the Services or Contractor's other duties and obligations under the terms of the Agreement.

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- 5.1.11 Pay all taxes on the Services (including the sale of food, alcoholic beverages, and non-alcoholic beverages under the terms of this Agreement) as may be required by Applicable Laws.
- 5.1.12 Pay all costs related to vehicles necessary for the performance of the Services and Contractor's other duties and obligations under the terms of the Agreement.
- 5.1.13 Pay all costs and charges related to telecommunication services provided to the Space by University.
- 5.1.14 Provide all office supplies, postage, printing supplies, and marketing materials necessary for the performance of the Services and Contractor's other duties and obligations under the terms of the Agreement.
- 5.1.15 As they are not provided by the University, **Vendor will provide network connectivity and all Card System compatible point-of-sale cash registers and appropriate accessories that are necessary for the performance of the Services and Contractor's other duties and obligations under the terms of the Agreement.** A comprehensive inventory of University Owned Equipment in **Section 5.4** and incorporated for all purposes.
- 5.1.16 Maintain all University Owned Equipment in good working order.
- 5.1.17 Repair or replace (at University's option) all University Owned Equipment and all other University equipment, furniture, plumbing fixtures, and electrical fixtures, lost or damaged by Contractor, its employees, representatives, agents, or subcontractors, including clearing of stoppages in drains caused by grease or other foreign matter lodged between the grease traps and the food service area of any part of the Space. University Owned Equipment that has exceeded its useful life will be replaced by University at University's expense.
- 5.1.18 PURCHASE AND PROVIDE NEW (WITH HIGHER CAPACITY) POPCORN MACHINE AT EACH VENUE
- 5.1.19 Provide for the removal and proper disposal of all wet garbage from the Space and related areas.
- 5.1.20 Provide for the removal and proper disposal of all dry garbage from the Space and related areas.
- 5.1.21 cause to be provided appropriate pest control services within the Space and adjacent areas. All pest control services must be (1) coordinated with University's pest control efforts, and (2) pre-approved in writing by University's Representative.
- 5.1.22 Comply, and cause its employees, representatives, agents, and subcontractors to comply, with all applicable University rules and policies, including University's *Standards of Conduct Guide* posted on the Internet at: <http://www.utsystem.edu/systemcompliance/SOCcombined.pdf> as well as University's rules and policies related to personal health, security, environmental quality, safety, fire prevention, noise, smoking, parking and access restrictions; and pay any and all other costs associated with the performance of the Services and Contractor's other duties and obligations pursuant to the terms of this Agreement, not expressly required to be paid by University pursuant to **Section 6.3.**

5.2 Additional Questions Specific to this RFP

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

- 5.2.1 If Proposer takes exception to any terms or conditions set forth in **APPENDIX TWO**), Proposer must submit a list of the exceptions.
- 5.2.2 **INTENTIONALLY OMITTED - Access by Individuals with Disabilities.**

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5.2.3 INTENTIONALLY OMITTED - Electronic and Information Resources (EIR) Environment Specifications

5.2.4 Proposer must be able to obtain and maintain license/permit to serve alcohol with the Texas Alcohol Beverage Commission (TABC).

5.2.5 Proposer must be able to provide two (2) or more venue names/addresses where they have provided concessions services in a venue of 250 or more seats within the last three years (or currently).

5.3 Scope of Work

Contractor will provide the following services to University:

Contractor will provide all necessary management and operations of the concessions services for the events located in UT Arlington's Special Event Facilities. The areas of responsibilities include but are not limited to:

All food and beverage (alcoholic and non-alcoholic) concessions at specified facilities including:

5.3.1 Commissions

- Establish a commission structure based on sales at each location, with a clear payment schedule and reporting requirements.

5.3.2 Accounting and Reports

- Provide monthly financial updates detailing gross sales, expenses, and net revenue.
- Include a breakdown of expenses to give a clear picture of profitability, ensuring transparency in all financial dealings.
- Implement a transparent accounting system for tracking revenue and commissions.

5.3.3 Personnel

- Hire, train, and manage staff for each concession stand and portable location.
- Ensure compliance with all labor laws, including scheduling and wage regulations.
- Develop staff training programs focusing on customer service, food safety, and cash handling.

5.3.4 Operational Responsibilities

- Manage daily operations, including setup and breakdown of stands.
- Ensure adherence to all food safety regulations and health codes.
- Develop operational procedures for inventory management, waste disposal, and emergency protocols.
- Schedule regular meetings with UTA Athletics to review operations, address performance related concerns, and any other issues that may arise.

5.3.5 Technology

- Provide and maintain their own Point of Sale (POS) system for sales tracking and inventory management.
- Implement secure cash handling procedures and consider mobile payment options.

5.3.6 Creativity

- Develop an innovative menu that appeals to a wide range of customers.
- Create promotional events or specials in collaboration with UTA External Relations to increase sales.

5.3.7 Inventory

- Maintain appropriate inventory levels to meet demand without excessive waste.
- Establish reliable supplier relationships for timely product delivery.
- Conduct regular inventory audits and adjust ordering based on sales trends.

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5.3.8 Customer Experience

- Focus on creating a welcoming atmosphere with friendly service and efficient operations, gathering customer feedback for continuous improvement.

5.3.9 Food Service Locations

5.3.9.1 Clay Gould Ballpark: accommodates up to 1,600 guests for a home baseball contest and is the home of UT Arlington Mavericks. Venue renovations/upgrades that include new clubhouse, concessions area, dugouts, outfield fence were completed in the spring of 2015 at a cost of 2.2 million dollars. UT Arlington is a proud member of the Western Athletic Conference which is ranked as one of the top eight conferences in the country according to NCAA RPI. The Mavericks play approximately thirty home dates a year. Past non-conference opponents have been Texas Christian University, Dallas Baptist, University of Oklahoma, Oklahoma State, University of Nebraska, University of Minnesota, University of Alabama, University of Arkansas, Texas Tech, Boston College, Arizona State and Michigan State. The stadium also hosts numerous high school contests during the spring as well hosting multiple camps during the summer. Clay Gould Ball Park has one multi-window concession stand located underneath the home plate seating area. There are also multiple areas for satellite concession stands.

Clay Gould Ballpark
1400 Allan Saxe Parkway
Arlington, TX 76019

- a. Stand 1
- b. Various Portable Locations on Concourses as requested and/or required.

5.3.9.2 Allan Saxe Field: accommodates up to 622 guests for home softball contest. Venue renovations/upgrades that include new clubhouse, reconstructed playing surface, seating, dugouts, bullpen, and outfield fence were completed in the spring of 2015 at a cost of 3.5 million dollars. UT Arlington is a proud member of the Western Athletic Conference with perennial powers University of Louisiana-Lafayette and South Alabama as members. The stadium hosts up to two pre-season tournaments each year. Teams such as University of Texas and University of Arizona have recently competed in the tournament. Opponents have included University of Oklahoma, Oklahoma State University, and University of Tennessee. The stadium also hosts numerous high school contests during the spring as well hosting multiple camps during the summer. Alan Saxe Stadium has one multi-window concession stand located near the entrance of the stadium near the public restrooms. There are also multiple areas for satellite concession stands.

Allan Saxe Stadium
1100 Allan Saxe Parkway
Arlington, TX 76019

- a. Stand 1
- b. Various Portable Locations on Concourses as requested and /or required.

5.4 University Owned Equipment and Smallware’s Inventory

Clay Gould Ballpark

ITEM DESCRIPTION	BRAND	MODEL	LOCATION	QUANTITY
ICE CHEST COOLER	REDDYICE			1
POPCORN MACHINE	APW WYOTT			1

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MICROWAVE	UNKNOWN			1
POPCORN MACHINE	UNKNOWN			1
REFRIGERATOR	PEPSI			1
COOLER	AVANTCO			1

Allan Saxe Stadium

ITEM DESCRIPTION	BRAND	MODEL	LOCATION	QUANTITY
POPCORN MACHINE	APW WYOTT			1
SODA DISPENSER	PEPSI			1
REFRIGERATOR	PEPSI			1
HOT DOG COOLER	DIETZ & WATSON			1

5.5 Contractors Responsibilities

NOTE: The University requires Performance and Payment Bond. (ref. **APPENDIXES FOUR & FIVE**)

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SECTION 6
PRICING AND DELIVERY SCHEDULE

Proposal of: _____
(Proposer Name)

To: University of Texas at Arlington

RFP No.: _____

Ladies and Gentlemen:

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

6.1 Pricing for Work and Expenses

Pricing needs to be submitted separately from the technical response and according to the instructions and submittal steps in the BidNet system.

Vendors should follow the submission information provided with this solicitation for proposed pricing for work and expenses.

The University is interested in, and will consider in our evaluation, creative ideas from Proposers regarding opportunities for sponsorships, donations, or other revenue generating/cost reduction initiatives and/or no cost benefits. Please describe any initiatives you would be willing to negotiate.

University Athletics will require the following items "traditional ballpark menu". Price points will need to be submitted annually and will require prior approval from UTA Athletics.

- | | |
|--|---------|
| <input type="radio"/> Hot Dog (4 oz. all beef) | \$ 4.00 |
| <input type="radio"/> Popcorn (12 oz. bag) | \$ 4.00 |
| <input type="radio"/> Soda (20 oz.) | \$ 4.00 |
| <input type="radio"/> Coffee | \$ 3.00 |
| <input type="radio"/> Candy | \$ 4.00 |
| <input type="radio"/> Nachos | \$11.00 |
| <input type="radio"/> Hot Chocolate | \$ 3.00 |
| <input type="radio"/> Water | \$ 2.50 |
| <input type="radio"/> Peanuts | \$ 5.00 |
| <input type="radio"/> Beer (16 oz. aluminum/plastic) | \$ 7.00 |
| <input type="radio"/> Margaritas | \$ 9.00 |
| <input type="radio"/> Wine | \$ 8.00 |

6.1.1 In addition, Contractor will/can offer additional non-traditional ballpark fare/local fare (BBQ, Mexican, etc.) and can set reasonable menu prices with consultation of the university Athletics. Contractor shall submit additional menu items along with size and price.

6.1.1.1 Contractor will be required, as previously stated, to gain and maintain liquor license.

6.1.1.2 The contractor will not sell any beverages in glass containers.

6.1.1.3 The contractor has the right to sell other alcoholic beverages (with University Athletics approval).

6.1.1.4 Prices are set and committed to for the first year. The University Athletics and the Contractor will sit down and negotiate all price changes for the ensuing years.

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6.2 Travel Expenses

University will *not* reimburse Contractor for travel expenses.

6.3 Discounts

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

6.4 Schedule for Completion of Tasks and Submittal of Deliverables

Vendor should provide a proposed schedule for completion of tasks and submitted deliverables in accordance with the Scope of Work (ref. Section 5.4) and as requested with this solicitation.

6.5 Payment Terms

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

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

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

6.6 Revenue Collection Procedures

6.6.1 Contractor shall process all cash sales through cash registers, maintain cash register tapes and sales records locally and make such tapes and records accessible to University upon request.

6.6.2 Contractor shall process all declining balance sales through University's Mav Money Card System.

6.6.3 Contractor shall account for all catering sales and other credit sales in a manner acceptable to University and consistent with standard industry accounting practices.

6.6.4 Under no circumstances will the University be responsible for any uncollected debt unless a University department, college or school is responsible for the amount owing.

6.6.5 Contractor shall ensure all cash handling procedures are managed in accordance with Contractor's Policies and Procedures Manual, and Contractor shall provide a copy of such upon University's request.

6.7 Invoicing Instructions

PAYMENT (COMMISSION / REBATE / ROYALTY) REPORTING: When Contractor makes any payment to the University, Contractor must also submit a copy of the payment information/report to the following:

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Charlie Brooks: Charles.brooks@uta.edu;
Erin Cavazos: Ecavazos@uta.edu

Send Notification of Payment to: University of Texas Arlington
Department of Athletics
600 S Center St.
Arlington, TX 76010
Ref. RFP #UTA2024-019
Attention: Savannah Greenlee
E-Mail: Savannah.Greenlee@uta.edu

With a Copy to: Accounts Payable
University of Texas at Arlington
219 W. Main Street
Arlington, TX 76019
E-Mail: accounts_payable@uta.edu
Ref. RFP #: UTA2024-019

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).

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

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APPENDIX ONE
PROPOSAL REQUIREMENTS

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SECTION 1**GENERAL INFORMATION****1.1 Purpose**

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

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

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

1.2 Inquiries and Interpretations

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

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

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

1.3 Public Information

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

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

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

1.4 Type of Agreement

Contractor, if any, will be required to enter into a contract with University in a form that (i) includes terms and conditions substantially similar to the terms and conditions set forth in **APPENDIX TWO**, and (ii) is otherwise acceptable to University in all respects (**Agreement**).

1.5 Proposal Evaluation Process

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

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

University may discuss and negotiate all elements of proposals submitted by Proposers within a specified competitive range. For purposes of negotiation, University may establish, after an initial review of the proposals, a competitive range of acceptable or potentially acceptable proposals composed of the highest rated proposal(s). In that event, University may defer further action on proposals not included within the

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competitive range pending the selection of Contractor; provided, however, University reserves the right to include additional proposals in the competitive range if deemed to be in the best interest of University.

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

University reserves the right to (a) enter into an agreement for all or any portion of the requirements and specifications set forth in this RFP with one or more Proposers, (b) reject any and all proposals and re-solicit proposals, or (c) reject any and all proposals and temporarily or permanently abandon this selection process, if deemed to be in the best interests of University. Proposer is hereby notified that University will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by University.

1.6 Proposer's Acceptance of RFP Terms

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

1.7 Solicitation for Proposal and Proposal Preparation Costs

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

1.8 Proposal Requirements and General Instructions

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

1.9 Preparation and Submittal Instructions

1.9.1 Specifications and Additional Questions

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

1.9.2 Execution of Offer

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

1.9.3 Pricing and Delivery Schedule

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

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

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

1.9.4 Proposer's General Questionnaire

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

1.9.5 Addenda Checklist

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

1.9.6 Submission

Proposer should submit all proposal materials through the University's online portal at www.bidnetdirect.com/arlinton.

Proposer must also submit the HUB Subcontracting Plan (also called the HSP) as required. by **Section 2.5**.

University will not under any circumstances consider a proposal that is received after the Submittal Deadline or which is not accompanied by the HSP as required by **Section 2.5**. University will not accept proposals submitted by telephone, email or FAX transmission.

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

SECTION 2

EXECUTION OF OFFER

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

- 2.1 Representations and Warranties.** Proposer represents, warrants, certifies, acknowledges, and agrees as follows:
- 2.1.1 Proposer will furnish Work to University and comply with all terms, conditions, requirements and specifications set forth in this RFP and any resulting Agreement.
 - 2.1.2 This RFP is a solicitation for a proposal and is not a contract or an offer to contract. Submission of a proposal by Proposer in response to this RFP will not create a contract between University and Proposer. University has made no representation or warranty, written or oral, that one or more contracts with University will be awarded under this RFP. Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
 - 2.1.3 Proposer is a reputable company that is lawfully and regularly engaged in providing Work.
 - 2.1.4 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform Work.
 - 2.1.5 Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances relating to performance of Work.
 - 2.1.6 Proposer understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in the Agreement under which Proposer will be required to operate.
 - 2.1.7 Proposer will not delegate any of its duties or responsibilities under this RFP or the Agreement to any sub-contractor, except as expressly provided in the Agreement.
 - 2.1.8 Proposer will maintain any insurance coverage required by the Agreement during the entire term.
 - 2.1.9 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. University will rely on such statements, information and representations in selecting Contractor. If selected by University, Proposer will notify University immediately of any material change in any matters with regard to which Proposer has made a statement or representation or provided information.
 - 2.1.10 PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, UT SYSTEM, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF PROPOSER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROPOSER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.
 - 2.1.11 Pursuant to §§[2107.008](#) and [2252.903](#), *Government Code*, any payments owing to Proposer under the Agreement may be applied directly to any debt or delinquency that Proposer owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until such debt or delinquency is paid in full.
 - 2.1.12 Any terms, conditions, or documents attached to or referenced in Proposer's proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP, and (b) do not place any requirements on University that are not set forth in this RFP. Submission of a proposal is Proposer's good faith intent to enter into the Agreement with University as specified in this RFP and that Proposer's intent is not contingent upon University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.
 - 2.1.13 Pursuant to [Chapter 2271, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
 - 2.1.14 Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Proposer certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.
 - 2.1.15 Pursuant to Chapter 2274, *Texas Government Code* (enacted by [SB 19, 87th Texas Legislature, Regular Session \(2021\)](#)), Proposer verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of any contract or agreement resulting from this RFP against a firearm entity or firearm trade

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association. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this verification is inaccurate.

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

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Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term “computer equipment” means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.

2.12 Conflict of Interest Certification.

- Proposer is not a debarred vendor or the principal of a debarred vendor (i.e. owner, proprietor, sole or majority shareholder, director, president, managing partner, etc.) either at the state or federal level.
- Proposer’s provision of services or other performance under any Agreement resulting from this RFP will not constitute an actual or potential conflict of interest.
- Proposer has disclosed any personnel who are related to any current or former employees of University.
- Proposer has not given, nor does Proposer intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to an officer or employee of University in connection with this RFP.

2.13 Proposer should complete the following information:

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

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

RFP No.: _____

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

Submitted and Certified By:

(Proposer Institution’s Name)

(Signature of Duly Authorized Representative)

(Printed Name/Title)

(Date Signed)

(Proposer’s Street Address)

(City, State, Zip Code)

(Telephone Number)

(FAX Number)

(Email Address)

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SECTION 3

PROPOSER'S GENERAL QUESTIONNAIRE

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

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

3.1 Proposer Profile

3.1.1 Legal name of Proposer company:

Address of principal place of business:

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

Number of years in Business: _____

State of incorporation: _____

Number of Employees: _____

Annual Revenues Volume: _____

Name of Parent Corporation, if any _____

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

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

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

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

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

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

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

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

3.2 Approach to Work

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

[OPTION Include the following Section 3.2.5 if the University anticipates that under the contract or agreement resulting from this RFP the Contractor or its subcontractors or third-party providers will be providing cloud computing services (CCSs) to the University or processing (including storing or transmitting) University data using CSSs:

- 3.2.5 Proposer must select, and if necessary complete, one of the following two options regarding cloud computing services ("CCSs"):
- _____ **OPTION 1:** Proposer represents and warrants that it will not provide any CCSs either through this Agreement or in furtherance of this Agreement, as provided in Section 2.15 of Appendix One.
- _____ **OPTION 2:** Proposer represents and warrants that it will provide the following CCSs either through this Agreement or in furtherance of this Agreement, as provided in Section 2.15 of Appendix One:

3.3 General Requirements

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

3.4 Service Support

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

3.5 Quality Assurance

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

3.6 Miscellaneous

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

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SECTION 4**ADDENDA CHECKLIST****Proposal of:** _____
(Proposer Name)**To:** University of Texas at Arlington**RFP No.:** UTA2024-019

Ladies and Gentlemen:

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

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

Respectfully submitted,

Proposer: _____**By:** _____
(Authorized Signature for Proposer)**Name:** _____**Title:** _____**Date:** _____***1337023-09-29-51***

APPENDIX TWO

TERMS AND CONDITIONS

1. **Payment.** University agrees to pay fees due under this Agreement in accordance with the Texas Prompt Payment Act (**Act**), [Chapter 2251, Texas Government Code](#). Pursuant to the Act, payment shall be deemed late on the 31st day after the later of: 1) the date the University receives the goods under this Agreement, 2) the date the performance of the services under this Agreement is completed, or 3) the date University receives an invoice for the goods or services. University will be responsible for interest on overdue payments equal to the sum of: 1) one percent, plus 2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year (University's fiscal year begins September 1) that does not fall on a Saturday or Sunday. University will have the right to verify the details set forth in Contractor's invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Contractor at mutually convenient times; (b) examining any reports with respect to the Project; and (c) other reasonable action. The cumulative amount of all payments will not exceed the amount of this Agreement.

[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 9** 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.

2. **Prompt Payment Discount.** Notwithstanding any other provision of this Agreement, University is entitled to a discount of % (**Prompt Payment Discount**) off of each payment that University submits within days after University's receipt of Contractor's invoice for that payment.
3. **Tax Exemption.** 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.
4. **Contractor's Obligations.**
- 4.1 Contractor will perform Work in compliance with (a) all federal, state or local, laws, statutes, regulations and ordinances (collectively, **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 (**UTA Policies, Procedures and Forms** <https://policy.uta.edu/>) (collectively, **University Rules**). Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for the firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, [Chapter 15, Texas Business and Commerce Code](#), or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor's response to University's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.
- 4.2 Contractor represents and warrants that (a) it will use commercially reasonable efforts to perform Work in a good and workmanlike manner and in accordance with commercially reasonable standards of Contractor's profession or business, and (b) all Work performed will be of the quality that prevails among similar businesses engaged in providing similar services in major United States urban areas under the same or similar circumstances
- 4.3 Contractor will call to University's attention in writing all information in any materials supplied to Contractor (by University or any other party) that Contractor regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.
- 4.4 University at all times is relying on Contractor's skill and knowledge in performing Work. Contractor represents and warrants that Work will be accurate and free from any material defects. Contractor's duties and obligations under this Agreement will not be in any way diminished by reason of any approval by University. Contractor will not be released from any liability by reason of any approval by University.

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- 4.5 Contractor will, at its own cost, correct all material defects in Work as soon as practical after Contractor becomes aware of the defects. If Contractor fails to correct material defects in Work within a reasonable time, then University may correct the defective Work at Contractor's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Work that University may have at law or in equity.
- 4.6 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will cause all persons connected with Contractor directly in charge of Work to be duly registered and licensed under all Applicable Laws. Contractor will assign to the Project a designated representative who will be responsible for administration and coordination of Work. Contractor will furnish efficient business administration and coordination and perform Work in an expeditious and economical manner consistent with the interests of University.
- 4.7 Contractor represents and warrants it is duly organized, validly existing and in good standing under the laws of the state of its organization; it is duly authorized and in good standing to conduct business in the State of Texas; it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 4.8 Contractor represents and warrants that neither the execution and delivery of this Agreement by Contractor nor the performance of its duties and obligations under this Agreement will (a) result in the violation of any provision of its organizational documents; (b) result in the violation of any provision of any agreement by which it is bound; or (c) conflict with any order or decree of any court or other body or authority having jurisdiction.
- 4.9 Contractor represents and warrants that all of Contractor's Personnel contributing to Work Material (ref. **Section 22**) under this Agreement will be required to (i) acknowledge in writing the ownership of Contractor (for the benefit of University) of Work Material produced by Personnel while performing services pursuant to this Agreement, and (ii) make all assignments necessary to effectuate such ownership. **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 Contractor represents and warrants that: (i) Work will be performed solely by Contractor, its full-time or part-time employees during the course of their employment, or independent contractors who have assigned in writing all right, title and interest in their work to Contractor (for the benefit of University); (ii) University will receive free, good and clear title to all Work Material developed under this Agreement; (iii) Work Material and the intellectual property rights protecting Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges and other restrictions; (iv) Work Material will not infringe upon or violate any patent, copyright, trade secret, trademark, service mark or other property right of any former employer, independent contractor, client or other third party; and (v) the use, reproduction, distribution, or modification of Work Material will not violate the rights of any third parties in Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.]
- 4.11 If this Agreement requires Contractor's presence on University's premises or in University's facilities, Contractor agrees to cause its employees, representatives, agents, or subcontractors to become aware of, fully informed about, and in full compliance with all applicable University Rules, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.
- 4.12 Contractor, at its sole cost and expense, will comply with all requirements of [Subchapter C, Chapter 2252, Texas Government Code](#), including the provision of financial statements, payment statements derived from sales tax reports, and bonds.
- 4.12.1 In accordance with [§2252.062, Texas Government Code](#), Contractor will submit to University two (2) copies of Contractor's most recent financial statement prepared by a certified public accountant on the Effective Date.
- 4.12.2 In accordance with [§2252.063, Texas Government Code](#), Contractor will submit to University, no later than the 15th day after the end of each contract year, an annual payment statement derived from all of Contractor's sales tax reports for its operations during the preceding contract year. The annual payment statement must be certified by a certified public accountant licensed in the State of Texas. **Contract year** means that period of time beginning on the Effective Date and ending _____, 20____, and each twelve (12) month period thereafter, during the Term.

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4.12.3 In accordance with [§2252.064, Texas Government Code](#), Contractor will provide University with a performance bond for each contract year during the Term. The amount of the performance bond for the first contract year during the Term will be equal to twenty-five thousand dollars (**\$25,000.00**). Thereafter, the amount of the performance bond will be adjusted at the beginning of each contract year to twenty-five thousand dollars (**\$25,000.00**). The performance bond will be issued by a surety company authorized to do business in the State of Texas and acceptable to University in all respects. The performance bond will be made payable to University and conditioned upon the prompt and faithful performance of Work and all of Contractor's other duties and obligations under this Agreement.

5. **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.
6. **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.
7. **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.
8. **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.
9. **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: _____

 Fax: _____
 Email: _____
 Attention: _____

with copy to: _____

 Fax: _____
 Email: _____
 Attention: _____

If to Contractor: _____

 Fax: _____
 Email: _____
 Attention: _____

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

10. **State Auditor's Office.** Contractor understands acceptance of funds under this Agreement constitutes acceptance of authority

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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 permitted subcontractors. This provision is included pursuant to [Section 2262.154 of the Texas Government Code](#).

11. **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 construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.
12. **Breach of Contract Claims.** 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:
 - 12.1. 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.
 - 12.2. If the parties are unable to resolve their disputes under **Section 12.1** the contested case process provided in [subchapter C](#) of Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement by University.
 - 12.3. 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.
 - 12.4. 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.
 - 12.5. University and Contractor agree that any periods provided in this Agreement for notice and cure of defaults are not waived.
13. **Records.** Records of Contractor's costs, reimbursable expenses pertaining to the Work 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](#)).
14. **Insurance.**
 - 14.1. 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:

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

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

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

In the event watercraft is used in the course of performing Work, the maritime coverage endorsement must be added unless separate Protection & Indemnity coverage is maintained. In the event operations are conducted in relation to navigable waters which may qualify employees for [United States Longshore & Harbor Workers Compensation Act \(USL&H\)](#) benefits, the USL&H endorsement must be added.

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

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

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

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

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

Contractors transporting hazardous materials must provide the *MCS-90 endorsement* and *CA9948 Broadened Pollution Liability endorsement* on the Business Auto Liability policy. Policy limits must be in line with federal requirements.

14.1.4 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 14.1.1** Employer's Liability; **14.1.2** Commercial General Liability; and **14.1.3** Business Auto Liability; and **14.1.5** Liquor 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.

14.1.5 Liquor Liability Insurance, with limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate for bodily injury and property damage arising from selling, serving or furnishing of any alcoholic beverage by Contractor or Contractor's employees, representatives, agents, or subcontractors in the performance of this Agreement.

14.1.6 Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 each occurrence, \$3,000,000 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.

- 14.1.7 Contractor's Employee Dishonesty Insurance will be endorsed with a *Client's Property Endorsement* (or equivalent) to protect the assets and property of University with limits of not less than \$1,000,000 per claim. If Contractor has property of University in its care, custody or control away from University's premises, Contractor will provide bailee coverage for the replacement cost of the property. Contractor's Employee Dishonesty policy will name University as Loss Payee.
- 14.1.8 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.
- 14.1.9 Cyber Liability Insurance with limits of not less than \$10,000,000 for each wrongful act. This policy must cover:
- Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of University data, whether by Contractor or any of subcontractor or cloud service provider used by Contractor;
 - Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management / public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
 - Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
 - Liability for technological products and services;
 - PCI fines, fees, penalties and assessments;
 - Cyber extortion payment and response costs;
 - First and Third Party Business Interruption Loss resulting from a network security failure;
 - Liability for technological products and services;
 - Costs of restoring, updating or replacing data; and
 - Liability losses connected to network security, privacy, and media liability.

If this policy is written on a claims-made basis, (a) the "retroactive date" must be prior to the commencement of work under this Agreement; and (b) if this policy is cancelled, terminated or non-renewed at any time during the Term, Contractor will purchase an "extended reporting period" for at least a period of two (2) years beyond the termination or expiration of the Term

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

14.2 Contractor will deliver to University:

14.2.1 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.

14.2.1.1 **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.

14.2.1.2 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 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 14**.

14.2.1.3 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.

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

Name:
Address:
Facsimile Number:
Email Address:

14.3 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 14.3**.

14.3.1 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.

14.3.2 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.

15. Indemnification.

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

16. **Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy at <http://www.utsystem.edu/board-of-regents/policy-library/policies/int180-conflicts-interest-conflicts-commitment-and-outside->, University's Standards of Conduct Guide at <https://www.utsystem.edu/documents/docs/policies-rules/ut-system-administration-standards-conduct-guide>, and 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 <https://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.

If applicable, Contractor agrees to comply with [§2252.908, Texas Government Code \(Disclosure of Interested Parties Statute\)](#), and [1 TAC §§46.1 through 46.5 \(Disclosure of Interested Parties Regulations\)](#), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC and University with information required on the form promulgated by TEC. Contractor may learn more about these disclosure requirements, including the use of TEC's electronic

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filing system, by reviewing the information on TEC's website at https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php.

17. **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 25**. 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.
18. **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.
19. **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.
20. **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.
21. **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.
22. **Ownership and Use of Work Material.**
- 22.1 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.
- 22.2 Contractor grants and assigns to University all rights and claims of whatever nature and whether now or hereafter arising in and to Work Material and will cooperate fully with University in any steps University may take to obtain or enforce patent, copyright, trademark or like protections with respect to Work Material.
- 22.3 Contractor will deliver all Work Material to University upon expiration or termination of this Agreement. University will have the right to use Work Material for the completion of Work or otherwise. University may, at all times, retain the originals of Work Material. Work Material will not be used by any person other than University on other projects unless expressly authorized by University in writing.
- 22.4 Work Material will not be used or published by Contractor or any other party unless expressly authorized by University in writing. Contractor will treat all Work Material as confidential.
- 22.5 All title and interest in Work Material will vest in University and will be deemed to be work made for hire and made in the course of Work rendered under this Agreement. To the extent that title to any Work Material may not, by operation of law, vest in University or Work Material may not be considered works made for hire, Contractor irrevocably assigns, conveys

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and transfers to University and its successors, licensees and assigns, all rights, title and interest worldwide in and to Work Material and all proprietary rights therein, including all copyrights, trademarks, service marks, patents, trade secrets, moral rights, all contract and licensing rights and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known. In the event Contractor has any rights in Work Material which cannot be assigned, Contractor agrees to waive enforcement worldwide of the rights against University, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to University with the right to sublicense. These rights are assignable by University.

22.6 Contractor IP is the sole property of Contractor (or its licensor) and Contractor (or its licensor) will at all times retain sole and exclusive title to and ownership of Contractor IP. Contractor grants University a non-exclusive, worldwide, perpetual, irrevocable, sub-licensable, royalty-free license to use Contractor IP in connection with the Work and Contractor's services related to the Work. "**Contractor IP**" means all tools, software and programs owned by Contractor (licensed to Contractor by a third party licensor) that (1) existed prior to the Effective Date and the commencement of the Work; (2) are not related to the Work or to Contractor's services in connection with the Work; or (3) were created by Contractor (or its licensor) totally separate from the Work or Contractor's services in connection with the Work.

22.7 University grants Contractor a non-exclusive, worldwide, perpetual, irrevocable, sub-licensable, royalty-free license to the Work Product Improvements to Contractor IP. "**Work Product Improvements to Contractor IP**" means Work Material comprising an improvement, enhancement or modification to Contractor IP, whether or not patentable, copyrightable as a derivative work, or otherwise protectable as intellectual property.

23. **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**). However, it is expressly agreed that University will not provide to Contractor, and Contractor will never seek to access, any University Records that contain personally identifiable information regarding any individual that is not available to any requestor under the *Texas Public Information Act*, [Chapter 552, Texas Government Code](#), including "directory information" of any student who has opted to prohibit the release of their "directory information" as that term is defined under the *Family Educational Rights and Privacy Act*, [20 USC §1232g \(FERPA\)](#) and its implementing regulations. Additional mandatory confidentiality and security compliance requirements with respect to University Records subject to the Health Insurance Portability and Accountability Act and [45 CFR Part 160](#) and [subparts A and E of Part 164](#) (collectively **HIPAA**) are addressed in **Section 24**. Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to the security controls, including reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security as well as the Payment Card Industry Data Security Standards) that are proportionate to the University's risk under the Agreement based on the sensitivity of University's Records, and no less rigorous than the standards by which Contractor protects its own confidential information, and periodically provide to University evidence that Contractor meets the security controls required under the Agreement; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all Applicable Laws and the terms of this Agreement; and (4) comply with University Rules regarding access to and use of University's computer systems, including UTS165 at <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy>. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.

23.1 **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.

23.2 **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.

- 23.3 **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 23.3**.
- 23.4 **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.
- 23.5 **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.
- 23.6 **Termination.** In addition to any other termination rights in this Agreement and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or obligations in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.
- 23.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.
24. **HIPAA Compliance. Not Applicable**
25. **Default and Termination**
- 25.1 In the event of a material failure by a party to this Agreement to perform in accordance with its terms (**default**), the other party may terminate this Agreement upon fifteen (15 days' written notice of termination setting forth the nature of the material failure; provided, that, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the fifteen-day (15-day) period.
- 25.2 University may, without cause, terminate this Agreement at any time upon giving seven (7) days' advance written notice to Contractor. Upon termination pursuant to this Section, Contractor will be entitled to payment of an amount that will compensate Contractor for Work satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement; provided, that, Contractor has delivered all Work Material to University. Notwithstanding any provision in this Agreement to the contrary, University will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice, that could have been avoided or mitigated by Contractor.
- 25.3 Termination under **Sections 25.1** or **25.2** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.
- 25.4 If Contractor fails to cure any default within fifteen (15) days after receiving written notice of the default, University will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Contractor under this Agreement, any and all reasonable expenses incurred in connection with University's curative actions.
- 25.5 In the event that this Agreement is terminated, then within thirty (30) days after termination, Contractor will reimburse University for all fees paid by University to Contractor that were (a) not earned by Contractor prior to termination, or (b) for goods or services that University did not receive from Contractor prior to termination.
26. **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.
27. **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.

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- 28. Limitation of Liability.** EXCEPT FOR UNIVERSITY'S OBLIGATION (IF ANY) TO PAY CONTRACTOR CERTAIN FEES AND EXPENSES UNIVERSITY WILL HAVE NO LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING ANY DUTY OR OBLIGATION OF UNIVERSITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR, NO PRESENT OR FUTURE AFFILIATED ENTERPRISE, SUBCONTRACTOR, AGENT, OFFICER, DIRECTOR, EMPLOYEE, REPRESENTATIVE, ATTORNEY OR REGENT OF UNIVERSITY, OR THE UNIVERSITY OF TEXAS SYSTEM, OR ANYONE CLAIMING UNDER UNIVERSITY HAS OR WILL HAVE ANY PERSONAL LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.

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

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

- 29. Assignment and Subcontracting.** Except as specifically provided in Exhibit, 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.
- 30. Subcontracting.** Contractor will use good faith efforts to subcontract work performed under this Agreement in accordance with the Historically Underutilized Business Subcontracting Plan (HSP) (ref. Exhibit). Except as specifically provided in the HSP, Contractor will not subcontract any of its duties or obligations under this Agreement, in whole or in part. This Agreement is subject to [34 TAC §20.285](#). Contractor will comply with all of its duties and obligations under [34 TAC §20.285](#). In addition to other rights and remedies, University may exercise all rights and remedies authorized by [34 TAC §20.285](#).
- 31. 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). 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.
- 31.1 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 19** to replace the HSP with the revised subcontracting plan.
- 31.2 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 25** 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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32. **Responsibility for Individuals Performing Work; Criminal Background Checks.** Each individual who is assigned to perform Work under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing Work under this Agreement. Prior to commencing Work, Contractor will (1) provide University with a list (**List**) of all individuals who may be assigned to perform Work, and (2) have an appropriate criminal background screening performed on all the individuals. Contractor will determine on a case-by-case basis whether each individual assigned to perform Work is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University's campus who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform Work.
- Prior to commencing performance of Work under this Agreement, Contractor will provide University a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will provide University an updated certification letter each time there is a change in the individuals assigned to perform Work.
33. **Limitations.** THE PARTIES ARE AWARE THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS (**LIMITATIONS**) ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THIS AGREEMENT, INCLUDING TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY, AND TERMS AND CONDITIONS RELATED TO LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
34. **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.
35. **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.
36. **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.
37. **Quality Assurance.** Contractor will (a) comply with all applicable standards of the Joint Commission (**Joint Commission**); (b) implement and monitor a quality assurance process that complies with Joint Commission standards; (c) comply with applicable Joint Commission privileging standards for licensed independent practitioners; (d) upon request, provide assurance to University of a licensed independent practitioner's privileging file; and (e) provide University with periodic reports of its quality assurance indicators and/or permit University to conduct periodic quality assurance audits of Work.
38. **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, browsewrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that University or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Contractor.
39. **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

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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).

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

40. **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.
41. **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/>
42. **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.
43. **Affirmative Action.** Exhibit, Affirmative Action Compliance Program, contains a written copy of Contractor's Civil Rights "Affirmative Action Compliance Program," or if Contractor is not required to have such a written program, the reason Contractor is not subject to such requirement.
44. **OSHA Compliance.** To the extent applicable to the Work to be performed under this Agreement, Contractor represents and warrants, that all Work, articles and services furnished under this Agreement meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law ([Public Law 91-596](#)) and its regulations in effect or proposed as of the date of this Agreement.

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45. 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.

46. Federal Requirements for Telecommunications Equipment or Services

- (a) Contractor represents that it will not provide covered telecommunications equipment or services, as defined in 2 CFR § 200.216, to University in the performance of this Agreement or any contract, subcontract, or other contractual instrument resulting from this Agreement.
- (b) In the event Contractor identifies covered telecommunications equipment or services, as defined in 2 CFR § 200.216, used as a substantial or essential component of any system, or as critical technology as part of any system, during performance of this Agreement, or Contractor is notified of such by a subcontractor at any tier or by any other source, Contractor shall report information about the contract, equipment item, and mitigation measures to University within one business day, and provide University with an update within ten business days that includes measures to prevent recurrence.

47. FERPA Compliance. Not Applicable

48. Payment Card Industry Standards. University is required to validate compliance on a periodic basis with applicable Payment Card Industry Data Security Standards (**PCI DSS**), including Payment Application Data Security Standards (**PA DSS**), promulgated by the Payment Card Industry Security Standards Council (**PCI SSC**). The compliance validation process requires University to undergo an assessment of (1) system components used to process, store or transmit cardholder data, and any other components that reside on the same network segment as those system components, as well as (2) related processes used to process, store or transmit cardholder data, (System Components in Scope). Some or all System Components in Scope have been outsourced to Contractor under this Agreement. Contractor will cause its agents and subcontractors to comply with all terms of this Section applicable to Contractor. Contractor will achieve and maintain compliance under the current versions of PCI DSS and PA DSS published on the PCI SSC website for service providers and payment applications. Contractor will provide to University (1) on or before the date this Agreement is signed by University, and (2) within ten (10) days after each anniversary of the date this Agreement is signed by University, a copy of Contractor's annual attestation of compliance signed by a Qualified Security Assessor (**QSA**) as described on the PCI SSC website.

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

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

49. 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.

50. INTENTIONALLY OMITTED - Access by Individuals with Disabilities.

51. INTENTIONALLY OMITTED - EIR Environment Specifications

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52. **INTENTIONALLY OMITTED - Security Characteristics and Functionality of Contractor's Information Resources**
53. **Contractor Certification regarding Boycotting Israel.** Pursuant to [Chapter 2271, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
54. **Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
55. **Contractor Verification Regarding Discrimination Against Firearm Entities or Trade Associations.** Pursuant to Chapter 2274, *Texas Government Code* (enacted by [SB 19, 87th Texas Legislature, Regular Session \(2021\)](#)), Contractor verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
56. **Contractor Verification Regarding Boycotting Energy Companies.** Pursuant to Chapter 2274, *Texas Government Code* (enacted by [SB 13, 87th Texas Legislature, Regular Session \(2021\)](#)), Contractor verifies (1) it does not boycott energy companies and (2) it will not boycott energy companies during the term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
57. **Contractor Certification Regarding COVID-19 Vaccination.** Pursuant to Section 161.0085, *Texas Health and Safety Code* (enacted by [SB 968, 87th Texas Legislature, Regular Session \(2021\)](#)), Contractor certifies that it does not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Contractor's business. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
58. **Cybersecurity Training Program.** If Contractor and/or its subcontractors, officers, or employees will have an account on a state computer system (for example, an account to an application, database, or network), then pursuant to [Section 2054.5192, Texas Government Code](#), Contractor and its subcontractors, officers, and employees must complete a cybersecurity training program certified under [Section 2054.519, Texas Government Code](#) and selected by the University. The cybersecurity training program must be completed by Contractor and its subcontractors, officers, and employees during the term and any renewal period of this Agreement. Contractor shall verify completion of the program to the University.
59. **Texas Public Information Act - Subchapter J Requirements.** Pursuant to [Section 552.372 of the Texas Government Code](#), Contractor must:
- (1) preserve all contracting information (ref. [Section 552.003\(1-a\), Texas Government Code](#)) related to this Agreement as provided by the records retention requirements applicable to University for the duration of this Agreement (Ref. [Section 441.1855 of the Texas Government Code](#));
 - (2) promptly provide to the University any contracting information related to this Agreement that is in the custody or possession of Contractor on request of the University; and
 - (3) on completion of this Agreement, either:
 - (A) provide at no cost to the University all contracting information related to this Agreement that is in the custody or possession of Contractor, or
 - (B) preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to the University.

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

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

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or contract described by Section 552.371 unless the University determines and documents that the entity has taken adequate steps to ensure future compliance with the requirements of Subchapter J.

If Contractor fails to comply with the requirements of Subchapter J applicable to Contractor, then University shall provide written notice to Contractor stating the requirement(s) of Subchapter J that Contractor has violated. Such notice will also advise Contractor that University may terminate this Agreement without further obligation to Contractor if (a) Contractor does not cure the violation on or before the 10th business day after the date the University provides the notice, (b) the University determines that Contractor has intentionally or knowingly failed to comply with a requirement of that Subchapter J, and (c) the University determines that Contractor has not taken adequate steps to ensure future compliance with the requirements of Subchapter J. For purposes of the above, Contractor has taken adequate steps to ensure future compliance with Subchapter J if: (1) Contractor produces contracting information requested by the University that is in the custody or possession of Contractor not later than the 10th business day after the date the University makes the request and (2) Contractor establishes a records management program to enable Contractor to comply with Subchapter J.

- 60. Contractor Certification Relating to Critical Infrastructure.** Pursuant to Chapter 2274, *Texas Government Code (enacted by SB 2116, 87th Texas Legislature, Regular Session (2021))*, Contractor certifies (A) it is neither owned by nor is the majority of stock or other ownership interest of the Contractor held or controlled by (i) individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2274.0103 of the *Texas Government Code* (a "designated country") or (ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or 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.

Option: Include if the Contractor or its subcontractors or third-party providers will be providing cloud computing services (CCSs) to the University or processing (including storing or transmitting) University data using CSSs.

61. Contractor Compliance and Warranty Relating to Cloud Computing Services. The Texas Department of Information Resources (DIR) has established and implemented a state risk and authorization management program providing a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services (CCSs) that process (including storing or transmitting) the data of Texas state agencies (TX-RAMP). The requirements of TX-RAMP include [Section 2054.0593 of the Texas Government Code, Title 1, Rule 202.77 of the Texas Administrative Code](#), and DIR's TX-RAMP Manual.

Contractor represents and warrants that throughout the term of this Agreement it will comply with the requirements of TX-RAMP and that all CCSs subject to TX-RAMP will comply with the requirements of and be certified under TX-RAMP. The CCSs subject to TX-RAMP include those provided by Contractor either through this Agreement or in furtherance of this Agreement, including CCSs provided through Contractor's subcontractors or third-party providers. A CCS used in furtherance of this Agreement includes a CCS that Contractor or its subcontractors or third-party providers use to process (including storing or transmitting)

University data, even if the University itself does not access or use that CCS. Contractor's subcontractors or third-party providers responsible solely for servicing or supporting a CCS provided by Contractor or another Contractor subcontractor or third-party provider shall not be required to provide evidence of TX-RAMP certification; instead, Contractor will be responsible for providing such evidence. The list of current TX-RAMP certified CCSs and DIR's TX-RAMP Manual are set forth at <https://dir.texas.gov/txramp>.

Option: Include if greater specificity is desired; see Option 2 in Section 3.2.5 of Appendix One: Contractor further represents and warrants that the following are the only CCSs that it will provide either through this Agreement or in furtherance of this Agreement as provided above, and Contractor's representations, warranties, and obligations under this Section include the following CCSs:

_____ |

Contractor understands and agrees that the University may not enter into or renew a contract with Contractor to purchase CCSs that are subject to TX-RAMP unless Contractor demonstrates compliance with TX-RAMP requirements. Contractor acknowledges this Agreement may be terminated and payment withheld if Contractor does not comply with TX-RAMP or this Section. |

Alternate Option: Include if neither the Contractor nor its subcontractors or third-party providers will be providing cloud computing services (CCSs) to the University or processing (including storing or transmitting) University data using CSSs and the University wishes to document this in the Agreement. 61. 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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APPENDIX THREE

HUB SUBCONTRACTING PLAN

Proposer must submit one (1) complete copy of HSP to University at the same time it submits its proposal to University (ref. SECTION 3.2 of this RFP). **The HSP must be submitted/uploaded as a separate file/document**, or as directed in BidNet. Proposer must ensure that the HSP clearly shows and makes visible:

- The RFP No. and the Submittal Deadline (ref. **Section 2.1**),
- Name and address of Proposer, and
- File name should include the RFP number and the words “HUB Subcontracting Plan.”

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

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

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APPENDIX FOUR
PERFORMANCE BOND

Surety Bond No. _____

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF §

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

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

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

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

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

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

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

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

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

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

(SEAL) _____
Principal
ATTEST: _____
By: _____

(Typed Name and Title)

(SEAL) _____
Surety
ATTEST: _____
By: _____

(Typed Name and Title)

Surety's Texas Local Recording Surety's Home Office Agent or Servicing
Agent or Resident Agent: Agent:

(Signature) Name: _____

(Typed Name) Title: _____

License No. _____
File No. _____
Address: _____ Address: _____

Telephone No.: _____ Telephone No.: _____

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APPENDIX FIVE**PAYMENT BOND**

Surety Bond No. _____

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF §

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

The conditions of this obligation are such that whereas the Principal entered into a certain contract, hereto attached, and made a part hereof, with the State of Texas, acting by and through The University of Texas Health Center at Tyler, on behalf of the Northeast Texas Telecommunications Network (also known as the Northeast Texas Initiative), dated _____, _____, for _____

(Project No. _____).

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall promptly make payments to all claimants of all persons supplying labor and materials in the prosecution of the work provided for in said contract, then this obligation shall be null and void, but otherwise it shall remain in full force and effect.

In the event that the Principal fails to promptly pay when due persons who have supplied labor, materials, or supplies used in the performance of the said contract, the Surety will, upon receipt of notice from the State of Texas or a claim in the form required by law, satisfy all undisputed balances due, and make arrangements satisfactory to the interested parties to resolve all amounts disputed in good faith, but in no event shall the liability of the Surety for the Principal's failure to promptly pay for labor, materials, or supplies exceed the penalty of this bond.

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

Provided further, that this bond is made and entered into for the protection of all claimants supplying labor and material in the prosecution of the work provided for in said Contract, and all such claimants shall have a direct right of action under the bond. If any legal action is filed upon this bond, venue shall be in the county where the said contract is to be performed.

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

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

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

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(SEAL)

Principal

ATTEST:

By: _____

By: _____

(Typed Name and Title)

(Typed Name and Title)

(SEAL)

Surety

ATTEST:

By: _____

By: _____

(Typed Name and Title)

(Typed Name and Title)

Surety's Texas Local Recording

Surety's Home Office Agent or Servicing

Agent or Resident Agent:

Agent:

(Signature)

Name: _____

(Typed Name)

Title: _____

License No. _____

File No. _____

Address: _____

Address: _____

Telephone No.: _____

Telephone No.: _____

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