**Purchasing Department**
PO Box 750416
Dallas, TX 75275

# REQUEST FOR PROPOSAL

## *RFP Number: SMU-20240304*

## *EXPRESS SHUTTLE*

***All bids in response to this RFP are due before:***

## *5:00 PM Central Time on March 22, 2024*

**Please be sure to include this RFP # on Any Submissions**

# Section 1

# Introduction

## 1.1 Background

As a private, comprehensive university enriched by its United Methodist heritage and partnership with the Dallas-Fort Worth area, SMU seeks to enhance the intellectual, cultural, technological, ethical, and social development of a diverse student body. SMU offers undergraduate programs centered on the liberal arts and excellent graduate, professional, and continuing education programs. The SMU experience also includes accessible faculty in small classes and abundant opportunities for research experience, international study, leadership development, and service and internship opportunities beyond campus – all with the goal of preparing students to become contributing citizens and leaders for our state, nation and world.

SMU has over 12,000 students studying in eight degree-granting schools: Cox School of Business, Dedman College of Humanities and Sciences, Meadows School of the Arts, Bobby B. Lyle School of Engineering, Dedman School of Law, Annette Caldwell Simmons School of Education and Human Development, Perkins School of Theology, and Moody School of Graduate and Advanced Studies.

Founded in 1911 by what is now The United Methodist Church, SMU is nonsectarian in its teaching and committed to academic freedom and open inquiry. Owned by the South Central Jurisdiction of the United Methodist Church, SMU is managed by a Board of Trustees that includes civic, business, education, and religious leaders who represent various faiths and geographic areas.

## 1.2 Purpose

The purpose of this Request for Proposal (RFP) is to provide guidelines as to what SMU is looking for in an Express Shuttle operator, and solicit proposals from companies with an interest in providing first class, responsive, professional, and non-discriminatory services for SMU faculty, staff and students.  Final companies selected will enter into a Preferred Provider Contract with SMU.

A basic three-year term will be established with the option to extend an additional two years, as determined by the Purchasing department. Option will be exercised as long as service and quality remain excellent and pricing competitive.

SMU will review each proposal submitted and may select multiple providers that are qualified and will meet the needs of the university.

The selected provider(s) will be paid by SMU Campus Services at an hourly rate. SMU does not guarantee any minimum or maximum amount of business during the term of the contract.

1.3 RFP Schedule

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| Issue Request for Proposals | Monday, March 4, 2024 |
| Last Day for Questions by 5:00 PM | Friday, March 15, 2024 |
| Proposals Due by 5:00 PM | Friday, March 22, 2024 |
| Interviews (if necessary) | |
| Evaluation and Notice of Award | Monday, April 1, 2024 |
| Contract Start | Saturday, June 1, 2024 |
| Beginning of Service | Thursday, August 1, 2024 |

1.4 Questions and inquiries

All inquiries concerning the RFP should be directed to:

**Harmony Mei, RFP Coordinator**
**Email: harmony@smu.edu**
**Phone: 214-768-6464**

Questions should be submitted in writing via email. Written questions should be directly tied to the RFP and should be asked in consecutive order, following the organization of the RFP reference the RFP section. General questions will be shared with all those firms participating in the process.

Short procedural inquiries may be accepted by telephone or email by the buyer. However, oral explanations or instructions given over the telephone shall not be binding upon SMU.

1.5 Bidder Responsibility

The bidder assumes sole responsibility for the complete effort required in this RFP. No special consideration shall be given because vendor's failure to be knowledgeable of all the requirements of this RFP. By submitting a proposal in response to this RFP, the vendor represents that it has satisfied itself, from its own investigation, of all the requirements of this RFP.

1.6 Cost Liability

SMU assumes no responsibility and bears no liability for costs incurred by firms in the preparation and submittal of proposals in response to this RFP.

1.7 Revisions to this RFP

In the event that it becomes necessary to clarify or revise this RFP, such clarification or revision will be by an Amendment. RFP Amendments will be emailed to participants and posted on the Purchasing web page under the Open Solicitations tab. Any amendment to this RFP shall become part of this RFP.

1.8 Proposal Acceptance and Rejections

SMU reserves the right to reject any or all proposals, to waive technicalities, to make inquiries and request additional information from all Proposers, and to award Preferred Provider Contracts in whole or in part as deemed to be in the best interest of SMU. SMU reserves the right to negotiate

with any vendor if such action is deemed to be in the best interest of SMU.

1.9 Proposal Submittal

Suppliers interested in participating in the RFP should submit four (4) hard copies and one electronic PDF copy of your proposal to be received no later than close of business, 5:00 PM on Closing Date indicated in RFP Schedule. Proposals received after that due date may be rejected. To the extent reasonably possible, the University shall keep all proposals confidential.

**Proposals must be received by 5:00 PM CST on or before Friday, March 22, 2024.**

Proposal delivery addresses:

| | |
|---|---|
| Electronic | harmony@smu.edu |
| Postal Mail | SMU Purchasing<br>Attn: Harmony Mei<br>PO Box 750416<br>Dallas, Texas 75275-0416 |
| Courier/Physical | SMU Purchasing<br>Attn: Harmony Mei<br>6116 North Central Expressway, Suite 205A<br>Dallas, Texas 75275-0416 |
| Ground Shipping | SMU Purchasing<br>Attn: Harmony Mei<br>3140 Dyer Street, MS #416<br>Dallas, TX 75205 |

Proposals, modifications or withdrawals received after the date set for receipt of proposals may not be considered.

Bidders shall not contact any person within the University directly, in person, by email or by telephone, other than the RFP Coordinator concerning this RFP.

Notify Harmony Mei (harmony@smu.edu) via email if company would like to pick up their proposal hard copies. SMU Purchasing will discard/recycle proposal hard copies 30 days after final award notification.

Section 2

RFP Proposal Content Requirements

## 2.1 RFP Content

All companies submitting proposals should include a comprehensive response to items as specified in the RFP document and Statement of Work. Proposals are required to follow the exact order as provided in the RFP document and reference the appropriate section identification when responding to questions or providing company information

## 2.2 Company Information

Provide the company's exact name, its legal nature (e.g., corporation, limited liability company, general partnership, limited partnership, etc.), and the state and country in which the entity was organized.

Provide a brief history of the firm and number of years in business, and demonstrate that it is financially capable of providing services to the University.

Provide the company's corporate and local addresses (if different), main phone number, web address, and person authorized to commit the company to the terms specified in the proposal.

## 2.3 Personnel Contact Information

Provide information on the personnel composition of the company and individuals assigned to SMU's account, including point of contact names, positions, responsibilities and a brief description of their experience (highlighting university experience).

List the local address of the office that will be serving this account. List contact information, including direct phone number and email, for daily point of contact managers.

List contact information for after 5:00 pm hours.

## 2.4 Operational Concept Proposed

- Describe how you plan to provide Express Shuttle transportation services for the University. Include a description on how the company will work with the University and any subcontractors that the firm plans to use to accommodate trip requirements.
- Provide a complete list of your fleet with specifications (i.e. model, year, passenger capacity, etc.) and provide fleet location.
- Describe company's ability to serve the needs of SMU in a timely manner.
- Describe company dispatch and communication with drivers.
- Describe staffing, uniforms, and training procedures for drivers prior to assignment.
- Describe process for providing immediate alternative transportation in the event of a delay or mechanical failure.
- Provide an example of a daily ridership report and describe how this data will be communicated to SMU every month.

- Provide hourly rate to be paid by SMU Campus services. Present your best offer initially. SMU makes no guarantee that further negotiations will occur.

2.5 Insurance

State insurance your company has or will obtain insurance to meet University requirements. See **Exhibit A** below for Insurance Requirements as set by Office of Risk Management. Suppliers must demonstrate they have insurance that meets University requirements.

Submit current COI (Certificate of Insurance) with explanation of the insurances the company has and description of its claim history. COI must be approved by Office of Risk Management.

State if company agrees to voluntarily assume all risk of loss, damage, injury to its persons or property and waive all claims or causes of action which results from operations in, on or about the University except if such loss, damage, or injury is caused by the active negligence or willful misconduct of SMU.

2.6 Subcontractor and Partner Company Information (if applicable)

List the names, addresses, and contact information of any subcontractors that will be utilized on this account. State what services they will provide.

2.7 References

Include a minimum of three accounts that are similar in size and scope to SMU. List only 1 SMU reference if you currently work with SMU, and 2 non-SMU references who you have worked with in the past year.

Include reference name, address, contact person, length of relationship, a brief description of trips provided, and the volume of work currently doing business with each reference provided. State volume of work in terms of annual sales and annual number of trips for each reference (i.e. 10 trips, estimated $10,000 annual volume).

Section 3

Evaluation Criteria for Award

## 3.1 Evaluation Information

SMU will utilize a selection committee for the evaluation of the RFP. Generally, the selection teams consist of 3-4 individuals who have a direct interest in the award of this contract.

The Evaluation Committee will ensure that the contractor with the best overall value to the University will be selected. The Committee shall be the sole judge of the comparative evaluation of the bids received. The decision of the Committee will be final. Southern Methodist University reserves the right to reject any and all bids.

The Committee will initially review all proposals for completeness and compliance with the terms and conditions of the RFP. Proposals clearly inconsistent with the RFP requirements will be eliminated from further consideration. Proposals that pass the completeness and compliance review will be evaluated against the Evaluation Criteria outlined herein.

## 3.2 Evaluation Criteria

SMU will utilize a selection team to ensure that the contractor with the best overall value and ability to meet the requirements is selected. The evaluation criteria are listed in no particular order of importance. SMU at its sole discretion may choose to award part or all of the scope of work contained in this RFP to single or multiple firms. Furthermore, the University does not guarantee that any actual Agreement will ensue as a result of the RFP and its evaluation process.

The University intends to award contracts based on perceived best value as determined by a review including, but not limited, to the following factors:

- Firm's plan to meet requirements as outlined in the **Statement of Work**
- Firm's comprehensive responses to the **Proposal Content Requirements**
- Quality of the proposal, responsiveness to requirements and adequacy of information provided
- Financial proposal, hourly rate to be paid by SMU, and financial strength of the firm
- Key personnel who will service this account
- Acceptance of SMU Terms and Conditions
- Insurance coverage that meets University requirements
- Company management, fleet, dispatch process, response time commitment, software and record keeping.
- Industry experience, references, compliance history,
- Quality control, safety record, training programs, and security program

Companies submitting proposals should bear in mind the competitive nature of the proposal process and the fact that SMU will be looking for proposals that offer the best advantage to SMU and should draft their proposal accordingly. Note that pricing is only one component of the overall basis of selection.

Section 4

Requirements and Statement of Work

SMU is seeking a Contractor(s) who will:

- Make recommendations concerning aspects of the business within their sphere of its expertise and help SMU stay up-to-date in regard to changes in transportation processes and technologies
- Provide technical expertise taking into account SMU's unique higher educational needs
- Provide business expertise that will bring additional value and added services to SMU
- Gain knowledge of SMU's operations so that operational and cost saving opportunities can be explored to the mutual benefit of both companies and demonstrates Process Efficiencies – Prompt and punctual adherence to SMU Express Shuttle routes and schedules
- Reduce costs: Best practices and efficiencies to maintain the lowest possible cost at the highest possible quality of services
- Continuously Improve: Improvement in quality and consistency for the services through collaboration, innovation, and continuous improvement processes
- Solve temporary staffing issues – Contractor must be able to consistently staff all necessary positions with the highest quality personnel available and must provide background checks.
- Provide thorough communication and stay in direct touch with all necessary personnel
- Effectively manage GPS location system and regularly update App and management team to provide real time communication to riders. Contractor will learn GPS-based tracking system provided by SMU and maintain functionality.
- Provide alternative vehicles of similar passenger capability, model year, and standard of service immediately if there is a delay or mechanical failure.
- Provide daily and monthly ridership reports and detailed invoices that reflect each bus in use with dates, times, route and stop information

Contractor warrants that:

- Well maintained and clean buses will be provided for every trip.
- All busses and equipment necessary to fulfill the contract are clean, in good working order, properly maintained, and conform with standards of the industry.
- Buses will be properly marked for their route and will have either printed or electronic signage clearly displayed.
- All driving staff provided are background checked, properly certified, and licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.

- All driving staff provided have been drug tested in compliance with any applicable laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.
- All driving staff provided conform to all applicable requirements for motor carrier drivers.
- All driving staff provided are prepared with accurate routing information and itinerary specifics.
- All driving staff will pick-up and drop-off passengers in the safest manner and location possible so that passengers are not forced to exit vehicle into on-coming traffic. Vehicle should be parked in such a manner that allows passengers to exit vehicle onto the sidewalk or parking lot so passengers are not crossing the street in on-coming traffic.
- Contractor shall be responsible for providing an alternate vehicle or mode of transportation immediately when there is a vehicle mechanical failure.
- All of the services to be performed by Contractor under or pursuant to the agreement shall be of the standard and quality which prevail among similar businesses and organizations of superior knowledge and skill engaged in providing similar services under the same or similar circumstances.
- Contractor has all necessary corporate power and has received all necessary corporate approvals to execute and deliver the Preferred Provider Agreement/Contract, and the individual executing Preferred Provider Agreement/Contract on behalf of Contractor has been duly authorized to act for and bind the company.
- Daily point of contact manager must be attentive, available, and communicative.

**To see the current route maps with the stops, please visit the DART website for the SMU 440 Red Express and SMU 442 Blue Express. SMU will provide a list of additional stops to the selected vendor(s). Routes, additional stops, schedule, and hours of operation are subject to change as designated by the University.**

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| **SMU 440 Red Express** | **https://dart.org/guide/transit-and-use/bus-routes/bus-route-detail/bus-route-440-smu-red-express** |
| **SMU 442 Blue Express** | **https://dart.org/guide/transit-and-use/bus-routes/bus-route-detail/bus-route-442-smu-blue-express** |

**SAMPLE CONTRACT**

**TO PROVIDE SERVICES ON AN ANNUAL BASIS TO SOUTHERN METHODIST UNIVERSITY BY (CONTRACTOR)**

This Contract to provide services ("the Services") on an Annual Basis (this "Contract") is made by and between Southern Methodist University ("SMU"), a Texas nonprofit corporation, with its principal offices located at 6425 Boaz Lane, Dallas, Texas 75205, and [enter vendor] ("Contractor"), a [enter state] corporation, with its principal offices located at [enter address].

ARTICLE 1: SERVICES TO BE PROVIDED UNDER THIS CONTRACT

Contractor will provide to SMU the services described in Contractor's Proposal, attached hereto as Exhibit A. The term "Services" means the services to be provided pursuant to this contract and includes all labor, materials, equipment, subcontractor services and/or miscellaneous items provided by Contractor to fulfill Contractor's obligations hereunder. Labor shall include straight-time wages, fringe benefits, workers' compensation and other insurance, applicable taxes, small tools expenses, truck allowance, overhead and profit. Contractor shall not charge SMU for overtime unless authorized by SMU"s Representative designated in Exhibit C.

ARTICLE 2: TERM

The term of this Contract shall commence on [enter date] and shall end at the conclusion of business on [enter date]. SMU reserves the right to extend this Contract by written direction of the President, a Vice President or other authorized signatory identified in Exhibit C, for three (3) additional one-year terms on the terms, including, without limitation, pricing terms, specified in this Contract.

## ARTICLE 3: CONTRACT SUM AND PAYMENTS

3.1 SMU shall pay to Contractor the Contract sum **not to exceed** [enter estimated amount] $XXX,XXX (XXXX Dollars and No Cents) during each annual term of this Contract. Contractor will invoice SMU on a monthly basis based upon completion of Services as described in quotes or proposals accepted by SMU. Each invoice will be delivered to SMU at the address set forth in Exhibit C and will specify the location of Services performed, the purchase order number, and will be delivered to the address set forth in Exhibit V. The term of the Contract will not extend beyond the latest date set forth in Article 2, without the written agreement of the President, a Vice President, or other authorized signatory identified in Exhibit C.

3.2 Each invoice will be due and payable by SMU thirty (30) days after satisfactory completion of Services and acceptance and approval of the Services and of such invoice by SMU.

3.3 Payments will be made only to Contractor and will be sent to Contractor at the address designated in Exhibit C.

3.4 Contractor must present all invoices to SMU no later than ninety (90) days after completion of Services. Invoices should be sent electronically to invoices@smu.edu.

3.5. Contractor shall not charge SMU for overtime unless authorized by a Contractor Directive. No overtime shall be charged during a week unless SMU requires Contractor to furnish personnel in excess of a Weekly Full Schedule. Contract shall not charge SMU for items other than labor unless specifically authorized by Contractor Directive.

3.6 Contractor agrees to keep full and detailed accounts of costs and exercise such controls as may be necessary for proper financial management under this Contract. SMU shall be afforded access to Contractor's records books, correspondence, instructions, receipts, vouchers, memoranda and other data relating to this Contract for a period of three (3) years after final payment or for such longer period as may be required by law.

## ARTICLE 4: CONTRACT DOCUMENTS

The following documents form a part of this Contract and are attached hereto and incorporated herein by reference (including plans, specifications and drawings, if applicable):

| **Exhibit** | **Title** | **Pages** |
|---|---|---|
| A | Contractor's Proposal/Statement of Services | XX |
| B | Insurance Requirements | x |
| C | Primary Location of Business to Receive Invoices and Payments; Designated Persons to Receive Notices, Operational Points of Contact, and Authorized to Sign | x |

In the event of a conflict between (i) the provisions of this Contract and the attached Exhibits B and C and any Directive, as completed by SMU, and (ii) the provisions of Exhibit A or any other proposal or bid from Contractor, then the provisions of this Contract, the attached Exhibits B and C, and the Directive, as completed by SMU, will control.

## ARTICLE 5: RESPONSIBILITIES OF CONTRACTOR

5.1 By execution of this Contract, Contractor represents that Contractor has visited the SMU premises where Contractor is to perform the Services under this Contract and is familiar with the local conditions under which the Services are to be performed.

5.2 Contractor will be responsible to SMU for the acts and omissions of Contractor's employees, subcontractors, sub-subcontractors, suppliers, volunteers, agents and any other persons performing any part of the Services hereunder. Contractor is responsible for ensuring that all persons performing any part of the Services comply with the obligations of the Contractor set forth in this Contract.

5.3 Contractor will not subcontract any portion of the Services to be performed under this Contract without advance written approval by SMU. Contractor will notify SMU's Representative of the names of any subcontractors, persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Services. Contractor will not contract with any subcontractor, person or entity to which SMU has made reasonable objection. By appropriate written agreement, Contractor will

(a) require each subcontractor, person or entity, to the extent of the Services to be performed, to be bound to Contractor by terms of this Contract, and to assume toward Contractor all obligations and responsibilities which Contractor, by this Contract assumes toward SMU;

(b) allow to each subcontractor, person or entity the benefit of all rights, remedies and redress afforded to Contractor by this Contract; and

(c) require each subcontractor to enter into similar agreements with sub-subcontractors. Contractor will maintain all subcontractor agreements, purchase orders, and certificates of insurance at its offices and upon SMU’s request will provide SMU with copies of same.

5.4 Contractor will give notices required by and comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Services, including, without limitation, those bearing on safety of persons and property and their protection from damage, injury or loss. Contractor will obtain and pay for all required permits, licenses and inspections and will pay all governmental fees. Contractor will be responsible for all fines, penalties and other costs resulting from Contractor’s failure to meet its obligations under this Contract.

5.5 Contractor will supervise and direct the performance of the Services, using Contractor's best skill and attention. Contractor will be solely responsible for and have control over the means, methods, techniques, sequences and procedures involved in performance of the Services, so long as such are consistent with all specifications of this Contract, and for coordination of all portions of performance of the Services under this Contract, unless otherwise specifically agreed by the parties elsewhere in this Contract.

5.6 Unless otherwise provided in this Contract, Contractor will provide and pay for labor, materials, subcontractors, equipment, tools, machinery, transportation, and other facilities and services necessary for the proper performance of the Services hereunder, whether temporary or permanent. Contractor will certify that materials furnished by it hereunder are free of asbestos, meaning that the materials, if sampled and analyzed, can be determined to contain no asbestos.

5.7 (a) Contractor will enforce strict discipline and good order among Contractor's

employees and others performing any part of the Services under this Contract. When not a safety hazard, a photo ID badge must be worn in plain sight by all persons performing any part of the Services under this Contract. Contractor will not permit unfit persons or persons unskilled in the tasks assigned to them to perform any part of the Services hereunder. Contractor will independently verify whether any person assigned to work on SMU property has a record of a conviction of any felony or of a misdemeanor involving alcoholic beverages, animals, assault, computers, controlled substances, criminal mischief, dishonesty, disorderly conduct, explosives, fire alarms, fraud, harassment, indecent exposure, public indecency, public lewdness, riot, stalking or theft ("Misdemeanor") under Texas law or the equivalent under the laws of another jurisdiction. Contractor will also ensure that employment screenings are conducted on all persons who are expected to perform Services, consistent with the duties and responsibilities associated with such individuals' positions, locations of work and other factors. Contractor will not permit any person to perform Services hereunder if Contractor deems such individual to be an unreasonable risk on the basis of the results of such screenings. In addition, Contractor will not permit any person to perform Services on SMU property who has been convicted of any felony or Misdemeanor under Texas law, or the equivalent under the laws of another jurisdiction, without first obtaining written approval from the SMU Police Department. SMU reserves the right to refuse to grant such permission if, in its sole judgment, business necessity requires it to do so. SMU reserves the right to remove immediately from SMU's property (or to require Contractor to remove immediately) any person performing any part of the Services, should such person pose, in the reasonable judgment of SMU, an immediate threat of harm or nuisance to persons or property.

(b) To the extent required by law, all persons performing any part of the Services will be United States citizens or nationals, lawful permanent residents, or aliens properly authorized to work in the United States.

(c) At SMU's request, Contractor will provide appropriate documentation demonstrating compliance with the requirements of this Section 5.7.

5.8 Contractor warrants to SMU that the Services performed hereunder will be performed in a good and workmanlike manner and that they will conform to the requirements of this Contract. If Contractor provides professional or other expertise for performance of the Services, Contractor warrants that the Services will be performed in accord with the highest appropriate professional and/or industry standard. SMU relies upon Contractor's expertise to perform the Services in a manner fit to accomplish those particular purposes stated herein and all other foreseeable purposes. If required by SMU, Contractor will furnish to SMU satisfactory evidence of the kind and quality of materials and equipment it will use to perform the Services hereunder.

5.9 Unless otherwise provided in this Contract, Contractor will pay sales, consumer, use and other similar taxes which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect during the term of this Contract.

5.10 Contractor will confine the Services to areas permitted by law, ordinances, permits and this Contract, and will not unreasonably encumber the area with materials or equipment. Unless approved by SMU's Representative, Contractor will not permit use of cellular telephones on construction sites. In addition, Contractor will restrict all persons performing any part of the Services to such areas. Contractor must obtain authorization for parking of vehicles or equipment on SMU property from SMU's Representative. Vehicles and equipment will also conform to all parking regulations of SMU as directed by SMU's Police Department. Without limiting the foregoing, no driving or parking is permitted on pedestrian walkways.

5.11 Contractor will be permitted to use existing entrances and stairs and such other areas only with SMU's prior approval and subject to SMU's security arrangements. Contractors given keys, cards or codes allowing access to SMU properties will use diligence in safeguarding the keys, cards or

codes and will only use for the purpose of fulfilling the services under the contract.

5.12 Contractor will permit SMU access to observe and evaluate Contractor's performance of the Services at any time desired by SMU.

**5.13 INDEMNIFICATION.**

**(a) TO THE FULLEST EXTENT PERMITTED BY LAW, AND EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR FAULT OF THE INDEMNIFIED PARTY, CONTRACTOR WILL INDEMNIFY, DEFEND (WITH COUNSEL ACCEPTABLE TO SMU) AND HOLD HARMLESS SMU, ITS TRUSTEES, OFFICERS, EMPLOYEES, VOLUNTEERS AND/OR AGENTS AND/OR THE SUCCESSORS AND/OR ASSIGNS OF ANY OF THEM (EACH, AN "INDEMNIFIED PARTY") FROM AND AGAINST ANY AND ALL LOSS, COST, EXPENSE, DAMAGE, INJURY, LIABILITY, CLAIM, DEMAND, FINE, PENALTY OR CAUSE OF ACTION, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COSTS AND EXPENSES OF ANY DISPUTE RESOLUTION PROCEEDING (EACH A "CLAIM" AND COLLECTIVELY, "CLAIMS"), DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATING TO CONTRACTOR'S PERFORMANCE OF THE SERVICES HEREUNDER OR OTHER ACTIVITIES OF THE CONTRACTOR, INCLUDING, BUT NOT LIMITED TO:**

**(i) CONTRACTOR'S BREACH OF THIS CONTRACT;**

**(ii) ANY CLAIM ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE, OR DEATH OF ANY PERSON, OR TO INJURY TO OR DESTRUCTION OF PROPERTY, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OF THE PROPERTY;**

**(iii) ANY LIEN CLAIM OR NOTICE OF LIEN CLAIM ASSERTED BY ANY SUBCONTRACTOR, SUB-SUBCONTRACTOR, SUPPLIER OR EQUIPMENT PROVIDER OF ANY TIER WHO PROVIDES LABOR, MATERIALS OR EQUIPMENT TO THE PROJECT TO CARRY OUT ANY OF THE SERVICES PROVIDED IN THIS CONTRACT, TO THE EXTENT CONTRACTOR HAS BEEN PAID FOR THE SERVICES; OR**

**(iv) THE ACT OR OMISSION OF CONTRACTOR, A SUBCONTRACTOR, SUB-SUBCONTRACTOR, SUPPLIER, OR ANY OTHER PERSON OR ENTITY DIRECTLY OR INDIRECTLY EMPLOYED BY SUCH PARTIES OR FOR WHOSE ACTS OR OMISSIONS THEY MAY BE LIABLE.**

**In the event that an Indemnified Party is found by final award to be negligent or at fault at whole or in part, the indemnity and hold harmless obligation of Contractor with regard to attorneys' fees and costs and expenses of any dispute resolution proceeding will be reduced by the percentage of fault or negligence of the Indemnified Party. These obligations will not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 5.16.**

**(b) INDEMNITY – EMPLOYEE INJURY CLAIMS; INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS. IN ADDITION TO THE INDEMNIFICATION PROVIDED IN SECTION 5.16(a) AND TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WILL INDEMNIFY, DEFEND (WITH COUNSEL ACCEPTABLE**

**TO SMU), AND HOLD HARMLESS EACH INDEMNIFIED PARTY FROM AND AGAINST ANY CLAIM (i) DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATING TO BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE OF CONTRACTOR, ANY SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY EITHER, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS' COMPENSATION INSURANCE CARRIER; AND/OR (ii) ANY CLAIM THAT ANY MATERIALS CONTRACTOR PRODUCES FOR OR USES AT SMU INFRINGE ON THE COPYRIGHT, TRADEMARK, SERVICE MARK, OR TRADE NAME OR OTHER INTELLECTUAL PROPERTY RIGHT OF A THIRD PARTY, OR PLAGIARIZE THE WORK OF A THIRD PARTY, IT BEING THE EXPRESSED INTENT OF SMU AND CONTRACTOR THAT THE CONTRACTOR IS TO INDEMNIFY, DEFEND AND HOLD HARMLESS EACH INDEMNIFIED PARTY EVEN TO THE EXTENT SUCH CLAIM IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE SOLE OR CONCURRENT NEGLIGENCE OF AN INDEMNIFIED PARTY.**

**(c) The indemnification of this Section 5.16 will not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor under workers' compensation acts, disability benefit acts or other employee benefit acts. The obligations of Contractor under this Section 5.16 will survive the expiration of this Contract.**

5.14 (a) The consumption of alcoholic beverages and the illegal use of controlled substances will not be permitted on SMU's property nor will Contractor employees or any other person performing any part of the Services be under the influence of such substances while on SMU's property. Contractor will comply with SMU's Non-Smoking Policy, a copy of which can be obtained from SMU's Representative. Smoking will not be permitted at any location where either SMU or Contractor has posted a "No Smoking" sign, it being understood that Contractor has the obligation to post appropriate "No Smoking" signs as necessary for safety reasons within the spaces for which Contractor is responsible. Further, it is understood that SMU has designated all campus buildings as "No Smoking" areas, which designation must be respected unless a "Smoking Permitted" sign has been posted by SMU.

(b) To the fullest extent permitted by law, the use or possession of dangerous weapons or facsimiles of dangerous weapons on SMU property is prohibited for all persons except for persons duly authorized by the SMU Police Department or by an accredited law enforcement office, to carry a firearm in the performance of their duty.

5.15 (a) Without altering in any way Contractor's liability under this Contract or applicable law, Contractor agrees to comply with the "Insurance Requirements of the Contract" attached hereto as Exhibit B and incorporated herein by reference.

(b) None of the requirements as to types, limits or SMU's approval of Contractor's insurance coverage limits, qualifies or quantifies the liabilities and obligations assumed by Contractor under this Contract or otherwise provided by law. Contractor is responsible for maintaining its own insurance coverage on its personal property.

5.16 Contractor will be responsible for ensuring that the performance of the Services and the completed work comply with the Americans with Disabilities Act of (42 U.S.C. Section 12101 et seq.) and with Chapter 469, Texas Government Code, Elimination of Architectural Barriers, and with other laws affecting the rights of individuals with disabilities, and related federal and state regulations, as amended from time to time. If required by law or by SMU's Representative, Contractor will enter into a

subcontract with a third-party Registered Accessibility Specialist (RAS) acceptable to SMU. The cost of RAS services will be billed by Contractor as a direct pass-through cost to SMU without mark-up.

5.17 Minors on Campus. Contractor agrees to comply with Texas Education Code, Section 51.976, which mandates that all persons in a position involving contact with minors enrolled in a "campus program for minors" as defined in Texas Education Code, Section 51.976, must successfully complete an approved training and examination program on sexual abuse and child molestation. Contractor agrees to provide to SMU written certification of such training of Contractor employees, volunteers or others performing any part of the Services who will have contact with minors enrolled in a campus program for minors on SMU property.

## ARTICLE 6: MISCELLANEOUS PROVISIONS

6.1 With respect to the Services to be provided by Contractor and the administration of this Contract, SMU and Contractor shall designate a) the primary location of business to receive notices, invoices and payments; b) the parties to receive notices and communications and to act for SMU and Contractor in all respects; and, c) the parties authorized to sign agreements and changes to this Contract. Such designations are listed in the Primary Location of Business to Receive Notices, Invoices and Payments; Designated Persons to Receive Notices and Authorized to Sign, attached hereto as Exhibit C.

6.2 Any assignment of this Contract by Contractor, and more specifically assignment to a factoring company, shall be void without the express written consent of the President or a Vice President of SMU. Contractor shall not be relieved of its obligations under this Contract in the event of an authorized assignment. It is agreed that any sale, merger, corporate reorganization, or significant change of ownership of Contractor or any substantial alteration in the nature or character of its business shall constitute a change in Contractor, and it is agreed that continuation of this Contract after such a change shall be considered to be an assignment.

6.3 It is understood and agreed that the relationship of Contractor to SMU shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant or employee of SMU; or (2) create any partnership, joint venture or other association between SMU and Contractor. Any directions or instructions by SMU in respect of the Services shall relate to the results SMU desires to obtain from the Services and shall in no way affect Contractor's independent contractor status as described herein.

6.4 (a) In the event of the breach of any of the terms of this Contract by either party, the non-breaching party may terminate this Contract if (1) the non-breaching party provides written notice to the breaching party that a breach has occurred, the nature of the breach, and the date this Contract shall terminate, which shall be no less than thirty (30) days from the date of the written notice, and (2) the breaching party fails to cure the breach within the thirty (30) day period. In no event shall SMU be liable to Contractor for damages for delay.

(b) If a party files a petition or be adjudged bankrupt or insolvent under any applicable federal or state bankruptcy or insolvency law, or admits that it cannot meet its financial obligations as they become due; or if a receiver or trustee is appointed for all or substantially all of the assets of the party; or if a party makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors that shall be considered a breach of this Contract and the non-breaching party may terminate this Contract immediately.

6.5 Contractor represents and warrants that no trustee, officer, employee, student or agent of SMU has been or will be employed, retained, or paid a fee, or otherwise has received or will receive

any personal compensation or consideration by or from Contractor or any of Contractor's directors, officers, employees, or agents in connection with the obtaining, arranging, or negotiation of this Contract. Contractor agrees that the consideration to be paid by SMU under this Contract represents fair and reasonable consideration relative to the value of services to be provided by Contractor to SMU.

6.6 In its performance of this Contract, Contractor warrants that it will not discriminate against any person on the basis of race, color, religion, national origin, sex, age, disability, genetic information or veteran status. Contractor will also not discriminate against any person on the basis of sexual orientation or gender identity and expression. Contractor affirms that it is an equal opportunity and affirmative action employer and that it will comply with all applicable federal, state and local laws and regulations. The parties hereby incorporate the equal employment opportunity and affirmative action requirements, if applicable, of 41 C.F.R. 60-1.4(a) and 29 C.F.R. Part 471, Appendix A to Subpart A. **Contractor and all subcontractors shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans and qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.**

6.7 No waiver of any breach of any provision of this Contract shall operate as a waiver of any other or subsequent breach thereof or of the provision itself, or of any other provision. No provision of this Contract shall be deemed to have been waived unless such waiver is in writing and is signed by the party waiving the same.

6.8 Contractor shall not disclose the terms of this Contract without the express written consent of the President or a Vice President of SMU, unless such disclosure is required by law or court order.

6.9 Nothing contained herein allows Contractor to use the name "SMU" or "Southern Methodist University", or any of its logos or images, except for the purposes set forth in this Contract, unless prior written permission of SMU's President or Vice President for Development and External Affairs or their respective designees is obtained. Contractor shall take no action that states or implies or allows another to infer that SMU has approved or endorsed Contractor's products or services.

6.10 Contractor shall not report or release information concerning SMU or its trustees, officers, employees, students, volunteers, donors, guests, tenants, agents or alumni or others affiliated with SMU to third parties without SMU's prior written approval. Without limiting the foregoing, any such report or release of information shall, at a minimum, comply with those requirements enumerated in the Gramm-Leach Bliley Act (15 U.S.C. §6801 et seq.; 16 CFR §314 et seq.) and all other applicable laws regarding privacy or protection of personally identifiable information.

6.11 This Contract shall be governed by and construed under the laws of the State of Texas. Each party to this Contract hereby irrevocably submits to the exclusive jurisdiction of the federal or state courts in Dallas County, Texas, and consents to venue in Dallas County, Texas, for any action arising out of this Contract.

6.12 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations or any additional insured requirements under this Contract, such legal limitations are made a part of the contractual obligations and shall operate to amend the obligations to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect. Should any provision of this Contract be held invalid, unenforceable or contrary to public policy, law, statute or ordinance, then the remainder of the provision, paragraph, section and/or Contract shall not be affected thereby and shall remain valid and fully enforceable.

6.13 This Contract, including its exhibits (as set forth specifically in this Contract), and each Directive constitutes the entire agreement of the parties and supersedes any previous oral or written agreements regarding the subject of this Contract. Article and section headings are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text of such articles or sections. Terms and conditions submitted by Contractor with a proposal, a Directive, an invoice or otherwise are not incorporated in this Contract. This Contract shall not be modified or altered, including without limitation, making changes to the scope or cost of the work, except by mutual agreement, confirmed in writing and signed by the parties, with the signature on behalf of SMU being that of the President, a Vice President or the Director of Purchasing.

6.14 The obligations contained in Sections 5.2, 5.4, 5.8, 5.13, 5.15, 5.16, [5.17, 5.18,], 6.1, 6.2, 6.7, 6.8, 6.9, 6.10, 6.11, 6.12, 6.13 and 6.14 of this Contract shall survive the expiration, completion, abandonment and/or termination of the Contract and final completion of the Services.

6.15 Either party may terminate this Contract for convenience upon ninety (90) days' written notice to the other party. Each party shall remain responsible for all obligations accruing prior to the termination date.

This Contract is hereby executed and effective on the date on which it is signed and initialed by the last of those required to sign and initial this Contract. This Contract may be executed in multiple counterparts, including facsimile counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument

**SOUTHERN METHODIST UNIVERSITY**

BY:_____
SMU Signatory
Title

DATE:_____

**CONTRACTOR**

BY:_____

NAME:_____

TITLE:_____

DATE:_____

# EXHIBIT A

## Southern Methodist University
## Office of Risk Management
## Insurance Requirements of the Agreement
## (Third Party Doing Business with SMU) as of 2/15/22

A valid Certificate of Insurance, along with copies of policy provisions and the required endorsements, must be provided to SMU's Office of Risk Management by any person or entity who is (i) providing goods or services to or for SMU, (ii) using SMU property for events, programs or other purposes or (iii) otherwise doing business with SMU (each a "Contractor"). Insurance must be in place prior to commencement or provision of goods or services or the use of property or other business engagement and must be maintained throughout the term of the contract or other agreement or engagement between SMU and the Contractor (the "Contract"), and thereafter. Contractor, at its sole cost and expense including payment of any premiums, deductibles, and/or self-insured retentions, will provide the insurance required pursuant to this **Exhibit A** sufficient to insure all of the Contractor's duties and responsibilities under the Contract, as required below:

1. These requirements apply to Contractor, and to Contractor's sub-subcontractors, consultants, selected contractors and others fulfilling Contractor's obligations under the Contract, whether individuals or entities and including international providers (collectively, "Subcontractors"). Contractor must require all Subcontractors to comply with the insurance requirements applicable to Contractor.
2. The Contractor must be licensed or otherwise authorized to do business in the State of Texas.
3. Insurance must be issued by insurance companies with not less than an AM Best A-III rating.
4. Contractor and its insurers must waive subrogation against SMU, its trustees, officers, employees, students, volunteers and agents for claims or any other loss arising out of Contractor's negligence, willful misconduct, or omission.
5. Contractor will provide coverage for broad-form indemnification if such indemnification is required by the Contract.
6. Contractor will maintain all insurance required by this **Exhibit A** throughout the term of the Contract. For any "claims-made" coverage, such as insurance for any professional liability or directors and officers coverage, each policy must have a retroactive date prior to the date of project or Contract commencement which must be stated on the certificate of insurance and must be maintained by the Contractor until completion of the project and for at least three years thereafter either through policies in force or through "tail coverage."
7. Additional insured status will be written as noted for commercial general liability, automobile liability and excess liability or as noted on the P.**2** of this form using ISO additional insured endorsements for ongoing and completed operations. For purposes of this additional insured requirement, "equivalent coverage" means coverage for liability caused by Contractor's actions and omissions in connection with the Contract, including coverage for the negligence or fault of Contractor and/or SMU or other parties indemnified under the Contract as to third-party bodily injury or death, of an employee or agent of the Contractor or of Subcontractors, including products-completed operations.
8. If any of Contractor's employees will at any time be working under the direction or control of SMU, then SMU must be named as alternate employer on the Workers' Compensation/Employer's Liability insurance and a copy of such endorsement will be attached to Contractor's certificate of insurance.
9. Contractor agrees to allow SMU to review all applicable insurance policies upon request.
10. Contractor is responsible for maintaining its own insurance coverage on its personal property.

Contractor and its insurer will provide at least 30 days' prior written notice to SMU of cancellation, changes in coverage which no longer satisfy these requirements, or nonrenewal of any policy.

The Certificate of Insurance must be completed using the following Description and Certificate Holder language, and will be acceptable to SMU:

1. **DESCRIPTION**: SMU must be included as additional insured unless noted otherwise on the attached form and must include the following language:

***Southern Methodist University, its trustees, officers, employees, students, volunteers and agents are included as additional insureds (as the interest of each insured may appear) as to all insurance coverage required.***

2. **CERTIFICATE HOLDER**: listed as follows and address to send Certificate of Insurance to:

*Southern Methodist University*
*Office of Risk Management*
*P.O. Box 750231*
*Dallas, Texas 75275-0231 [by courier: 3050 Dyer Ct., Dallas, TX 75205]*
*riskmanagement@smu.edu*

3. **CONTACT FOR QUESTIONS**: Associate Director, Risk Operations
Your prompt attention in this matter is greatly appreciated. If you have any questions, **please contact (214) 768-2486 or riskmanagement@smu.edu; Fax: (214) 768-4138**

## SOUTHERN METHODIST UNIVERSITY

### Standard Minimum Limits of Liability and Certificate of Insurance Requirements

The following Standard Limits are the minimum requirements for all Contractors. There are specific requirements that supersede the Standard Minimum Limits for Contractors providing high-risk services or for other high-risk projects and events. Please consult with the Office of Risk Management.

### All Coverages and Minimum Limits of Liability listed below are required.

| Line of Coverage | Description of Coverage and minimum Limits of Liability | | SMU Included as Additional Insured Required |
|---|---|---|---|
| General Liability<br>CG 00 01 | Premises Liability<br>Personal Injury<br>Products Liability<br>Medical Payments<br>Sexual Molestation/Assault<br>General Aggregate | $1,000,000 per occurrence<br>$1,000,000<br>$1,000,000<br>$10,000<br>$50,000<br>$2,000,000 | Yes |
| Automobile Liability<br>CG 00 01<br>CA 00 05, ..12, ..20 | Combined Single Limit | $1,000,000 (any auto) | Yes |
| Workers' Compensation | Injury/Illness<br>Employer's Liability | Statutorily required limits<br>$1,000,000 | N/A |

# EXHIBIT B

## PRIMARY LOCATION OF BUSINESSTO RECEIVE NOTICES, PRIMARY LOCATION OF BUISNESS TO RECEIVE INVOICES AND PAYMENTS DESIGNATED PERSONS TO RECEIVE NOTICES OPERATIONAL POINTS OF CONACT AND AUTHORIZED TO SIGN

PRIMARY LOCATION OF BUSINESS TO RECEIVE NOTICES:

Any notice required or permitted to be delivered must be in writing and may be given by certified or registered mail, facsimile, hand delivery or by overnight courier and shall be deemed to be received (a) if given by certified or registered mail, three days after deposited in the United States mail, postage prepaid, certified mail, return receipt requested; or, (b) if given by facsimile or hand delivery, when such notice is received by the party to whom it is addressed or, if given by an overnight courier or delivery service when deposited with such courier.

The following are the designated Primary Locations of Business to Receive Notices:

For Contractor:

For SMU:

Southern Methodist University
Shannon S. Brown
Director of Purchasing
6116 North Central Expressway, Suite 205A
Dallas, TX 75206
Telephone: (214) 768-4909
shannonbrown@smu.edu

With a copy to:

Vice President for Legal Affairs and Government Relations
Southern Methodist University
P.O. Box 750132
Dallas, TX 75275-0132
Fax: (214) 768-1281

PRIMARY LOCATION OF BUSINESS TO RECEIVE INVOICES AND PAYMENTS:

Invoices shall be sent to SMU via email to invoices@smu.edu as a PDF attachment only. For timely invoice processing and payment, invoices should include the following information:

- Supplier ID
- Department requester or name of primary point of contact
- SMU School, Division or Area
- SMU Department #/Org # (a 6-digit number which identifies the department)
- Purchase order #

Payments shall be sent to Contractor by United States mail, postage prepaid, to the following location:

DESIGNATED PERSONS TO RECEIVE NOTICES AND COMMUNICATIONS:

The parties hereby designate and appoint the following persons, whose addresses are designated above, as their representatives respectively, to receive all notices and communications and, to the extent of their obligations, to act for them in all respects.

For Contractor:

For SMU:

Southern Methodist University
Shannon S. Brown
Director of Purchasing
6116 North Central Expressway, Suite 205A
Dallas, TX 75206
Telephone: (214) 768-4909
shannonbrown@smu.edu

(See "Designated Persons Authorized to Sign", below, for authority to bind the University to expend funds)

Contractor shall not take direction from persons in academic, administrative or operating units of SMU not specifically named herein. It is agreed, if Contractor takes direction from persons not named herein and proceeds to perform additional services, modifies established programming or changes the scope of basic services, SMU shall not reimburse Contractor for any such expenses, shall not extend the schedule of performance of Services, and shall not compensate Contractor for any services or expenses to bring the Services into compliance with the Contract.

OPERATIONAL POINTS OF CONTACT

The parties hereby designate and appoint the following persons to be the operational points of contacts.

For Contractor:

For SMU:

DESIGNATED PERSONS AUTHORIZED TO SIGN:

Unless specifically stated otherwise in the Contract, the following are the designated persons authorized to sign written authorizations or agreements, including but not limited to Change Orders and Directives required by the Contract:

For Contractor:

For SMU:

Directives:

Shannon S. Brown, Director of Purchasing

Authorizations, Contracts, Change Orders:

Shannon S. Brown, Director of Purchasing, or
Chris Regis, Vice President for Business and Finance, or
Dr. R. Gerald Turner, President

Should it become necessary to change the Primary Location of Business to Receive Notices and Payments or the Designated Persons to Receive Notices and Authorized to Sign, any party may do so by giving written notice to the other representatives as provided in the above within seven (7) days of such change.