

UNIVERSITY OF NORTH TEXAS

SOFTWARE SALES AGREEMENT



This Sales Agreement will set forth the terms by which University of North Texas ("Purchaser") and ANC Sports Enterprises, LLC ("ANC") (collectively, the "Parties") agree that ANC will provide and install vSOFT Control Management System Equipment (the "Control Management System Equipment") and a licensed copy of vSOFT version 2.8 operating software ("vSOFT") under the terms of the Software End User License Agreement attached hereto as Exhibit B.

CONTROL MANAGEMENT SYSTEM EQUIPMENT

Item	QTY
Render/Hybrid Server(s)	4
Monitor(s) - Includes (2) Desk Workstations and a Rack Workstation	1
Interconnect	1
Hot-Swap	1
Power Conditioning	1
Rack accessories	1
Processors/Modems	1
Training & Game Support	1
Integration	1
TOTAL: \$35,000	
Video Scalers (Nextage 16)	1
TOTAL: \$23,530	

EQUIPMENT PURCHASE GRAND TOTAL: \$58,530

CONTROL MANAGEMENT SYSTEM LICENSE

Item	PRICE
Software License Year 1	\$15,000
Software License Year 2	\$15,000



Equipment Purchase Price Includes:

- a 1-year warranty for all hardware provided
- An ANC technical representative on-site for two days to provide training and coverage for the first event at which the Control Management System Equipment is in use.

Software License Fee Includes:

- Access to ANC’s Tech Support Hotline
- Software Support, consisting of any updates to vSOFT version 2.8, or upgrade to any new version of vSOFT that may be released during the Term. Delivery of Software Support will be coordinated by ANC Tech Support.
- One (1) on-site visit per year by an ANC Tech Support representative, to be scheduled at the mutual convenience of ANC and Purchaser.
- Upon expiration of the license term, Purchaser will retain use of the then-current version of vSOFT and will have the option to purchase extended Software Support.
- The parties may renew the software license by mutual written consent, in two year increments for \$15,000 per year, provided that such consent is documented no later than August 1 in any year that the license would otherwise expire.

PAYMENT TERMS:

Hardware

- 10% at Signing of the LOI

Balance due Net 15 from completion of installation.

Software

- Year 1 – Payment in full Due Sept 1, 2020
- Year 2 – Payment in full Due Sept 1, 2021

Please sign below to indicate Purchaser’s agreement to purchase the Control Management System Equipment and licenses as described herein and to authorize ANC to commence production of the Control Management System Equipment. If, for any reason, Purchaser terminates this Agreement prior to the completion of the installation of the Control Management System Equipment, ANC will immediately cease all work and Purchaser will pay ANC for any work performed, work in progress, and materials purchased, if any.

AGREED TO AND ACCEPTED:

ANC SPORTS ENTERPRISES, LLC (“ANC”)
2 Manhattanville Road, Suite 402
Purchase, NY 10577

UNIVERSITY OF NORTH TEXAS (“PURCHASER”)
1112 Dallas Drive Suite 4000
Denton, Texas 76205

Date: 7/8/2020

Date: 7/8/2020



// CONTACT US // Address: 2 Manhattanville Road,
Suite 402 Purchase, NY 10577 Website: www.anc.com
Email: sales@anc.com Phone: 914.696.2100

June 4, 2020

GENERAL TERMS

These general terms apply to the sale of Control Management System Equipment (the "Control Management System Equipment") by ANC Sports Enterprises, LLC ("ANC") and the acceptance of such Control Management System Equipment by Purchaser:

1. Intellectual Property. As between the parties hereto, each party shall at all times retain all right, title, and interest in and to its intellectual property rights. With regard to ANC's trademarks, whether registered or unregistered, whether owned or licensed by ANC (the "Trademarks"); Purchaser may use the Trademarks only with ANC's express written permission. All such uses shall inure to the benefit of ANC, and Purchaser understands that it has no rights in or to the Trademarks beyond what is expressly granted. Each party expressly waives any and all claims it may now or hereafter have to the other party's intellectual properties.

2. Ownership of the Control Management System Equipment. Upon receipt of payment in full by ANC, ANC shall transfer to Purchaser good, clear, and marketable title to the Control Management System Equipment, free of any and all liens and encumbrances of any kind. Said transfer of ownership shall not affect ownership of the underlying intellectual properties associated with the Control Management System Equipment, in accordance with paragraph 1 of the General Terms hereof. _

3. Existence, Power and Authority. Each of the parties represents to the other that it is free to enter into and perform fully its obligations under this agreement, that it has full power and authority to grant the rights contained in this agreement, and that there are no restrictions or impediments on its freedom to perform fully its obligations under this agreement.

4. Confidentiality. In connection with the transactions contemplated by the Agreement, each party hereto may learn non-public information regarding the business of the other party ("Confidential Information"). The term "Confidential Information" shall include the terms of this Agreement but shall not include information which (i) is or becomes generally available to the public other than as a result of disclosure in violation of the Agreement, or (ii) becomes available on a nonconfidential basis from a source which is not prohibited from disclosing such information by a legal, contractual or fiduciary obligation, or (iii) is known by a party before entering into this Agreement. Each party, its affiliates, employees and agents shall keep secret all Confidential Information. After any termination of this Agreement, all tangible embodiments of Confidential Information of a party in the possession of the other party shall be returned or destroyed upon written request. An officer of the party destroying such embodiments shall so certify upon request.

5. Warranty.

(a) ANC warrants that the material supplied hereunder complies with all applicable standards, will conform to the type and specifications of the Control Management System Equipment as ordered by Purchaser and accepted by ANC, is free from any material defects in design or workmanship and that the material supplied hereunder complies with and/or has been produced in accordance with all applicable state and federal laws and regulations of the United States.

(b) Under no circumstances shall ANC be responsible for alleged defects or non-conformities with respect to any material which has been used with unapproved assemblies or sub-assemblies or to any material which has been customized or modified without ANC's prior written consent, or damaged by acts of Force Majeure, misuse or improper maintenance. During the twelve (12) month period after delivery, ANC shall repair or replace, at its option, any defective part or parts thereof within two (2) weeks of notification by Purchaser. ANC shall offer replacement parts and service after such twelve (12) month warranty period expires at fair market value but shall not be liable for the Control Management System Equipment being in good working order should Purchaser fail to use ANC's replacement parts or should such replacement parts be installed by a third party. Notwithstanding any other provision in the Agreement, ANC shall not be held responsible for any damage which may result from a defective part except for the replacement or repair of such part.

(c) THE PROVISIONS OF THE FOREGOING WARRANTIES ARE IN LIEU OF ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL (INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). ANC'S LIABILITY ARISING OUT OF THE MANUFACTURE, SALE, OR SUPPLYING OF THE WORK OR THEIR USE OR DISPOSITION, WHETHER BASED UPON WARRANTY, CONTRACT, TORT OR OTHERWISE, SHALL NOT FOR ANY REASON EXCEED THE ACTUAL PURCHASE PRICE PAID BY PURCHASER FOR THE WORK. IN NO EVENT SHALL ANC BE LIABLE TO PURCHASER OR ANY OTHER PERSON OR ENTITY FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE) ARISING OUT OF THE MANUFACTURE, SALE, SUPPLY, USE, MARKETING, RESALE OR OPERATION OF THE WORK, EVEN IF ANC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.



EXHIBIT A

6. Indemnification.

(a) ANC shall indemnify and hold harmless the Purchaser and its members, directors, officers, shareholders, employees, affiliates and agents from and against any and all loss, liability, costs, damages, and expenses, including reasonable attorneys' fees, which Purchaser may incur by reason of any action, claim, or proceeding arising out of any material breach of representations, warranties, or obligations hereunder.

(b) The Purchaser shall indemnify and hold harmless ANC, its members, directors, officers, shareholders, employees, affiliates, and agents from and against any and all loss, liability, costs, damages, and expenses, including reasonable attorneys' fees, arising out of or in connection with:

(i) any injury to third parties or third party property, except for injuries resulting from ANC's gross negligence or intentional misconduct.

(ii) the content of any material displayed on the Control Management System Equipment by the Purchaser or its advertisers.

7. Purchaser's Obligation to Pay. If Purchaser has any approval rights, it is Purchaser's responsibility to obtain ANC's written consent to such limitations on the front of this document. The obligation of the Purchaser to pay for the ANC Control Management System Equipment, as outlined herein, is absolute and unconditional and not subject to set off or rebate. The provisions of Sections 5 and 6 of these General Terms shall survive any termination, in whole or in part, of the Agreement.

8. Miscellaneous.

(a) Assignment. ANC may assign the Agreement at any time without the prior written consent of Purchaser.

(b) Independent Contractors. The Agreement is made between independent contracting parties and does not constitute a partnership or joint venture between the parties.

(c) Taxes. The Purchaser is responsible for the payment of any and all sales or use taxes or similar taxes applicable to the Control Management System Equipment should such taxes be or become due in any taxing jurisdiction as a result of legislation or any audit or such similar determination.

(d) Entire Agreement. The Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and may only be changed by a written instrument signed by both parties. No representation, warranty, undertaking or agreement is made by either party except as contained herein, and any representations, warranties, undertakings or agreements not set forth herein are specifically disclaimed.

(e) Force Majeure. (i) "Events of Force Majeure" shall be defined as follows: any act, event, or circumstance, beyond the reasonable control of either party and unavoidable despite the exercise of commercially reasonable diligence, that renders performance of any obligation of this agreement impossible, or so substantially increases the costs of compliance such that the value of this agreement is materially diminished or its purpose materially frustrated beyond the reasonable contemplation of either party as of the Effective Date; including, without limitation, the following actual or threatened events and their attendant consequences, so long as otherwise satisfying the foregoing definition: strikes, labor unrest, terrorism, civil disturbance or riots, military actions or movements, fires, acts of God, natural disasters, wars, pandemic, epidemic, viral outbreak, public health crisis, disease, quarantine restrictions, stay-at-home or shelter-in-place or equivalent orders, government restrictions on travel, movement, or public gatherings, public health government restrictions, acts of government or any federal, state, local, public or administrative authority, unavailability or obsolescence of parts, or materials, electrical, internet, wireless or computer network, server or telecommunications outages.

(ii) Neither party shall be liable to the other for either (a) any delay in performing or failure to perform under the Agreement relating to or arising out of Events of Force Majeure ; or (b) inoperability or breakdown of equipment or facilities relating to or arising out of Events of Force Majeure, other than the obligation to make money payments for work that was approved and delivered prior to the Event of Force Majeure, provided that the party failing to perform timely was not a cause of such Event of Force Majeure or otherwise at fault or negligent or that such Event of Force Majeure could not have been prevented or mitigated through commercially reasonable precautions. Notwithstanding the foregoing, it is understood that that ANC's payment obligations hereunder are subject to ANC's collection from Owner, and ANC shall have no liability to Sub for compensation due hereunder should Owner fail to pay ANC.

(iii) If either party is rendered reasonably unable, wholly or in part, by Event of Force Majeure to perform any of its obligations under this Agreement, such party will give the other party prompt written notice of the Event of Force Majeure with reasonably full particulars concerning it and the reasons for nonperformance. Thereupon, the obligations of the party giving notice will be suspended only for so long as the Event of Force Majeure continues and such reasonable time thereafter to allow the party to respond to such Event of Force Majeure.

(f) Headings. The headings of the sections and subsections of the Agreement have been inserted for convenience and shall not modify, define, limit or expand the express provisions of the Agreement.

(g) Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the State of Texas.



Software End User License Agreement

This Software End User License Agreement ("Agreement") is a binding agreement between ANC Sports Enterprises, LLC, a Delaware limited liability company located at 2 Manhattanville Road, Suite 402, Purchase, New York 10577, Tel: (914) 696-2100 ("Licensor") and UNIVERSITY OF NORTH TEXAS, located at 1112 Dallas Drive Suite 4000, Denton, Texas, 76205 ("Licensee"), and is effective as of the latest date of signature of the parties hereto ("Effective Date"). ANC and Licensee are at times collectively referred to in this Agreement as "the parties" and separately as a "party."

LICENSOR PROVIDES THE SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT LICENSEE ACCEPTS AND COMPLIES WITH THEM. BY SIGNING THIS AGREEMENT YOU (A) ACCEPT THIS AGREEMENT AND AGREE THAT LICENSEE IS LEGALLY BOUND BY ITS TERMS AND CONDITIONS; AND (B) REPRESENT THAT: (I) YOU ARE 18 YEARS OF AGE OR OLDER OR OF LEGAL AGE TO SIGN AND ENTER INTO THIS AGREEMENT; AND (II) IF LICENSEE IS A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF LICENSEE AND BIND LICENSEE TO ITS TERMS AND CONDITIONS. IF LICENSEE DOES NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, LICENSOR WILL NOT AND DOES NOT LICENSE THE SOFTWARE TO LICENSEE AND YOU MUST NOT DOWNLOAD, INSTALL, USE OR ACCESS THE SOFTWARE OR DOCUMENTATION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR YOUR OR LICENSEE'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NO LICENSE OTHER THAN AS SET FORTH IN THIS AGREEMENT IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY SOFTWARE THAT LICENSEE DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF LICENSOR'S SOFTWARE.

1. **Definitions.** In addition to any other terms defined in this Agreement, the following terms shall have the following meanings:

"Approved Hardware" means hardware or other equipment approved by Licensor and sold to Licensee by Licensor, which hardware or equipment can be used in conjunction or combination with the Software.

"Authorized Users" means the employees of Licensee authorized to use the Software pursuant to the license granted under this Agreement.

"Confidential Information" has the meaning set forth in **Section 14**

"Documentation" means any and all manuals, instructions, specifications and other documents and materials in any form or media that Licensor generally makes available to licensees, or other end users of its Software and that describe Licensor's Software's operation, use, support, maintenance or other features.

"Effective Date" means the date as defined in the preamble.

"Excluded Use" means, unless otherwise agreed to in writing by Licensor, any use of the Software in connection with sports or entertainment related venues.

"Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, patent application, copyright, trademark, service mark, trade dress, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"Licensee" has the meaning set forth in the preamble.

"License Fees" means the license fees, including all taxes thereon, paid or required to be paid, by Licensee to Licensor for the license granted under this Agreement.

"Licensor" has the meaning set forth in the preamble.

"Sales Agreement" means any agreement entered into between Licensor and Licensee, for Licensee's purchase of the license for the Software granted under this Agreement.



EXHIBIT B

"Person" means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

"Personal Information" means any information that, individually or in combination with other information, does or can identify a specific individual or by or from which a specific individual may be identified, contacted or located. Personal Information includes, but is not limited to the following types of information, personal first or last name(s), email addresses, phone numbers, social media handles or accounts, and home or business addresses.

"Social Media Posts" means any information or data submitted by a Third Party to a social media outlet or platform that is capable of then being displayed using the Software or Approved Hardware.

"Software" means the Licensor software product called vSOFT, in object code form, including any Documentation included in, or provided for use with, such software, including all Updates and any new version of the same.

"Term" has the meaning set forth in Section 10.

"Venue" means the physical location where the Software will be used as agreed between Licensor and Licensee, which location shall not be outside the United States of America and its territories and possessions, unless approved by Licensor in advance in writing.

"Third Party" means any Person other than Licensee or Licensor.

"Update" has the meaning set forth in Section 6(d).

2. License Grant and Scope. Subject to and conditioned upon Licensee's payment of the License Fees and Licensee's strict compliance with all the terms and conditions set forth in this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable limited license during the Term to use in the Venue, solely by and through its Authorized Users, the Software and Documentation, solely as set forth in this Section 2 and subject to all conditions and limitations set forth in Section 3 or elsewhere in this Agreement. This license grants Licensee the right, exercisable solely by and through Licensee's Authorized Users, to:

(a) Download, copy, and install in accordance with the Documentation one (1) copy of the Software on Approved Hardware owned or leased, and controlled by, Licensee. In addition to the foregoing, Licensee has the right to make one copy of the Software solely for archival purposes and one copy of the Software solely for backup purposes, provided that Licensee shall not, and shall not allow any Person to, install or use any such copy other than if and for so long as any copy installed in accordance with the preceding sentence is inoperable and, provided, further, that Licensee uninstalls and otherwise deletes such inoperable copy(ies). All copies of the Software made by the Licensee:

(i) will be and shall remain the exclusive property of the Licensor;

(ii) will be subject to the terms and conditions of this Agreement; and

(iii) must include all trademark, copyright, patent, and other Intellectual Property Rights notices contained in the original.

(b) Use and run the Software as properly installed on Approved Hardware in accordance with this Agreement and the Documentation, solely as set forth in the Documentation and solely for Licensee's business purposes, which purposes shall not include any Excluded Uses. The use licensed under this Agreement is use permitted only on the Approved Hardware on which the Software is installed, at the physical location thereof and not via any remote access or other network.

(c) Download or otherwise make a reasonable number of copies of the Documentation and use such Documentation, solely in support of its licensed use of the Software in accordance with this Agreement. All copies of the Documentation made by Licensee:

(i) will be and shall remain the exclusive property of the Licensor;



EXHIBIT B

- (ii) will be subject to the terms and conditions of this Agreement; and
- (iii) must include all trademark, copyright, patent, and other Intellectual Property Rights notices contained in the original.
- (d) Transfer any copy of the Software from one computer to another, provided that:
 - (i) the number of computers on which the Software is installed at any one time does not exceed the number permitted under Section 2(a).

3. Use Restrictions. Licensee shall not, and shall require its Authorized Users not to, directly or indirectly:

- (a) use (including make any copies of) the Software or Documentation beyond the scope of the license granted under Section 2;
- (b) provide any other Person, including any subcontractor, independent contractor, affiliate, or service provider of Licensee, with access to or use of the Software or Documentation;
- (c) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software or Documentation or any part thereof;
- (d) combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other software or computer programs;
- (e) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;
- (f) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the Software or Documentation, including any copy thereof;
- (g) except as expressly set forth in Section 2(a) and Section 2(c), copy the Software or Documentation, in whole or in part;
- (h) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software, or any features or functionality of the Software, to any Third Party for any reason, whether or not over a network or on a hosted basis, including in connection with the Internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software-as-a-service (SaaS), cloud, or other technology or service;
- (i) use the Software or Documentation in violation of any law, regulation, or rule; or
- (j) use the Software or Documentation for purposes of competitive analysis of the Software, the development of a competing software product or service, or any other purpose that is to the Licensor's commercial disadvantage.

4. Responsibility for Use of Software. Licensee is responsible and liable for all uses of the Software and Documentation through access thereto provided by Licensee, directly or indirectly. Specifically, and without limiting the generality of the foregoing, Licensee is responsible and liable for all actions and failures to take required actions with respect to the Software and Documentation by its Authorized Users or by any other Person to whom Licensee or an Authorized User may provide access to or use of the Software and/or Documentation, whether such access or use is permitted by or in violation of this Agreement.

5. Compliance Measures.

- (a) The Software may contain technological copy protection or other security features designed to prevent unauthorized use of the Software, including features to protect against any use of the Software that is prohibited under Section 3. Licensee shall not, and shall not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any such copy protection or security features.



EXHIBIT B

(b) On Licensor's written request, Licensee shall conduct a review of its and its Authorized Users use of the Software and certify to Licensor in a written instrument signed by an officer of Licensee that it is in full compliance with this Agreement or, if Licensee discovers any noncompliance:

(i) Licensee shall immediately remedy such noncompliance and provide Licensor with written notice thereof. Licensee shall provide Licensor with all access and assistance as Licensor requests to further evaluate and remedy such noncompliance.

(ii) If Licensee's use of the Software exceeds the number of copies or Authorized Users permitted under the license, Licensor shall have the remedies set forth in Section 5(d).]

(c) During the Term, Licensor may, in Licensor's sole discretion, audit Licensee's use of the Software to ensure Licensee's compliance with this Agreement, provided that (i) any such audit shall be conducted on not less than three (3) days' prior notice to Licensee, and (ii) no more than one (1) audit may be conducted in any six (6) month period except for good cause shown. Licensor also may, in its sole discretion, audit Licensee's systems within six (6) months after the end of the Term to ensure Licensee has ceased use of the Software and removed all copies of the Software from such systems as required by this Agreement. The Licensee shall fully cooperate with Licensor's personnel conducting such audits and provide all reasonable access requested by the Licensor to records, systems, equipment, information, and personnel, including machine IDs, serial numbers, and related information. Licensor shall only examine information directly related to the Licensee's use of the Software. Licensor may conduct audits only during Licensee's normal business hours and in a manner that does not unreasonably interfere with the Licensee's business operations.

(d) If the audit or any of the measures taken or implemented under this Section 5 determines that the Licensee's use of the Software exceeds or exceeded the use permitted by this Agreement then:

(i) Licensee shall, within three (3) days following the date of Licensor's written notification thereof, pay to Licensor the retroactive License Fees for such excess use and, unless Licensor terminates this Agreement pursuant its terms, obtain and pay for a valid license to bring Licensee's use into compliance with this Agreement. In determining the Licensee Fee payable pursuant to the foregoing, (x) unless Licensee can demonstrate otherwise by documentary evidence, all excess use of the Software shall be deemed to have commenced on the commencement date of this Agreement or, if later, the completion date of any audit previously conducted by Licensor hereunder, and continued uninterrupted thereafter, and (y) the rates for such licenses shall be determined without regard to any discount to which Licensee may have been entitled had such use been properly licensed prior to its commencement (or deemed commencement).

Licensor's remedies set forth in this Section 5(d) are cumulative and are in addition to, and not in lieu of, all other remedies the Licensor may have at law or in equity, whether under this Agreement or otherwise.

6. Maintenance and Support.

(a) During the Term of this Agreement, Licensee shall contact Licensor for all maintenance and support in connection with Licensee's use of the Software, which maintenance and support shall be charged at fees determined by Licensor.

(b) During the first year of the Term, Licensee shall be required to purchase maintenance services from Licensor, unless such services are provided under the Sales Agreement.

(c) Unless otherwise specified in the Sales Agreement, Licensee shall have the option to continue to purchase further maintenance and technical support services directly from Licensor at prices determined by Licensor at Licensor's sole discretion.

(d) Maintenance and support services will include provision of such updates, upgrades, bug fixes, patches, and other error corrections (collectively, "**Updates**") as Licensor makes available to Licensee. Licensor may develop and provide Updates in its sole discretion, and Licensee agrees that Licensor has no obligation to develop any Updates at all or for particular issues. Licensee further agrees that all Updates will be deemed Software, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement. Licensee acknowledges that Licensor may provide some or all Updates via download from a website designated by Licensor and that Licensee's receipt thereof will require an Internet connection, which connection is



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Licensee's sole responsibility. Licensor has no obligation to provide Updates via any other media. Maintenance and support services do not include any new version or new release of the Software that Licensor may issue as a separate or new product, and Licensor may determine whether any issuance qualifies as a new version, new release, or Update in its sole discretion. In the event that Licensor determines that any issuance or release of the Software is a new version or new release, Licensor may require Licensee to execute a new End User License Agreement.

- (e) Licensor has no obligation to provide maintenance and support services, including Updates:
 - (i) for any but the most current or immediately preceding version or release of the Software, as determined by Licensor in its discretion;
 - (ii) for any copy of Software for which all previously issued Updates have not been installed;
 - (iii) if Licensee is in breach under this Agreement; or
 - (iv) for any Software that has been modified other than by or with the authorization of Licensor, or that is being used with any hardware, software, configuration, or operating system not specified in the Documentation or expressly authorized by Licensor in writing.

7. Collection and Use of Data and Information.

- (a) Licensee acknowledges that Licensor may, directly or indirectly through the services of Third Parties, collect and store information regarding use of the Software, log files of data entered into the Software by Licensee or other Third Parties, including Social Media Posts, and about equipment on which the Software is installed or through which it is otherwise accessed and used.
- (b) Licensee agrees that the Licensor may use such information for any purpose related to any use of the Software by Licensee or on Licensee's equipment, including but not limited to:
 - (i) improving the performance of the Software or developing Updates; and
 - (ii) verifying Licensee's compliance with the terms of this Agreement and enforcing the Licensor's rights, including all Intellectual Property Rights in and to the Software.
- (c) Licensor shall keep logs of Social Media Posts, for a period of time as determined by Licensor in its sole discretion, which may be stored by Licensor for Licensee's use thereof to verify dates and times of such Social Media Posts. For Licensee's use thereof, Licensor shall make such logs of Social Media Posts available to Licensee upon Licensee's reasonable request.
- (d) Licensee acknowledges and agrees that, notwithstanding Licensor's storage of data or other information concerning use of the Software, including Social Media Posts, Licensee shall be responsible for advising and informing any Third Parties who may submit through the Software data or information, including but not limited to, Social Media Posts or Personal Information, that such data or information may be stored and viewed by Licensee, Licensor, or other Third Parties. Licensee shall also be responsible for providing notice to any minors or other individuals who are not the age of majority that any data or information they submit through the Software, including Social Media Posts or Personal Information, may be viewed by Third Parties.

8. Intellectual Property Rights. Licensee acknowledges and agrees that the Software and Documentation are provided under license, and not sold, to Licensee. Licensee does not acquire any ownership interest in the Software or Documentation under this Agreement, or any other rights thereto, other than to use the same in accordance with the license granted and subject to all terms, conditions, and restrictions under this Agreement. Licensor and its licensors and service providers reserve and shall retain their entire right, title, and interest in and to the Software and all Intellectual Property Rights arising out of or relating to the Software, except as expressly granted to the Licensee in this Agreement. Licensee shall use commercially reasonable efforts to safeguard all Software (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. Licensee shall promptly notify Licensor if Licensee becomes aware of any infringement of the Licensor's Intellectual Property Rights in the Software and fully cooperate with Licensor, at Licensor's sole expense, in any legal action taken by Licensor to enforce its Intellectual Property Rights.



EXHIBIT B

9. PAYMENT. All License Fees shall be set by Licensor and payable to Licensor as determined by Licensor. Non-payment of License Fees by Licensee may result in termination of this Agreement by Licensor.

10. Term and Termination.

(a) This Agreement and the license granted hereunder shall remain in effect for the term set forth on the Sales Agreement or until earlier terminated as set forth herein (the "Term").

(b) Subject to payment of all License Fees due and owing, Licensee may terminate this Agreement by ceasing to use and destroying all copies of the Software and Documentation.

(c) Licensor may terminate this Agreement, effective upon written notice to Licensee, if Licensee, breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured for thirty (30) days after Licensor provides written notice thereof.

(d) Licensor may terminate this Agreement, effective immediately, if Licensee files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property.

(e) Upon expiration or earlier termination of this Agreement, the license granted hereunder shall also terminate, and Licensee shall cease using and destroy all copies of the Software and Documentation. No expiration or termination shall affect Licensee's obligation to pay all License Fees and any other fees for maintenance or support that may have become due before such expiration or termination, or entitle Licensee to any refund, in each case except as set forth in Section 11(c)(ii).

11. Limited Warranties, Exclusive Remedy, and Disclaimer/Warranty Disclaimer.

(a) Solely with respect to Software for which Licensee has paid a License Fee, Licensor warrants that, for a period of thirty (30) days following the license date set forth on the Sales Agreement:

(i) the Software will substantially contain the functionality described in the Documentation, and when properly installed on Approved Hardware, and operated in accordance with, the Documentation, will substantially perform in accordance therewith.

THE FOREGOING WARRANTIES DO NOT APPLY, AND LICENSOR STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY MATERIALS.

(b) The warranties set forth in Section 11(a)(i) will not apply and will become null and void if Licensee breaches any material provision of this Agreement, or if Licensee, any Authorized User, or any other Person provided access to the Software by Licensee or any Authorized User, whether or not in violation of this Agreement:

(i) installs or uses the Software on or in connection with any hardware or software not specified in the Documentation or approved or authorized by Licensor;

(ii) modifies or damages the Software, or the media on which it is provided, including abnormal physical or electrical stress; or

(iii) misuses the Software, including any use of the Software other than as specified in the Documentation or expressly authorized by Licensor in writing.

(c) If, during the period specified in Section 11(a), any Software covered by the warranty set forth in such Section fails to perform substantially in accordance with the Documentation, and such failure is not excluded from warranty pursuant to Section 11(b), Licensor will, subject to promptly receiving notice in writing from Licensee of such failure, at its sole option, either:

(i) repair or replace the Software, provided that Licensee provides Licensor with all information Licensor requests to resolve the reported failure, including sufficient information to enable the Licensor to recreate such failure; or



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(ii) refund the License Fees paid for such Software, subject to Licensee's ceasing all use of and, if requested by Licensor, returning to Licensor all copies of the Software.

If Licensor repairs or replaces the Software, the warranty will continue to run from the initial date specified on the Sales Agreement, and not from Licensee's receipt of the repair or replacement. The remedies set forth in this Section 11(c) are Licensee's sole remedies and Licensor's sole liability under this Agreement.

(d) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 11(a), THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO LICENSEE "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, LICENSOR, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES, RESELLERS, AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, AND APPROVED HARDWARE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, THE LICENSOR PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE LICENSED SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

12. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

(a) IN NO EVENT WILL LICENSOR OR ITS AFFILIATES, RESELLERS, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE SOFTWARE; LOST REVENUES OR PROFITS; DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS, OR GOODWILL; LOSS OR CORRUPTION OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; OR BREACHES IN SYSTEM SECURITY; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) IN NO EVENT WILL LICENSOR'S AND ITS AFFILIATES', RESELLERS', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO THE LICENSOR OR RESELLER, AS THE CASE MAY BE, PURSUANT TO THIS AGREEMENT FOR (i) THE SOFTWARE OR (ii) UP TO TWELVE (12) MONTHS OF THE SPECIFIC SERVICES, THAT IS OR ARE THE SUBJECT OF THE CLAIM.

(c) THE LIMITATIONS SET FORTH IN SECTION 12(a) AND SECTION 12(b) SHALL APPLY EVEN IF THE LICENSEE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

13. Indemnification.

(a) Licensor Indemnification. Licensor shall indemnify, defend and hold harmless Licensee and Licensee's officers, directors, and employees (each, a "**Licensee Indemnitee**") from and against any and all claims, actions, or losses incurred by them arising out of or relating to any action by a third party (other than an affiliate of Licensee or a Licensee Indemnitee) to the extent that such claims, actions, or losses arise from an allegation that the Licensee's exercise of its license rights under this Agreement infringes a Third Party's United States Intellectual Property Right. The foregoing obligation does not apply to any claim, action, or loss arising out of or relating to any:

(i) materials, software, or other information supplied to Licensee by a Third Party;



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- (ii) patents issued on any patent application published in the United States after the Effective Date;
- (iii) incorporation of any Software with or into, or any combination, operation or use of any Software in or with, any technology (including any software, hardware, firmware, system or network), material or service (other than Approved Hardware) not provided by Licensor or specified for Licensee's use under this Agreement or Documentation, unless otherwise expressly permitted by Licensor in writing;
- (iv) Licensee's products or components;
- (v) modification of any Software other than: (i) by Licensor; or (ii) with Licensor's express written approval and in strict accordance with Licensor's written directions and specifications;
- (vi) failure to timely implement any Updates, maintenance release, modification, new version, or replacement of the Software made available to Licensee;
- (vii) use of any Software after Licensor's notice to Licensee of such activity's alleged or actual infringement, misappropriation or other violation of a Third Party's rights;
- (viii) negligence, abuse, misapplication or misuse of any Software by or on behalf of Licensee, or an affiliate or representative of Licensee or a Third Party;
- (ix) use of any Software by or on behalf of Licensee that is outside the purpose, scope or manner of use authorized by this Agreement or in any manner contrary to Licensor's instructions or Documentation;
- (x) events or circumstances outside of Licensor's commercially reasonable control (including any Third Party hardware, software or system bugs, defects or malfunctions);
- (xi) allegation of facts that, if true, would constitute Licensee's breach of any of its representations, warranties, covenants or obligations under this Agreement; or
- (xii) act, omission or other subject matter described in **Section 13(b)**, whether or not the same results in any claim or action against or loss by any Licensor Indemnitee.

(b) Licensee Indemnification. Licensee shall indemnify, defend and hold harmless Licensor and its affiliates, and each of its and their respective officers, directors, employees, agents, successors and permitted assigns (each, a "**Licensor Indemnitee**") from and against any and all claims, actions, or losses incurred by Licensor or any Licensor Indemnitee in connection with any claim, action, or loss alleged by a third party (other than an affiliate of a Licensor Indemnitee) to the extent such claim, action or loss arises from any allegation concerning or relating to:

- (i) Any Licensee trademarks, products or components, provided that, where such Licensee trademarks, products or components incorporate or are used or combined with the Software, and such claim, action or loss does not arise solely out of or relate solely to the Software;
- (ii) Licensor's compliance with any specifications or directions provided by or on behalf of Licensee to the extent prepared without any contribution by Licensor;
- (iii) any facts that, if true, would constitute Licensee's breach of any of its representations, warranties, covenants, or obligations under this Agreement;
- (iv) Licensee's use of Social Media Posts or any Personal Information, including but not limited to, any unauthorized use, publication, disclosure, or loss of the same;
- (v) Licensee's negligence or more culpable act or omission; or
- (vi) the performance of any support or other services hereunder by or on behalf of Licensor in material compliance with this Agreement.



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(c) Indemnification Procedure. Each party shall promptly notify the other party in writing of any claim, action, or loss for which such party believes it is entitled to be indemnified pursuant to Section 13(a) or Section 13(b), as the case may be. The party seeking indemnification (the "Indemnitee") shall cooperate with the other party (the "Indemnitor") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such claim, action, or loss and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this Section 13(c) will not relieve the Indemnitor of its obligations under this Section 13 except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

(d) Mitigation. If any Software is, or in Licensor's opinion, may likely be claimed to infringe, misappropriate or otherwise violate any Third Party Intellectual Property Right, or if Licensee's use of any Software is enjoined or threatened to be enjoined, Licensor may, at its option and sole cost and expense:

- (i) obtain the right for Licensee to continue to use the affected Software for its purposes as contemplated by this Agreement;
- (ii) modify or replace the Software, in whole or in part, to seek to make the Software (as so modified or replaced) non-infringing while providing equivalent features and functionality, in which case such modifications or replacements will constitute Software under this Agreement; or
- (iii) by written notice to Licensee, terminate the licenses granted to Licensee under this Agreement with respect to all or part of the Software, and require Licensee to immediately cease all use of the Software.

THIS SECTION 13(d) SETS FORTH LICENSEE'S SOLE REMEDIES AND LICENSOR'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SOFTWARE OR ANY OTHER LICENSOR MATERIALS OR PROPERTIES) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

14. Confidentiality.

(a) Confidential Information. In connection with this Agreement each party (as the "**Disclosing Party**") has disclosed and may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). Subject to **Section 14(b)**, "**Confidential Information**" means any information in any form or medium, whether provided orally, in written form, electronic form, or any other form, that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, software, trade secrets, know-how, business operations, plans, strategies, customers, discussions between the parties, designs, proposals, offers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, whether or not marked, designated or otherwise identified as "confidential". Without limiting the foregoing, all unpublished Documentation, and the terms and existence of this Agreement, including financial terms are and will remain the Confidential Information of Licensor.

(b) Exclusions. Except for Personal Information or any third-party information that the Receiving Party is under a contractual or other binding obligation to maintain in confidence, Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's disclosure or being made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.



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(c) Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall, during the Term and for a period of two (2) years thereafter:

(i) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

(ii) except as may be permitted by and subject to its compliance with **Section 14(c)(iv)**, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this **Section 14**; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 14;

(iii) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and

(iv) ensure its representatives' compliance with, and be responsible and liable for any of its representatives' non-compliance with, the terms of this Section 10.

(d) If the Receiving Party or any of its representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under **Section 14(c)**; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this **Section 14(c)(iv)**, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and, upon the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

15. Miscellaneous.

(a) Force Majeure. Licensor will not be responsible or liable to Licensee, or deemed in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning, or Licensee equipment, loss and destruction of property, or any other circumstances or causes beyond Licensor's reasonable control.

(b) Further Assurances. Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

(c) Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

(d) Public Announcements. Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or otherwise use the other party's trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that Licensor may, without Licensee's consent, include Licensee's name and/or other indicia in its lists of Licensor's current or former Licensees of Licensor in promotional and marketing materials.



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(e) Notices. Except as otherwise expressly set forth in this Agreement, all notices, requests, consents, claims, demands, waivers and other communications under this Agreement have binding legal effect only if in writing and addressed to a party at the party's address set forth above (or to such other address or such other person that such party may designate from time to time). Notices sent in accordance with this Section 15(e) will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or e-mail, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the fifth (5th) day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

(f) Interpretation. For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

(g) Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

(h) Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related exhibits, schedules, attachments and appendices (other than an exception expressly set forth as such therein) and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, this Agreement and attached Standard Addendum to Agreement, excluding its exhibits, schedules, attachments and appendices; (b) second, the exhibits, schedules, attachments and appendices to this Agreement as of the Effective Date; and (c) third, any other documents incorporated herein by reference.

(i) Assignment. Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Licensor's prior written consent, which consent Licensor may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Licensee (regardless of whether Licensee is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this Agreement for which Licensor's prior written consent is required. No delegation or other transfer will relieve Licensee of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this **Section 15(i)** is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(j) Amendment and Modification; Waiver. No amendment to or modification of or rescission, termination or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of this Agreement and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(k) Severability. If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement



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or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(l) Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of New York. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of New York in each case located in the city of New York and County of New York, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

(m) Waiver of Jury Trial. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

(n) Equitable Relief. Licensee acknowledges and agrees that a breach or threatened breach of its obligations under this Agreement would cause Licensor irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, Licensor will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

(o) Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

(p) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.



STANDARD ADDENDUM TO AGREEMENT

Contracts with the University of North Texas System and the University of North Texas (collectively, "UNT") are subject to the following terms and conditions, which are incorporated for all purposes into the Agreement to which they are attached. In the event of a conflict between the Agreement and this Addendum to Agreement, this Addendum shall govern. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.

Payment. In accordance with Chapter 2251 of the Texas Gov't Code: (a) payment shall be made no later than thirty days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to UNT; and (b) interest, if any, on past due payments shall accrue and be paid at the maximum rate allowed by law. Vendor must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur. Invoices and any required supporting documents must be presented to: University of North Texas – Business Service Center, 1112 Dallas Dr. Ste. 4000, Denton, TX 76205.

Eligibility to Receive Payment. By entering into and performing under this Agreement, Vendor certifies that under Section 231.006 of the Texas Family Code and under Section 2155.004 of the Texas Gov't Code, it is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

Tax Exempt. UNT is exempt from the payment of taxes and will provide necessary documentation confirming its tax exempt status.

Breach of Contract Claims Against UNT. Chapter 2260 of the Texas Gov't Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. To the extent that Chapter 2260, Texas Gov't Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the parties to attempt to resolve any claim for breach of contract against UNT that cannot be resolved in the ordinary course of business.

Governing Law and Venue. This Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. The Agreement is made and entered into, and is performable in whole or in part in Denton County, Texas, and venue for any suit filed against UNT shall be subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code.

No Excess Obligations. In the event this Agreement spans multiple fiscal years, UNT's continuing performance under this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Texas State Legislature. If the Legislature fails to appropriate or allot the necessary funds, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act, UNT shall issue written notice to Vendor that UNT may terminate the Agreement without further duty or obligation.

Travel Expenses. Reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.

Delivery. Delivery from an authorized distributor shall be FOB Destination. All direct purchases through Quidel Corporation shall be FOB Origin.

Insurance. UNT, as an agency of the State of Texas, is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by UNT shall without further requirement, satisfy all insurance obligations of UNT under the Agreement.

Public Information. UNT shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to UNT in an electronic format. The requirements of Subject J, Chapter 552, Texas Government Code, may apply to this contract and Vendor agrees that the contract can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter. Further, Vendor agrees (1) to preserve contracting information for the duration of the contract and according to UNT records retention requirements; (2) to promptly provide contracting information to UNT when requested; and (3) upon completion of the contract to provide, at no cost, all contracting information to UNT or to preserve all contracting information according to UNT's records retention requirements.

Required Posting of Contracts on Website. Vendor acknowledges and agrees that UNT is required by Section 2261.253 of the Texas Gov't Code to post each contract it enters into for the purchase of goods or services from a private vendor on its Internet website, including any terms and conditions otherwise marked confidential and/or proprietary.

Israel Non-Boycott Verification. If the Agreement is subject to Texas Gov't Code Section 2270.002, Vendor hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

Limitations. UNT is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on UNT property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will not be binding on UNT, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

ANC



Date: 7/8/2020

Date: 7/8/2020


UNT | SYSTEM™

REQUEST FOR PROPOSAL

RFP No.: RFP752-20-242302-JR
Title: Apogee Video Control Upgrade

Proposal Submittal Deadline: **April 9, 2020, 2:00 pm, local time**

Prepared by:


University of North Texas System Procurement Services
Business Service Center
1112 Dallas Drive, Suite 4000
Denton, Texas 76205
Date Issued: March 17, 2020

REQUEST FOR PROPOSAL

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ATTACHMENT(S) *(as separate files)*

 Attachment A: Component List

 Attachment B: Sample Service Agreement

SECTION 1: INTRODUCTION

1.1 UNTS System Description

The University of North Texas System (UNTS) is a University system that is composed of the University of North Texas in Denton (UNT), the University of North Texas Health Science Center (UNTHSC) in Fort Worth and the University of North Texas at Dallas (UNTDD). The UNT System Administration is based in downtown Dallas. The three independent universities of the UNT System have combined enrollment of just over 42,000 students across five major teaching locations, including each main campus as well as Frisco and downtown Dallas. Proposals submitted in response to this RFP shall be for goods and/or services provided to UNTS, UNT, UNTHSC and/or UNTDD, as agreed to in writing by the parties.

1.2 Background

UNTS on behalf of UNT is seeking proposals for upgrading the video controls (NIGP commodity code 287-00.) that was purchased and installed in or around 2011 by Daktronics. Most components of the frontend system are at end or near end life. UNT is seeking a qualified vendor to replace or upgrade specific, existing components of our frontend video control system for Apogee Stadium. It is the intent of UNT Athletics to have the stadium system installed and properly operating by May 15, 2020. The system shall be comprised of scoring and video components.

1.3 Group Purchase Authority

Texas law authorizes institutions of higher education to use the group purchasing procurement method (ref. Sections 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(s) under this Section. Should another institution exercise this option the resulting contract and obligations shall be between that institution and the vendor with UNTS incurring no obligation as a result thereof.

SECTION 2: NOTICE TO PROPOSER

2.1 Submittal Deadline

UNTS will accept proposals submitted in response to this RFP until 2:00 p.m., local time, on April 9, 2020 (the "Submittal Deadline"). Submissions will only be accepted via FedEx or UPS no hand deliveries will be accepted until further notice.

2.2 UNTS Contact Person

Proposers will direct all questions or concerns regarding this RFP to the following UNTS contact



The University specifically instructs all interested parties to restrict all contact and questions regarding this RFP to written communications forwarded to the UNTS Contact via the following link: <https://www.untsystem.edu/bid-inquiry>.

The UNTS Contact must receive all questions or concerns no later than 3:00 pm, local time on March 23, 2020. It is UNTS' intent to respond to all appropriate questions and concerns; however, UNTS reserves the right to decline to respond to any question or concern.

Answers to questions will be posted via addendum to this RFP on UNTS Business Service Center Bid Opportunities web page located at: <https://www.untsystem.edu/hr-it-business-services/procurement/purchasing/bid-opportunities>. Vendors are strongly advised to review this page at least four (4) business days prior to the due date for submissions or earlier to ensure that you have received all applicable addenda.

2.3 Criteria for Selection

The successful Proposer(s), if any, will be the Proposer(s) who submit a response to this RFP on or before the Submittal Deadline, and whose response is the best value UNTS, taking into

consideration the evaluation criteria contained herein. Selection by UNTS will be in accordance with the requirements and specifications set forth in this RFP. The successful Proposer(s) is/are referred to as the "Contractor". UNTS reserves the right to make a single award from this solicitation or multiple awards, whatever is in the best interest of the University, with UNTS being the sole judge thereof.

Proposer is encouraged to propose terms and conditions offering the maximum benefit to UNTS as outlined below. Proposers should describe all educational, state and local government discounts, as well as any other applicable discounts that may be available to UNTS in a contract for the services.

An evaluation team from UNTS will evaluate proposals. The evaluation of proposals and the selection of Contractor will be based on the information provided by Proposer in its proposal. Proposers should address, within the response, each of the criteria listed in this section. Failure to respond to these criteria may result in your proposal receiving a negative rating or considered as non-responsive. Proposers should note that the awarded proposal may not be the lowest offer, but the offer(s) deemed most advantageous to UNTS as described in this section.

The criteria to be considered by UNTS in evaluating proposals and selecting awardee(s), will be the following factors:

- 2.3.1 Ability to provide services and equipment listed in the RFP
- 2.3.2 Additional Service Cost and Warranty
- 2.3.3 References
- 2.3.4 Pricing

Furthermore, UNTS may consider information related to past contract performance of a respondent including, but not limited to, the Texas Comptroller of Public Accounts Vendor Performance Tracking System.

2.4 Schedule of Key Events

Issuance of RFP 3/17/2020
Deadline for Questions/Concerns 3/23/2020, 3:00pm, local time
(Ref. Section 2.2 of this RFP)
Answers to Questions posted 3/26/2020, 5:00pm, local time
Submittal Deadline 4/9/2020, 2:00pm, local time
(Ref. Section 2.1 of this RFP)

Note: This events schedule is for planning purposes only and may be changed at the sole discretion of UNTS.

2.5 Historically Underutilized Businesses

In accordance with Texas Gov't Code §2161.252 and Texas Administrative Code §20.14, each state agency (including institutions of higher education) as defined by §2151.002 that considers entering into a contract with an expected value of \$100,000 or more shall, before agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract.

UNTS has determined that subcontracting opportunities (check one) are probable are not probable under the agreement

SECTION 3: SUBMITTAL OF PROPOSAL

3.1 Number of Copies

Proposer must submit one (1) complete original copy of its *entire* proposal. An *original* signature by an authorized officer must appear on the Execution of Offer (ref. Appendix One, Section 2) of

submitted proposal. The Proposer's proposal bearing an original signature should contain the mark "original" on the front cover of the proposal.

The University does not consider electronic signatures to be valid for submittal of competitive solicitation responses. Therefore, the original signature must be a "wet signature."

In addition to the original proposal, Proposer must submit one (1) complete copy of the *entire* proposal electronically on a USB flash drive. The USB flash drive must include a protective cover and be labeled with Proposer's name and the RFP number.

3.2 Submittal

Proposals must be received by UNTS on or before the Submittal Deadline (ref. Section 2.1 of this RFP) and should be delivered to:

University of North Texas System
Procurement Services
Business Service Center
1112 Dallas Drive, Suite 4000
Denton, TX 76205

Proposals will only be received via FedEx and UPS. Hand deliveries will not be accepted until further notice

Proposals must be typed on letter-size (8.5" x 11") paper. Sections within the proposal are to be tabbed for ease of reference. Pre-printed material(s), if included, should be referenced in the proposal and included as labeled attachments.

Proposer should submit all proposal materials enclosed in a sealed envelope, box and/or container. The RFP No. and the Submittal Deadline (ref. Section 2.1 of this RFP) should be clearly shown in the lower left-hand corner on the top surface of the container. In addition, the name and the return address of the Proposer should be clearly visible.

Note: Electronic submittals via facsimile or other electronic means will not be accepted, unless otherwise specified within this RFP.

3.3 Proposal Validity Period

Each proposal must state that it will remain valid for UNTS' acceptance for a minimum of one hundred and eighty (180) days after the Submittal Deadline, to allow time for evaluation, selection, and, any unforeseen delays. Should circumstances arise that require an extension to this period, UNTS reserves the right to provide extensions at its discretion.

3.4 Terms and Conditions

3.4.1 Proposer must comply with the requirements and specifications contained in this RFP, including the Notice to Proposer (ref. Section 2 of this RFP), Proposal Requirements (ref. Section 5 of this RFP). 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 Specification (ref. Section 5 of this RFP),
- 3.4.1.2 Proposal Requirements (ref. Appendix One),
- 3.4.1.3 Notice to Proposers (ref. Section 2 of this RFP).

3.4.2 UNTS intends to enter into an agreement with the Contractor in substantially the form of the attached Sample Agreement.(refer to Click to enter Attachment name). Award is contingent upon the successful execution of agreement.

3.5 Submittal Checklist

Proposer is to complete, sign, and return the following documents as a part of its proposal. Failure to return each of these items with the proposal may result in rejection of the proposal.

- 3.5.1 Signed and Completed Execution of Offer (ref. Appendix One, Section 2).
- 3.5.2 Responses to Proposer's General Questionnaire (ref. Appendix One, Section 3).
- 3.5.3 Signed and Completed Addenda Checklist (ref. Appendix One, Section 4).
- 3.5.4 Responses to evaluation criteria.

SECTION 4: GENERAL TERMS AND CONDITIONS

UNTS' standard purchase order terms and conditions can be found at https://www.untsystem.edu/sites/default/files/bsc_po_terms_2019.pdf. Additionally, attached is a sample Services Agreement (refer to Section 3.4.2 of this RFP).

4.1 Exceptions

Any exceptions to the terms in either our standard purchase order terms and conditions or those included in the sample agreement should be clearly stated and included in a separate section of the Proposer's response and marked "exceptions". Proposers are advised that should UNTS not accept a stated exception, the result might be in the disqualification of the proposal.

SECTION 5: SCOPE OF SERVICES

5.1 Vendor Minimum Requirements/Qualifications

Minimum of five (5) full consecutive years experience as a provider and installer of scoreboard/display equipment.

5.2 Specifications/Deliverables

Technical Proposal

This section identifies the information which must be submitted in the Technical proposal. Offeror must demonstrate their ability to satisfy all qualification and technical requirements as well as detail their plan to perform the required services. The technical proposal must be structured in the following order and labeled with the corresponding titles stated below using the same outline numbers.

Offerer shall describe their company background and history, as well as experience and qualifications relevant to the scope of work described in this RFP.

The Offeror shall include in the proposal the legal form of their business organization, the state in which incorporated (if a corporation), the types of business ventures in which the organization is involved, the office location that shall be the point of contact during the term of any resulting contract, and a chart of the organization structure, including the reporting relationships, as they relate to this RFP.

The Offerer shall provide a list of all clients for whom similar services, as detailed in this RFP, have been provided during the past three (3) years. The offerer shall also disclose any services terminated by the client(s) and the reason(s) for termination.

- The list must include:
- Dates of service
- Name of contact person
- Title of contact person
- Phone number of contact person

Description of Goods and Services to be Provided

The University of North Texas Athletic Department is looking for a replacement for our Daktronics Venus 7000s, DMP 8000s, and VIP4400s that run the video boards at Apogee Stadium.

These computers provide content for the following displays, 936x528px Main Video board, 528x288px Aux Video Board, 1920x1080px Concourse TV Network, 360x198px Marquee (2 faces), and a 32x672px Art Wall.

The Main Video board and Aux Video board will need to be able to play live video via SDI, pre-loaded videos, and stills all sent to the boards via a Daktronics VIP 4060.

The boards will need to be controlled independently and be able to show different content as well as being able to input live stats from a Daktronics Scoring and Timing Interface computer.

The Concourse TV Network will need to be able to display live video, pre-loaded videos, stills, and live stats from the Daktronics Scoring and Timing Interface computer.

The display will be fed via SDI. The Marquee has 2 sides that mirror each other and will need to play a 24/7 schedule of still graphics. This display uses 2 VIP4060s, one for each side.

The Art Wall needs to display still graphics and uses a Daktronics data Distributor to send content to the board.

5.3 Pricing/Fees (Refer to Component List)

- A. Please price all components of the proposed solution separately including install, software and freight charges. The line items shall include the price of the equipment including freight. Alternate technologies for system components, and their associated costs, may be described in an alternate proposal submittal. Your submittal should include all pertinent product descriptions, specifications, and any corporate profiling you feel should be presented to the University of North Texas. Product Delivery and Installation Timeline- Please provide estimated timeline of delivery and installation of proposed solution upon receipt of Purchase Order
- B. Video Control Room – Video Front End -Pricing for your proposed video control room including turn-key installation. Your proposal should be based upon standards of the industry, and include a suggested list of equipment and a functional description of the proposed system.
- C. System Installation- Installation may not be proposed exclusive to the rest of this proposal. It is mandatory for a vendor responding to the video control system to include the system installation in their response.
- D. Spare Parts - Identify a list of spare parts UNT should have on hand for minor maintenance and provide cost, if any.
- E. Service Contracts- Provide service contract options as part of proposal but not incorporated into the costs of hardware and install needed.
- F. Warranty- Provide warranty information.

APPENDIX ONE

Section 1: Affirmations and Confirmations

1.1 Purpose

UNTS 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 UNTS.

By submitting a proposal, Proposer certifies that it understands this RFP and has full knowledge of the scope, nature, quality, and quantity of the services to be performed, the detailed requirements of the services to be provided, and the conditions under which such 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

UNTS 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 UNTS as having received a copy of this RFP. Only UNTS's responses that are made by formal written Addenda will be binding on UNTS. Any verbal responses, written interpretations or clarifications other than Addenda to this RFP will be without legal effect. All Addenda issued by UNTS prior to the Submittal Deadline will be and are hereby incorporated as a part of this RFP for all purposes. This addenda shall be posted to UNTS' Bid Opportunities Web Page located at: <https://www.untsystem.edu/hr-it-business-services/procurement/purchasing/bid-opportunities>. Vendors are strongly encouraged to visit this page at least four (4) business days prior to submitting your response to ensure that you have received all applicable addenda.

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 in Section 4 of this appendix. The Addenda Checklist should accompany the Proposer's proposal.

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

1.3 Public Information

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

All information, documentation, and other materials submitted in response to this RFP is subject to public disclosure under the *Texas Public Information Act (Government Code, Chapter 552.001, et seq.)*. Proposer will be advised of a request for public information that implicates their materials if those materials are marked "Confidential and Proprietary" and will have the opportunity to raise any objections to disclosure to the Texas Attorney General.

1.4 Type of Agreement

Refer to the attached Sample Service Agreement

1.5 Proposal Evaluation Process

UNTS will select Contractor by using the competitive sealed proposal process described in this Section.

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

At UNTS' sole option and discretion, UNTS may discuss and negotiate elements of proposals submitted with any or all proposers. Furthermore, UNTS may request presentations or system demonstrations from any or all proposers at no cost or obligation to UNTS.

After submission of a proposal but before final selection of Contractor is made, UNTS may permit a 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. UNTS is not obligated to select the Proposer offering the most attractive economic terms if that Proposer is not the most advantageous to UNTS overall, as determined by UNTS according to the evaluation criteria contained herein.

UNTS 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 UNTS. Proposer is hereby notified that UNTS will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by UNTS.

1.6 Proposer's Acceptance of Evaluation Methodology

By submitting a proposal, Proposer acknowledges (1) Proposer's acceptance of [a] the Proposal Evaluation Process (ref. **Section 1.5 of APPENDIX ONE**), [b] the Criteria for Selection (ref. **2.3** of this RFP), [c] the Specifications and, [d] the

terms and all other requirements and specifications set forth in this RFP; and (2) Proposer's recognition that some subjective judgments must be made by UNTS 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 UNTS has made no representation written or oral that one or more agreements with UNTS will be awarded under this RFP; (2) UNTS issues this RFP predicated on UNTS's anticipated requirements for the Services, and UNTS has made no representation, written or oral, that any particular scope of services will actually be required by UNTS; 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 UNTS.
- 1.8.3 UNTS 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 UNTS, at UNTS'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. Proposers are encouraged to completely address the evaluation criteria
- 1.8.6 UNTS makes no warranty or guarantee that an award will be made as a result of this RFP. UNTS 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 UNTS's best interest. UNTS 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 UNTS, at UNTS'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 UNTS, in UNTS' sole discretion.
- 1.8.8 Should a vendor wish to protest or dispute determinations or awards made in connection with this RFP, it shall be done by submitting a Letter of Protest/Dispute to UNTS Senior Director for Procurement Services outlining the issue to be considered.

1.9 Execution of Offer

Proposer must complete, sign and return the attached Execution of Offer (ref. Appendix One, Section 2) 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 UNTS, in its sole discretion.

1.10 Pricing and Delivery Schedule

Proposer must complete and return the Pricing Schedule (ref. Section 5 of this RFP), 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 the Services; 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.

UNTS will not recognize or accept any charges or fees to perform the Services 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 the Services to UNTS, and the time period within which Proposer proposes to be able to complete each such phase.

1.11 Proposer's General Questionnaire

Proposals must include responses to the questions in Section 3 of Appendix 1. 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.

1.12 Addenda Checklist

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

1.13 Submittal

Proposer should submit all proposal materials enclosed in a sealed envelope, box, or container. The RFP No. (ref. Section 1.3 of this RFP) and the Submittal Deadline (ref. Section 2.1 of this RFP) should be clearly shown in the lower left-hand corner on the top surface of the container. In addition, the name and the return address of the Proposer should be clearly visible.

Proposer must also submit the number of originals of the HUB Subcontracting Plan (also called the HSP), if required, as directed by this RFP (ref. Section 2.5 of the RFP.)

Note: If proposal requires the submittal of an HSP, the completed HSP documents and the proposal response documents must be in separate sealed envelopes. Both envelopes are to be placed in a master container, and such master container should be marked in the lower left-hand corner with the RFP number and name and Submittal Deadline, as stated above.

Upon Proposer's request and at Proposer's expense, UNTS will return to a Proposer its proposal received after the Submittal Deadline if the proposal is properly identified. UNTS will not under any circumstances consider a proposal that is received after the Submittal Deadline or which is not accompanied by the number of completed and signed originals of the HSP that are required by this RFP.

UNTS will not accept proposals submitted by telephone, proposals submitted by facsimile ("fax") transmission, or proposals submitted by electronic transmission (i.e., e-mail) in response to this RFP.

Except as otherwise provided in this RFP, no proposal may be changed, amended, or modified after it has been submitted to UNTS. 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 UNTS's consent, which will be based on Proposer's submittal of a written explanation and documentation evidencing a reason acceptable to UNTS, in UNTS's sole discretion.

By signing the Execution of Offer (ref. Appendix One, Section 2) and submitting a proposal, Proposer certifies that any terms, conditions, or documents attached to or referenced in its 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 UNTS that are not set forth in this RFP or in the Appendices to this RFP. Proposer further certifies that the submission of a proposal is Proposer's good faith intent to enter into the Agreement with UNTS as specified herein and that such intent is not contingent upon UNTS' acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.

1.14 Page Size, Binders, and Dividers

Proposals must be typed on letter-size (8-1/2" x 11") paper, and must be submitted in a binder. Preprinted material should be referenced in the proposal and included as labeled attachments. Sections within a proposal should be divided by tabs for ease of reference.

1.15 Table of Contents

Proposals must include a Table of Contents with page number references. The Table of Contents must contain sufficient detail and be organized according to the same format as presented in this RFP, to allow easy reference to the sections of the proposal as well as to any separate attachments (which should be identified in the main Table of Contents). If a Proposer includes supplemental information or non-required attachments with its proposal, this material should be clearly identified in the Table of Contents and organized as a separate section of the proposal.

1.16 Pagination

All pages of the proposal should be numbered sequentially in Arabic numerals (1, 2, 3, etc.). Attachments should be numbered or referenced separately.

Section 2: Execution of Offer

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

2.1 By signature hereon, Proposer represents and warrants the following:

- 2.1.1 Proposer acknowledges and agrees that (1) this RFP is a solicitation for a proposal and is not a contract or an offer to contract; (2) the submission of a proposal by Proposer in response to this RFP will not create a contract between UNTS and Proposer; (3) UNTS has made no representation or warranty, written or oral, that one or more contracts with UNTS will be awarded under this RFP; and (4) Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
- 2.1.2 Proposer is a reputable company that is lawfully and regularly engaged in providing the Services.
- 2.1.3 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform the Services.
- 2.1.4 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.
- 2.1.5 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.
- 2.1.6 If selected by UNTS, 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.
- 2.1.7 If selected by UNTS, Proposer will maintain any insurance coverage as required by the Agreement during the term thereof.
- 2.1.8 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. Proposer acknowledges that UNTS will rely on such statements, information and representations in selecting Contractor. If selected by UNTS, Proposer will notify UNTS immediately of any material change in any matters with regard to which Proposer has made a statement or representation or provided information.
- 2.1.9 Proposer will defend with counsel approved by UNTS, indemnify, and hold harmless UNTS, The University of North Texas 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.

- 21.10 Pursuant to Sections 2107.008 and 2252.903, *Government Code*, any payments owing to Proposer under any contract or agreement resulting from this RFP 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.
- 2.2 By signature hereon, Proposer offers and agrees to furnish the services to UNTS and comply with all terms, conditions, requirements and specifications set forth in this RFP.
- 2.3 By signature hereon, Proposer affirms that it 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 submitted proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting contracts, and the Proposer may be removed from all proposal lists at UNTS.
- 2.4 By signature hereon, Proposer certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, *Tax Code*, or that Proposer is exempt from the payment of those taxes, or that 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 UNTS's option, may result in termination of any resulting contract or agreement.
- 2.5 By signature hereon, Proposer hereby certifies that neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, or anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in Section 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.
- 2.6 By signature hereon, Proposer certifies that the individual signing this document and the documents made a part of this RFP, is authorized to sign such documents on behalf of Proposer and to bind Proposer under any agreements and other contractual arrangements that may result from the submission of Proposer's proposal.
- 2.7 By signature hereon, Proposer certifies as follows:

"Under Section 231.006, *Family Code*, relating to child support, Proposer certifies that the individual or business entity named in the Proposer's proposal is not ineligible to receive the specified contract award and acknowledges that any agreements or other contractual arrangements resulting from this RFP may be terminated if this certification is inaccurate."
- 2.8 By signature hereon, Proposer certifies that (i) 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 component of UNTS of North Texas System, on the other hand, other than the relationships which have been previously disclosed to UNTS in writing; (ii) Proposer has not been an employee of any component institution of the University of North Texas System within the immediate twelve (12) months prior to the Submittal Deadline; and (iii) 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. Section 669.003, *Government Code*). All disclosures by Proposer in connection with this certification will be subject to administrative review and approval before UNTS enters into a contract or agreement with Proposer.
- 2.9 By signature hereon, Proposer certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 2.10 By signature hereon, Proposer affirmatively states that it does not boycott Israel, pursuant to Texas Gov't Code Section 2270.001. Additionally, Proposer shall not engage in a boycott of Israel during the term of this Agreement.
- 2.11 By signature hereon, Proposer affirms its compliance with Texas Administrative Code Title 1, Part 10, Chapter 213, Subchapter C, Rule §213.38, Electronic and Information Resources Accessibility Standards for Institutions of Higher Education.
- 2.12 By signature hereon, Proposer represents and warrants that all products and services offered to UNTS 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.
- 2.13 By signature hereon, Respondent will comply with and agree to use e-Verify in accordance with State of Texas Executive Order RP-80.
- 2.14 Proposer will and has disclosed, as part of its proposal, any exceptions to the certifications stated in this Execution of Offer. All such disclosures will be subject to administrative review and approval prior to the time UNTS makes an award or enters into any contract or agreement with Proposer.

2.15 If Proposer will sell or lease computer equipment to UNTS under any agreements or other contractual arrangements that may result from the submission of Proposer's proposal then, pursuant to Section 361.965(c), *Health & Safety Code*, Proposer certifies that it 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 Title 30, Chapter 328, Subchapter I, *Texas Administrative Code*. Section 361.952(2), *Health & Safety Code*, states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term "computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.

216 Proposer should complete the following information:

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

If Proposer is a Corporation, then list the Proposer's corporate charter number: _____

RFP No.: _____, Title: _____

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 SECTIONS 552.021 AND 552.023, *GOVERNMENT CODE*, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 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)

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 SECTIONS 552.021 AND 552.023, *GOVERNMENT CODE*, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 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

Company's Legal Name:

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 (mark "N/A" if not applicable) _____

Are you a certified Historically Underutilized Business (HUB)? (check one) YES NO

If "Yes", please indicate the issuing authority _____
and include copy of your certificate in your bid response package.

THIS AREA LEFT INTENTIONALLY BLANK

Section 4: Addenda Checklist

Proposal of: _____
(Proposer Company Name)

To: The University of North Texas System

RFP Title _____

RFP No.: _____

The undersigned Proposer hereby acknowledges receipt of the following Addenda to the captioned RFP (initial where applicable).

Note: Only check the boxes that apply. For example, if there was only one addendum, initial just the first blank after "No. 1", not all 5 blanks below.

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

Respectfully submitted,

Proposer: _____
(Company Name)

By: _____
(Authorized Signature Name, print or type)

(Title)

(Date)

Signature (authorized signature)

-END-