**VENDING MACHINE SERVICES CONTRACT**

This **VENDING MACHINE SERVICES CONTRACT** (**Agreement**) is entered into effective as of \_\_\_\_\_\_\_, 20\_\_\_\_ (**Effective Date**) by and between **THE UNIVERSITY OF TEXAS \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (**University**), an agency and institution of higher education authorized by the laws and Constitution of the State of Texas, and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (**Contractor**), a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[Note: Insert type of organization (corporation, partnership, etc.) and State in which Contractor is organized.]**.

**RECITALS**

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

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

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

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

**TERMS AND CONDITIONS**

**Section 1.**

**TERM AND EXTENSION**

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

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

**Section 2.**

**CONTRACTOR’S OBLIGATIONS**

2.1 Preparation Activities; Schedule. Contractor’s activities (**Preparation Activities**) to be performed in preparation to provide vending machine operations on Campus and the related schedule for performance of the Preparation Activities are set forth in **Exhibit A** attached and incorporated for all purposes.

2.2 Commencement of Work. Beginning on **[Option:** \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_**]** **[Option:** the Effective Date**]**, Contractor will, in accordance with the terms and conditions of this Agreement, commence performance of vending machine operations at Campus locations (collectively, **Locations**) more particularly identified in **Exhibit B** attached and incorporated for all purposes, through Contractor’s vending machines and related equipment (collectively, **Equipment**) dispensing the products (collectively, **Products**) listed in **Exhibit C** attached and incorporated for all purposes. The Preparation Activities, vending machine operations and all other services, duties and obligations required to be performed by Contractor under this Agreement will sometimes be collectively referred to as “**Work**.”

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

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

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

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

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

University will not be responsible for interruptions in utility service to the Locations. However, University will exercise reasonable diligence in pursuing the restoration of interrupted utility service.

University will not be liable to Contractor or Contractor’s employees, representatives, agents, subcontractors, guests or invitees (collectively, **Contractor Parties**), for any loss, expense, or damage, either to person or property sustained by reason of any condition of Locations, Campus or adjoining grounds or facilities, or due to any act of any employee, representative, agent, subcontractor, guest or invitee of University, or the act of any other person whatsoever. University, its employees, representatives, agents, subcontractors, guests and invitees will not be liable for, and Contractor waives, all claims for damage to person or property sustained by any Contractor Parties, resulting from any accident or occurrence in or upon Locations, Campus or adjoining grounds or facilities. Contractor will pay on demand University’s expenses incurred in enforcing any obligation of Contractor under this license.

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

2.5 Products.

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

2.5.2 Applicable Laws; Product Standards; Perishable Products. Contractor will ensure that all Products will conform in all respects to Applicable Laws relating to the standards or specifications of those Products. All Products intended for human consumption will be fresh and suitable for human consumption in all respects. Contractor will identify perishable Products by means of coded markings with explanatory “keys” required to read Contractor’s coding system. On the Effective Date, Contractor will deliver to University a written report with a list of all coded markings and explanatory “keys.” Contractor will deliver to University an updated version of that report within five (5) days after Contractor changes the coding system or any explanatory “key.”

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

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

2.6 Equipment.

2.6.1 Type of Equipment; Compliance with Applicable Laws. Contractor will provide, install and operate all Equipment. Equipment operated on Campus by Contractor will be new or like‑new models, will contain coin changers and dollar bill reader/changers, and will be of a size and type acceptable to University. **[Option:** University and Contractor agree to cooperate in implementing a phase‑in of Equipment with credit card and debit card reader capability, at a rate to be mutually agreed upon between University and Contractor.**]** **[Option:** Contractor will operate and maintain credit card and debit card readers on **[Option:** all Equipment.**]** **[Option:** at least \_\_\_\_\_\_\_\_\_\_ percent (\_\_\_ %) of Equipment and at the Locations specified by University**]**. All Equipment will be installed and operated in conformity with Applicable Laws and University Rules.

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

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

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

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

2.7 Refunds. Contractor will provide University up to **[**\_\_\_\_\_\_\_\_\_\_\_\_\_**] [Option:** three (3)**]** separate cash funds in the amount of **[**\_\_\_\_\_\_\_\_\_\_\_\_\_**]** **[Option:** $50.00**]** each, which will be used by University for making refund payments available at Campus locations designated by University. Contractor will make additional funds available to University as required to maintain each fund at a level adequate to pay refunds promptly upon submission of a refund claim. Contractor will supply a written form, mutually agreeable to both parties, to be used as a voucher for submitting refund claims. The form will include space for claimants to identify (1) the type of Equipment, (2) the Location, (3) the amount of the loss, (4) a description of how the loss occurred, (5) the date of the loss, (6) the claimant's name and signature, and (7) the date of the refund claim.

2.8 Auxiliary Enterprise.

Contractor, at its sole cost and expense, will comply with all requirements of [Subchapter C, Chapter 2252, *Texas Government Code*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2252.htm#C), including the provision of financial statements, payment statements derived from sales tax reports, and bonds.

2.8.1 Financial Statement. In accordance with [§2252.062, *Texas Government Code*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2252.htm#2252.062), Contractor will submit to University on or before the Effective Date, two (2) copies of Contractor’s most recent financial statement prepared by a certified public accountant on the Effective Date.

2.8.2 Payment Statement. In accordance with [§2252.063, *Texas Government Code*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2252.htm#2252.063), 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\_\_\_\_ **[Note: Insert date that is 12 months after Effective Date (i.e., if Effective Date is January 1, 2018, then insert December 31, 2018).]** and each twelve (12) month period thereafter, during the term of this Agreement.

2.8.3 Performance Bond. In accordance with [§2252.064, *Texas Government Code*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2252.htm#2252.064), Contractor will provide University with a performance bond for each contract year during the term of this Agreement. The amount of the performance bond **[Option (Include only if the performance bond amount should be adjusted each contract year.):** for the first contract year**]** during the term of this Agreement will be equal to \_\_\_\_\_\_\_\_\_\_ (**$\_\_\_\_\_\_\_\_\_\_\_\_**). **[Note: Amount of performance bond may not exceed the contract price.]**. **[Option (Include only if the performance bond amount should be adjusted each contract year.):** Thereafter, the amount of the performance bond will be adjusted at the beginning of each contract year to \_\_\_\_\_\_\_\_\_\_.**]** The performance bond will be issued by a surety company authorized to do business in the State of Texas and acceptable to University in all respects. The performance bond will be made payable to University and conditioned upon Contractor’s prompt and faithful performance of Work.

2.9 Costs of Operation. Contractor will pay all costs for installing, operating, stocking, servicing, and replacing the Equipment; provided, however, subject to **Section 2.3**, University will provide Contractor with electricity and water for operation of Equipment on Campus. University will not be responsible for any money shortages that result from theft, burglary, inoperable or malfunctioning Equipment, or any other cause.

2.10 Energy-Saving; Energy Management. Pursuant to [§2165.058, *Texas Government Code*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2165.htm#2165.058):

2.10.1 Internal Energy Saving or Management Device. Contractor will activate and maintain any internal energy saving or energy-management device or option that is already part of or contained in the Equipment.

2.10.2 External Energy Saving or Management Device. Contractor will use an external energy-saving or energy-management device in all Equipment that (a) operates with a compressor, and (b) does not have an activated and operational internal energy-saving or energy-management device or option.

2.10.3 Expenses. Contractor is responsible for any and all expenses associated with the acquisition, installation, or maintenance of all energy-saving devices required by this Section.

2.10.4 Exception. This **Section 2.10** does not apply to any Equipment that contains a perishable food product, as defined by [§96.001, *Texas Civil Practice and Remedies Code*](http://www.statutes.legis.state.tx.us/Docs/CP/htm/CP.96.htm#96.001).

2.11 Signs. Contractor will not post signs or posters at the Locations or elsewhere on Campus.  Contractor may only engage in marketing or promotional activity on Campus, that in each instance, (a) fully complies with Applicable Laws and University Rules, (b) has received University’s advance written approval, and (c) qualifies as “use or acknowledgement” as defined in [Treasury Regulations 1.513-4(c)(iv)](https://www.ecfr.gov/cgi-bin/text-idx?SID=8fa3557439e2b07768e261bf82f85934&mc=true&node=se26.9.1_1513_64&rgn=div8).

2.12 Student Evaluation. Contractor will comply with requirements of [§51.945, *Texas* *Education Code*](http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.51.htm#51.945), and all University Rules regarding students’ involvement in the evaluation of the performance of Contractor, by periodically holding meetings or forums to provide University’s students with a reasonable opportunity to discuss the performance of Contractor. Contractor will obtain University’s prior written approval concerning the date, time and location for each meeting or forum at least **[Option:**\_\_\_\_\_\_**]** **[Option:** thirty (30)**]** days in advance.

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

2.13.1 Right to Refuse Entry and Eject. University has the right to (a) require identification from any person on University’s Campus, (b) refuse entry to persons having no legitimate business on Campus, and (c) eject any undesirable person refusing to leave peaceably on request. Contractor will cooperate with all authorized University representatives in the exercise of University’s rights described in this Section.

2.13.2 Identification Badge. Contractor will provide each of Contractor’s employees, representatives, agents and subcontractors with an identification badge and will cause each employee, representative, agent and subcontractor to prominently display the badge on his or her person at all times while on Campus.

2.13.3 Background Check. Each individual who is assigned to perform any of Contractor‘s duties and obligations under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor and previously approved by University in writing. Contractor is responsible for the performance of all individuals performing Work under this Agreement. Prior to commencing any Work on Campus, Contractor will at its expense (a) provide University with a list ("**List**") of all individuals who may be assigned to perform Work, and (b) have an appropriate criminal background screening performed concerning each individual. Contractor will determine on a case-by-case basis whether each individual is qualified to provide Work. Contractor will not knowingly assign any individual to provide Work who has a history of criminal conduct unacceptable for a university campus, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform Work.

2.13.4 Certification. Prior to commencing any Work under this Agreement, Contractor will provide University a letter signed by an authorized representative of Contractor certifying compliance with **Section 2.13.3**. Contractor will provide University with an updated certification letter each time there is a change in the individuals assigned to perform Work.

**Section 3.**

**ROYALTY PAYMENTS, RECORDS AND REPORTS**

**[Note: Because this Agreement is a revenue generating or revenue sharing contract, this Agreement must comply with** [**UTS103**](https://www.utsystem.edu/board-of-regents/policy-library/policies/uts103-unrelated-business-income-tax-ubit) **and your institution must complete and submit the Non‑Financial Questionnaire related to the Unrelated Business Income Tax.]**

3.1 Royalty. Contractor will pay University a royalty (**Royalty**) on gross revenue generated by Work, all as more particularly provided in **Exhibit D** attached and incorporated for all purposes. The term “**gross revenue**” means gross revenue before exclusion of applicable sales taxes.

3.2 Payment and Report. Contractor will pay University the Royalty on or before the 10th day of the month that follows the month in which the Royalty was earned. Contractor will make all Royalty checks payable to “The University of Texas\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,” and will deliver the monthly payments to University’s \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, accompanied by a written report for the preceding month, showing the Royalty due and the dollar amount of gross revenue (a) from each piece of Equipment, and (b) from each Location. The report will also contain a summary showing all monthly and year-to-date gross revenue generated by Contractor as a result of Work.

3.3 Accurate Records. Contractor will keep accurate records of all sales on Campus. Contractor will make all records related to the Work available to University upon written request during the Term of this Agreement and for up to four (4) years after the expiration or termination of this Agreement. Contractor will permit authorized representatives of University to accompany Contractor's employees during cash collection and counting activities and to randomly examine the receipts of Equipment operated by Contractor.

3.4 Form of Reports. All reports required or given under this Agreement will be presented in forms satisfactory to University in all respects.

**[Option: (Use when Contractor, its agents or subcontractors will accept credit card payments.):**

3.5 Payment Card Industry Standards. **[Note: If using this Option, contact OGC to confirm that the services provided by Contractor do not violate or conflict with existing UT System or State of Texas contracts or agreements.]** University is required to validate compliance on a periodic basis with all applicable Payment Card Industry Data Security Standards (collectively, **PCI DSS**), including Payment Application Data Security Standards (collectively, **PA DSS**), promulgated by the Payment Card Industry Security Standards Council (**PCI SSC**). The compliance validation process requires University to undergo an assessment of (1) all system components used to process, store or transmit cardholder data, and any other components that reside on the same network segment as those system components, as well as (2) all related processes used to process, store or transmit cardholder data, (collectively, **System Components in Scope**). Some or all System Components in Scope have been outsourced to Contractor under this Agreement. Contractor will cause its agents and subcontractors to comply with all terms of this Section applicable to Contractor. Contractor will achieve and maintain compliance under the current versions of PCI DSS and PA DSS published on the PCI SSC website for service providers and payment applications. As evidence of compliance, Contractor will provide to University on or before the Effective Date and within ten (10) days after each anniversary of the Effective Date during the term of this Agreement, a copy of Contractor’s annual attestation of compliance signed by a Qualified Security Assessor (**QSA**) as more particularly described on the PCI SSC website.

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

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

**Section 4.**

**LICENSES, TAXES, APPLICABLE LAWS AND UNIVERSITY RULES**

4.1 Licenses and Taxes. Contractor will obtain, maintain in effect, and pay the cost of all licenses, permits, certifications, and inspections required in connection with Contractor’s performance of Work. Contractor will pay all taxes (including sales, excise and payroll taxes), payroll deductions, employee benefits, fines, penalties, or other payments required by Applicable Laws in connection with Contractor’s performance of Work. Contractor will file proper sales tax returns with and remit sales tax payments to the Texas Comptroller of Public Accounts.

4.2 Applicable Laws and University Rules. Contractor will comply with, and will cause its employees, representatives, agents, and subcontractors to comply with, all Applicable Laws and University Rules.

4.3 Health and Safety Inspections. Contractor will provide University with copies of all health and safety inspection reports related to the Work in any way within **[Option:** \_\_\_\_\_\_\_\_ (\_\_\_\_)**] [Option:** **three (3)]** days after Contractor receives the reports.

4.4 Remedies. In the event University reasonably believes that Contractor is not in compliance with Applicable Laws and reasonably determines that a violation of Applicable Laws creates an imminent health hazard or immediate threat to the health and safety of University’s Campus community or the public, University may immediately (a) perform any cleaning or other services deemed necessary by University (Contractor will reimburse University for all reasonable costs, including overtime costs.), (b) report Contractor’s non-compliance with Applicable Laws to any governmental body or authority, and (c) *at University’s option*, (i) require Contractor to cure the violation within a timeframe that is acceptable to University, or (ii) suspend Contractor’s performance of Work, and/or (iii) terminate this Agreement *without notice or opportunity to cure*. Upon receipt of written notice of suspension or termination of this Agreement, Contractor will immediately cease performance of Work under this Agreement.

**Section 5.**

**INSURANCE**

**[Note: These are minimum insurance requirements developed by the UT System Office of Risk Management. Depending on the type of goods or services covered by this Agreement, consideration should be given to increasing the types of insurance coverages and the limits. In particular, services related to health and safety concerns, hazardous chemicals, or the disposal of hazardous wastes require increased types of insurance coverages and increased limits; therefore, please refer your contract to your institution’s designated risk management contact for assistance. For contracts with professionals, consider requiring professional liability insurance of not less than $1,000,000 per claim. *Contact your institution’s designated risk management contact for assistance with review of all Certificates of Insurance*.]**

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

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

Employers Liability - Each Accident $1,000,000

Employers Liability - Each Employee $1,000,000

Employers Liability - Policy Limit $1,000,000

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

**[Option:** 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.**]**

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

Each Occurrence Limit $1,000,000

Damage to Rented Premises $ 300,000

Personal & Advertising Injury                  $1,000,000

General Aggregate                                             $2,000,000

Products - Completed Operations Aggregate       $2,000,000

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

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

**[Option:** 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.**]**

**[Option:** 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.**]**

**[Option:** 5.1.4 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 5.1.1 Employer’s Liability; 5.1.2 Commercial General Liability; **[Option:** and**]** 5.1.3 Business Auto Liability **[Option:** ; and 5.1.5 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.**]** **[Note: Limit amount should be adequate to cover University’s exposure. Appropriate limit will depend on the subject matter of this Agreement.]**

**[Option:** 5.1.5 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.**]**

**[Option:** 5.1.6 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.**]**

**[Option:** 5.1.7 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 **[Option:** $500,000**] [Alternate Option:** $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.**]** **[Note: Limit amount should be adequate to cover University’s exposure. Appropriate limit will depend on the subject matter of this Agreement.]**

**[Option:** 5.1.8 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.**]**

**[Note:** If this Agreement involves construction on property owned by the Board of Regents of The University of Texas System, please contact the UT System Office of Risk Management for guidance and relevant insurance requirements.**]**

**[Note:** If this Agreement poses potential risks related to data privacy, network or information security, please contact the UT System Office of Risk Management for guidance on relevant insurance requirements and seek review of the contract by the Institution’s Information Security Officer.**]**

5.2 Contractor will deliver to University:

5.2.1 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.

5.2.1.1 ***All insurance policies*** (with the exception of workers’ compensation, employer’s liability and professional liability) will be endorsed and name the Board of Regents of The University of Texas System **[Option (Delete only if contracting party is UT 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.

5.2.1.2 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System **[Option (Delete only if contracting party is UT 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 **[Option (Delete only if contracting party is UT 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 5**.

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

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

Name:

Address:

Facsimile Number:

Email Address:

5.3 Contractor’s or subcontractor’s insurance will be primary to any insurance carried or self‑insurance program established by University **[Option (Delete only if contracting party is UT System.):** 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. **[Option:** , except as provided in this **Section 5.3**.**]**

**[Option:** 5.3.1 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.**]**

**[Option:** 5.3.2 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.**]]**

**Section 6.**

**INDEMNIFICATION**

To the fullest extent permitted by law, Contractor will indemnify, protect, defend with counsel approved by University, and hold harmless University and UT System, and their respective affiliated enterprises, regents, officers, directors, attorneys, employees, representatives and agents (collectively, **Indemnitees**) from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys’ fees incurred in investigating, defending or settling any of the foregoing (collectively, **Claims**) by any person or entity, arising out of, caused by, or resulting from Contractor’s performance under or breach of this Agreement and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of Contractor, anyone directly employed by Contractor or anyone for whose acts Contractor may be liable. The provisions of this Section will not be construed to eliminate or reduce any other indemnification or right which any Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

In addition, Contractor will indemnify, protect, defend with counsel approved by University, and hold harmless Indemnitees from and against all claims arising from infringement or alleged infringement of any patent, copyright, trademark or other proprietary interest arising by or out of the performance of services or the provision of goods by Contractor, or the use by Indemnitees, at the direction of Contractor, of any article or material; provided, that, upon becoming aware of a suit or threat of suit for infringement, University will promptly notify Contractor and Contractor will be given the opportunity to negotiate a settlement. In the event of litigation, University will reasonably cooperate with Contractor. All parties will be entitled to be represented by counsel at their own expense.

**Section 7.**

**REPRESENTATIONS AND WARRANTIES**

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

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

7.3 Payment of Debt or Delinquency to the State. Pursuant to §§[2107.008](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2107.htm#2107.008) and [2252.903](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2252.htm#2252.903), *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

7.4 Texas Family Code Child Support Certification. Pursuant to [§231.006, *Texas Family Code*](http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.231.htm#231.006), Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

7.5 No Conflict. Contractor has not entered into, and during the Term of this Agreement will not enter into, any other agreements that would conflict with Contractor’s obligations under this Agreement or prevent it from fully complying with the provisions of this Agreement.

7.6 Undocumented Workers. The *Immigration and Nationality Act* ([8 *United States Code* 1324a](http://uscode.house.gov/view.xhtml?req=(title:8%20section:1324%20edition:prelim)%20OR%20(granuleid:USC-prelim-title8-section1324)&f=treesort&edition=prelim&num=0&jumpTo=true)) (**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](https://www.uscis.gov/i-9) (**I-9 Form**) as the document to be used for employment eligibility verification ([8 *Code of Federal Regulations* 274a](https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-11261/0-0-0-28757.html)). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by Applicable Laws, University may terminate this Agreement in accordance with **Section 10**. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

7.7 Contractor Certification regarding Boycotting Israel. Pursuant to [Chapter 2270, *Texas Government Code*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2270.v2.htm), 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.

**[Note:** **New** [**Subchapter F, Chapter 2252, *Texas Government Code***](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2252.htm#F)**, will require UT institutions to implement a process to compare Contractor names to the various lists designated in Section 2252.152, Government Code, before execution of this Agreement.]**

7.8 Contractor Certification regarding Business with Certain Countries and Organizations. Pursuant to [Subchapter F, Chapter 2252, *Texas* *Government Code*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2252.htm#F), Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Section 8.**

## RELATIONSHIP OF PARTIES

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

**Section 9.**

### NOTICES

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

If to University: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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.

**[Note: If both fax and email delivery are *not* permitted above, the following provision is required by** [**§2251.054, *Texas Government Code***](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2251.htm#2251.054)**. However, if both fax and email delivery are permitted above, following provision is optional:** Notwithstanding any other requirements for notices given by a party under this Agreement, if Contractor intends to deliver written notice to University pursuant to [§2251.054, *Texas Government Code*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2251.htm#2251.054), then Contractor will send that notice to University as follows:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*with copy to:* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**Section 10.**

### DEFAULT AND TERMINATION

### 10.1 Termination Without Cause. This Agreement may be terminated by University *without cause* by giving Contractor not less than \_\_\_\_\_\_\_\_\_\_ (\_\_\_) [Option: forty-five (45)] days written notice of University’s intention to terminate this Agreement as of a specified date. In the event this Agreement is terminated by University before the end of the then current contract year, the Royalty will be paid by Contractor to University (on a pro-rata basis through the effective date of termination) in accordance with Section 3 of this Agreement.

**[Option (Use only if University is comfortable granting Contractor the right to terminate this Agreement without cause.):** This Agreement may be terminated by Contractor *without cause* by giving University not less than \_\_\_\_\_\_\_\_\_\_ (\_\_\_) **[Option:** forty-five (45)**]** days’ written notice of Contractor’s intention to terminate this Agreement as of a specific date. In the event this Agreement is terminated by Contractor before the end of the then current contract year, the Royalty will be paid by Contractor to University (on a pro-rata basis through the effective date of termination) in accordance with **Section 3** of this Agreement.

10.2 Termination for Default. Except as provided in **Section 4.4**, in the event of a material failure by a party to this Agreement to perform in accordance with the terms of this Agreement (**default**), the other party may terminate this Agreement upon \_\_\_\_\_\_\_\_ (\_\_\_) **[Option:** thirty (30)**]** days’ written notice of termination setting forth the nature of the default; provided, that, the default is through no fault of the terminating party. Termination will not be effective if the default is fully cured prior to the end of the \_\_\_\_\_\_\_\_\_\_ **[Option:** thirty (30)**]** day period. If Contractor fails to cure any default within \_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_) **[Option:** thirty (30)**]** days after receiving written notice of default, University will be entitled (but will not be obligated) to cure the default and will have the right, at University's option, to collect any and all reasonable expenses incurred in connection with the curative actions from Contractor or to set off the expenses against any amounts due to Contractor under this Agreement.**]**

## 10.3 No Release of Liability. Termination of this Agreement under Sections 4.4, 10.1 or 10.2 will not relieve Contractor or any of its employees, representatives, agents, or subcontractors from liability for any default under the terms of this Agreement or any other act or omission.

## 

10.4 Transition Period.If this Agreement expires or is terminated for any reason, then at University’s option, Contractor will continue to perform Work in accordance with the terms of this Agreement until University contracts with a new qualified and experienced vendor(s) to perform Work or is able to perform Work in-house; provided, that, Contractor will not be required to continue performing Work for more than \_\_\_\_\_\_\_\_\_\_\_ (\_\_\_) **[Option:** three (3)**]** months after expiration or termination of this Agreement. Contractor will cooperate with, and assist, University’s efforts to transition Work to another vendor(s) or to perform Work in-house.

10.5Continuing Obligations. The expiration or termination of this Agreement will not relieve either party of any obligations under this Agreement that by their nature survive expiration or termination.

**Section 11.**

## NO OTHER RIGHTS

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

**Section 12.**

**ASSIGNMENT AND SUBCONTRACTING**

## 12.1 Assignment and Subcontracting. [Option (Include if the value of this Agreement is expected to equal or exceed $100,000 or if University has requested a HUB Subcontracting Plan.): Except as specifically provided in Exhibit E, Historically Underutilized Business Subcontracting Plan, attached and incorporated for all purposes,] Contractor's interest in this Agreement (including Contractor’s duties and obligations under this Agreement, and any amounts due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on University; and (b) be a default under this Agreement for which Contractor will be subject to all remedial actions provided by Texas law, including [Chapter 2161, *Texas Government Code*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2161.htm), and 34 TAC §§[20.285(g)(5)](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=285), [20.585](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=585) and [20.586](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=586). The benefits and burdens of this Agreement are assignable by University.

**[Option (Include if the value of this Agreement is expected to equal or exceed $100,000 or if University has requested a HUB Subcontracting Plan.):** 12.2 Historically Underutilized Business Subcontracting Plan.Contractor will use good faith efforts to subcontract Work in accordance with the Historically Underutilized Business Subcontracting Plan (**HSP**) (ref. **Exhibit E**). Contractor will maintain business records documenting its compliance with the HSP and submit a monthly compliance report to University in the format required by the Statewide Procurement and Statewide Support Services Division of the Texas Comptroller of Public Accounts or successor entity (collectively, **SPSS**). Submission of compliance reports will be required as a condition for any payments by University under this Agreement. If University determines that Contractor has failed to subcontract as set out in the HSP, University will notify Contractor of any deficiencies and give Contractor an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. If University determines that Contractor failed to implement the HSP in good faith, University, in addition to any other remedies, may report nonperformance to SPSS in accordance with Texas law, including 34 TAC §§[20.285(g)(5)](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=285), [20.585](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=585) and [20.586](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=586). University may also terminate this Agreement for default and make a claim against Contractor.

* + 1. Changes to the HSP.If at any time during the term of this Agreement, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with [34 TAC §20.285](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=285); (b) the changes must be reviewed and approved by University; and (c) if University approves changes to the HSP, this Agreement must be amended in accordance with **Section 13** to replace the HSP with the revised subcontracting plan.

12.2.2 Expansion of Work. If University expands the scope of Work through a change order or any other amendment, University will determine if the additional Work contain probable subcontracting opportunities *not* identified in the initial solicitation for Work. If University determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of [34 TAC §20.285](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=285) before (a) this Agreement may be amended to include the additional Work; and (b) Contractor may perform the additional Work. If Contractor subcontracts any of the additional subcontracting opportunities identified by University without prior authorization and without complying with [34 TAC §20.285](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=285), Contractor will be deemed to be in default of this Agreement under **Section 10** and will be subject to any remedial actions provided by Texas law including Chapter 2161, *Texas Government Code*, and [34 TAC §20.285](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=285). University may report nonperformance under this Agreement to SPSS in accordance with Texas law, including [34 TAC §20.285(g)(5)](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=285), §[20.585](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=585) and [20.586](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=586).**]**

**Section 13.**

**MERGER AND AMENDMENT**

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

**Section 14.**

**BREACH OF CONTRACT CLAIMS**

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

**Section 15.**

## GENERAL PROVISIONS

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

15.2 Venue; Governing Law. \_\_\_\_\_\_\_\_\_\_\_ County **[Note:  Insert “Travis” or county in which University is located.]**, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions, all rights and obligations of the parties, and all claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.

15.3 Time for Performance. Time is of the essence with regard to this Agreement and Contractor’s performance of Work. Contractor will complete all Preparation Activities, commence delivery of Work and perform Work to the satisfaction of University in accordance with the schedules, deadlines and other terms and conditions set forth in this Agreement. University will have no obligation to accept late performance or to waive timely performance by Contractor.

15.4 University's Right to Audit.At any time during the Term of this Agreement and for a period of four (4) years after the termination or expiration of this Agreement, University or a duly authorized representative of University, UT System, or the State of Texas, at its expense, will have the right to audit Contractor’s records and books relevant to all services provided under this Agreement. In the event an audit reveals any errors or underpayments to University, Contractor will pay to University the full amount of the underpayments within thirty (30) days after being notified in writing of the audit findings.

15.5 Force Majeure. Neither party will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character **[Option (Include for medical institutions.):** (**Force Majeure Occurrence**). Provided, however, in the event of a Force Majeure Occurrence, Contractor will use its best efforts to mitigate the impact of the occurrence so that University may continue to provide educational and healthcare services during the occurrence**]**.

15.6 Ethics Matters, No Financial Interest. Contractor and its employees, representatives, agents, and subcontractors have read and understand University’s Conflicts of Interest Policy available at **[Note: Insert University’s web page where Policy is posted.] [Option (Include for UT System only.):** <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts180-conflicts-interest-commitment-outside-actvities>**]**, University’s Standards of Conduct Guide available at **[Note: Insert University’s web page where Guide is posted.] [Option (Include for UT System only.):** <https://www.utsystem.edu/documents/docs/policies-rules/ut-system-administration-standards-conduct-guide>**]**, and applicable state ethics laws and rules available at <http://utsystem.edu/offices/general-counsel/ethics>. Neither Contractor nor its employees, representatives, agents, or subcontractors will assist or cause University employees to violate University’s Conflicts of Interest Policy, provisions described by University’s Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

**[Option (include *only* if Contractor is *not* exempt from disclosure requirements under** [§2252.908(c), *Texas Government Code*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2252.htm#2252.908) **and, after 12/31/2017, see Section 5 of HB 1295 amending Section 2252.908(c), Gov Code, at** <http://www.legis.state.tx.us/tlodocs/84R/billtext/html/HB01295F.htm>**):** Further, Contractor agrees to comply with [§2252.908, *Texas Government Code*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2252.htm#2252.908) (**Disclosure of Interested Parties Statute**), and [1 TAC §§46.1 through 46.5](https://www.ethics.state.tx.us/rules/adopted_Nov_2015.html#Ch46.1) (**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. Contractors may learn more about these disclosure requirements, including the use of TEC’s electronic filing system, by reviewing the information on TEC’s website at <https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html>.**]**

15.7 Severability; Titles. In case any provision of this Agreement is, for any reason, held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included in this Agreement. Captions and titles of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

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

15.9 Limitations. The Parties are aware that there are constitutional and statutory limitations on the authority of University (a state agency) to enter into certain terms and conditions that may be a part of this Agreement, including, but not limited to, those terms and conditions relating to liens on University’s property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys’ fees; dispute resolution; indemnities; and confidentiality (collectively, **Limitations**), and terms and conditions related to the Limitations will not be binding on University except to the extent authorized by the laws and Constitution of the State of Texas.

15.10 Confidentiality and Safeguarding of University Records; Press Releases; Public Information. Under this Agreement, Contractor may (a) create, (b) receive from or on behalf of University, or (c) have access to, records or record systems (collectively, **University Records**). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws, including the Gramm-Leach-Bliley Act ([Public Law No: 106-102](https://www.gpo.gov/fdsys/pkg/PLAW-106publ102)) and the Family Educational Rights and Privacy Act, [20 U.S.C. §1232g](http://uscode.house.gov/view.xhtml?req=(title:20%20section:1232g%20edition:prelim)%20OR%20(granuleid:USC-prelim-title20-section1232g)&f=treesort&edition=prelim&num=0&jumpTo=true) (**FERPA**). If University Records are subject to FERPA, (a) University designates Contractor as a University official with a legitimate educational interest in University Records, and (b) Contractor acknowledges that its improper disclosure or redisclosure of personally identifiable information from University Records will result in Contractor’s exclusion from eligibility to contract with University for at least five (5) years. Contractor represents, warrants, and agrees that it will: (a) hold University Records in strict confidence and will not use or disclose University Records except as (i) permitted or required by this Agreement, (ii) required by Applicable Laws, or (iii) otherwise authorized by University in writing; (b) safeguard University Records according to reasonable administrative, physical and technical standards (such as standards established by (i) the National Institute of Standards and Technology and (ii) the Center for Internet Security, as well as the Payment Card Industry Data Security Standards) that are no less rigorous than the standards by which Contractor protects its own confidential information; (c) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all Applicable Laws, including FERPA and the Gramm-Leach Bliley Act, and the terms of this Agreement; and (d) comply with University Rules regarding access to and use of University’s computer systems. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.

15.10.1 Notice of Impermissible Use.If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to University within one (1) business day after Contractor’s discovery of that use or disclosure. Contractor will promptly provide University with all information requested by University regarding the impermissible use or disclosure.

15.10.2 Return of University Records. Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of University will be (1) returned to University, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Contractor will provide University with written notice of Contractor’s intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to University in writing the destruction of University Records.

15.10.3 Disclosure. If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this Section.

15.10.4 Press Releases. Except when defined as part of the Work, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of University in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of University.

15.10.5 Public Information. University strictly adheres to all statutes, court decisions and opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* (**TPIA**), [Chapter 552, *Texas Government Code*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm). In accordance with [§552.002](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm#552.002) of TPIA and [§2252.907, *Texas Government Code*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2252.htm#2252.907), and at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public**.**

15.10.6 Termination. In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.

15.10.7 Duration. The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

**[Option: (Include in contracts under which the Contractor (including its subcontractors, officers, or employees) has access to a state computer system or database.  For more information, see the Texas Department of Information Resources’ website on this requirement:** [**https://dir.texas.gov/View-About-DIR/Information-Security/Pages/Content.aspx?id=154**](https://dir.texas.gov/View-About-DIR/Information-Security/Pages/Content.aspx?id=154)**):** 15.11 Cybersecurity Training Program.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.**]**

**SECTION 16.**

**ACCESS BY INDIVIDUALS WITH DISABILITIES**

Contractor represents and warrants (**Accessibility Warranty**) that, at all times during the Term, the Equipment will comply with (a) all applicable requirements of the Americans with Disabilities Act, and (b) the applicable standards/specifications set forth in [1 TAC §213.33](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=1&pt=10&ch=213&rl=33).

**SECTION 17.**

**BOARD APPROVAL**

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

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

**CONTRACTOR**   **UNIVERSITY**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Attachments:**

**Exhibit A** **– Preparation Activities and Schedule**

**Exhibit B – Campus Locations for Equipment**

**Exhibit C – Products and Sales Prices**

**Exhibit D – Vending Royalty Schedule**

**[Option (Include if the value of this Agreement is expected to equal or exceed $100,000 or if University has requested a HUB Subcontracting Plan.): Exhibit E – HUB Subcontracting Plan]**

**EXHIBIT A**

**PREPARATION ACTIVITIES AND SCHEDULEEXHIBIT B**

**CAMPUS Locations FOR EQUIPMENT**

***[aTTACH cAMPUS mAP AND bUILDING fLOOR PLANS SHOWING LOCATION OF EQUIPMENT.]***

**Exhibit c**

**pRODUCTS AND PRODUCT PRICING LIST**

**PRODUCTS CASE/PACK PRICE PER CASE/PACK**

Carbonated, 20 oz. 24 $\_\_\_\_\_\_\_

Carbonated, 12 oz. 24 $\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_ $\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_ $\_\_\_\_\_\_\_

**Exhibit d**

**VENDING ROYALTY SCHEDULE**

**[Option: EXHIBIT E**

**HUB Subcontracting Plan**

*Attach if applicable***]**