

Iowa Regents Universities Terms and Conditions

RFP/RFQ Instructions

1. AMENDMENTS TO RFP/RFQ: WITHDRAWAL OF PROPOSALS.

- a. Iowa State University of Science and Technology, State University of Iowa and University of Northern Iowa (Universities) reserve the right to amend the RFP/RFQ at any time. The supplier submitting a response to this RFP/RFQ (Bidder) will receive such notice via the online bidding system. All documents and information will be submitted by the Bidder in the online bidding system (Proposal). All amendments will be posted via the online bidding system by lead University.
- b. Prior to the date and time designated for receipt of Proposals, Bidder may withdraw a Proposal by retracting their response in the online bidding system. Such retraction should be completed prior to the designated date and time for receipt of Proposals. Bidder may resubmit a withdrawn Proposal up to the time designated for receipt of Proposals provided that the resubmitted Proposal complies with the RFP/RFQ documents. Bidder may not withdraw its Proposal for a period of 120 calendar days after the time designated for receipt of Proposals unless the Proposal contains an obvious and documented error for which it would be a manifest injustice to require Bidder to perform pursuant to such terms.

2. REJECTION OF PROPOSALS. Proposals may be rejected and not reviewed by the Universities for any of the following reasons:

- a. The Proposal is not received by the bid close date and time.
- b. The Bidder fails to respond to any part of this RFP/RFQ or does not provide information in the format required.
- c. There is evidence that the Bidder is engaged in unfair bidding practices.
- d. The Bidder is financially insolvent.
- e. The Bidder fails to comply with the minimum eligibility requirements and is determined to be ineligible.

3. LIMITATIONS AND OTHER CONDITIONS. This RFP/RFQ does not commit Universities to award a contract or to pay costs incurred by Bidder in the preparation, submission, presentation or any other action connected with proposing or otherwise responding to this RFP/RFQ. If Universities elects to award a contract, it will do so based on the criteria set forth in the RFP/RFQ documents. Universities are not required to purchase the lowest priced goods or inferior or substandard goods. Universities may make multiple awards if Universities determines it is in its best interest to do so. Universities may accept or reject any or all Proposals.

Proposals will be opened and reviewed at the convenience of the Universities; there is no public opening.

Universities may waive any irregularities, technicalities, or informalities in Proposals if such waiver does not substantially change the offer or provide a competitive advantage to any Bidder. Universities may accept deviations from the specifications in the RFP/RFQ documents if through information submitted or demonstrations Universities determines that the offered product or service is substantially compliant and would be in Universities best interest.

4. COPYRIGHTS. By submitting a Proposal, the Bidder agrees that Universities may copy the Proposal for purposes of facilitating the evaluation of the Proposal or to respond to requests for public records. The Bidder consents to such copying by submitting a Proposal and warrants that such copying will not violate the rights of any third party. Universities shall have the right to use ideas or adaptations of ideas that are presented in the Proposals.

5. CONTRACTS.

- a. This RFP/RFQ does not commit the Universities to award a contract. Universities reserve the right to either award a contract without further negotiation or to negotiate contract terms with the selected Bidder if the best interests of the Universities would be served.

- b. The successful Bidder must, in a timely manner, enter into a contract with Universities to implement the services contemplated by this RFP/RFQ.
 - c. It is expected that a contract between the Bidder and Universities will be executed within a reasonable timeframe or less after the date of the notification of the award. Failure of the successful Bidder to agree to the terms of a contract within this time period may be grounds for the Universities to award the contract to another Bidder.
 - d. Any Vendor terms incorporated into this [Purchase Order or Supplier Contract] are modified as required by Iowa Code §8A.311C and §8A.311D.
6. **RESTRICTIONS ON GIFTS AND ACTIVITIES.** Iowa Code Chapter 68B restricts gifts which may be given or received by state employees and requires certain individuals to disclose information concerning their activities with state government. Bidders are responsible for determining the applicability of this Chapter to their activities and complying with the requirements. In addition, pursuant to Iowa Code section 722.1, it is a felony offense to bribe or attempt to bribe a public official
7. **PUBLIC RECORDS AND REQUESTS FOR CONFIDENTIAL TREATMENT.**
- a. Iowa Administrative Code §681-9.8 requires Universities to release, if requested, the name of the awarded Bidder and all other Bidders. In addition, as agencies of the State of Iowa, Universities are subject to the requirements of Iowa Code Chapter 22, the Iowa Open Records Act. Bidders are encouraged to familiarize themselves with Chapter 22 before submitting a Proposal. Universities will treat all information submitted by a Bidder as public information following the conclusion of the selection process.
 - b. A Bidder shall identify information provided in response to this RFP/RFQ which the Bidder believes represents confidential information that may fall within one of the exceptions identified in Iowa Code section 22.7. Any request for confidential treatment of information must be included with the Bidder's Proposal. In addition, the Bidder must enumerate the specific grounds in Iowa Code Chapter 22 or other applicable law which support treatment of the material as confidential and explain why disclosure is not in the best interest of the public. The request for confidential treatment of information must also include the name, address, and telephone number of the person authorized by the Bidder to respond to any inquiries by Universities concerning the confidential status of the materials. Identification of the entire Proposal or substantially all of a Proposal as confidential may be deemed non-responsive and disqualify the Bidder from the selection process. The Bidder's designation of information as confidential is for informational purposes only and is not binding on Universities.
 - c. If Universities receives a request for a portion of the Proposal or other documents that Bidder has identified as confidential, Universities shall notify Bidder (unless legally prohibited from doing so) and Bidder shall, at its sole expense and in a timely manner, appear before an administrative or judicial authority to obtain an order restraining its release. If Bidder fails to do so, Universities may release the portions of the Proposal or other documents that Bidder has identified as confidential.
8. **DISPOSITION OF BID PROPOSALS.** All Proposals become the property of Universities and shall not be returned to the Bidder. Otherwise, at the conclusion of the selection process, the contents of all Proposals will remain in the online bidding system and be open to inspection by interested parties subjected to exceptions provided in Iowa Code Chapter 22 or other applicable law.
9. **NONDISCRIMINATION.** Universities do not discriminate in the contract award process on the basis of sex, age, race, religion, color, national origin, or disability.
10. **SMALL BUSINESSES AND TARGETED SMALL BUSINESSES.** Under Iowa's targeted small business procurement program, State entities have established procurement goals for the purchase of goods and services supplied by small businesses and targeted small businesses. Certified targeted small businesses and small businesses are encouraged to respond to this RFP/RFQ. The term "small business" and "targeted small business" are as defined in Iowa Code section 15.102.

11. **CONFLICT OF INTEREST.** Should Bidder be a State of Iowa official, a paid employee of Universities or any other State of Iowa agency, a member of the General Assembly or a legislative employee, Bidder will be considered a “conflict of interest vendor.” In addition, should any individual who is a paid employee of Universities or State of Iowa Agency be a partner in Bidder’s firm or hold significant

financial interest in the firm, a conflict of interest exists. Whenever Bidder represents a conflict of interest or whenever there is a disclosure or indication of a conflict of interest, Bidder must have approval by Universities prior to being awarded any contract from this RFP/RFQ. In addition, 2 CFR part 200.318 General Procurement Standards imposes additional requirements on federally funded projects. <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.318>

12. **CONFIDENTIALITY AND RESTRICTIONS ON COMMUNICATIONS.** Until the date of an award of this RFP/RFQ, any responses and other related documents, including but not limited to, attachments, appendices, and exhibits, shall be marked and treated as CONFIDENTIAL, as provided for preliminary correspondence under State of Iowa law. Bidders should not communicate about the subject of the RFP/RFQ with any administrator, faculty, or staff of Universities with the exception of the representative from the lead University for this RFP/RFQ.
13. **IOWA PREFERENCE LAW.** Iowa Code §73.2 requires all requests for proposals to contain the following language: “By virtue of statutory authority, a preference will be given to products and provisions grown and coal produced within the State of Iowa.” Universities shall grant such preferences unless an item is being procured with federal funds or granting the preference would violate applicable law.

Contract Terms and Conditions

1. INSURANCE.

Requirements: The Supplier, and any subcontractor, each at their own expense shall maintain insurance throughout the term of this Contract and any extensions or renewals with insurance company(ies) licensed to do business in the State of Iowa and with a minimum AM Best Rating of A-VII. The Supplier's insurance shall, be occurrence based and insure against any loss or damage resulting from or related to the Supplier's performance of this Contract regardless of the date the claim is filed or expiration of the policy. Policy shall name the Universities, State of Iowa and their agencies as additional insureds with respect to all operations and work hereunder and shall provide that such insurance applies separately to each insured against whom claim is made or suit is brought. Additional insured form CG 2026 or equivalent are required and must be attached to the certificate.

Types and Amounts of Insurance Required: Unless otherwise requested by the Universities in writing, the Supplier shall carry commercial general liability with limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate in addition to One Million Dollars (\$1,000,000) excess / umbrella liability insurance and One Million Dollars (\$1,000,000) in Errors and Omissions insurance (Professional Services Liability) insuring the Supplier against all general liabilities, product liability, personal injury, contingent bodily injury, property damage, and (where applicable) professional liability to be evident on the Contract Declarations and Execution page. Coverage must be written on a primary, non-contributory basis with any other insurance and/or any self-insured funds of the Universities, State of Iowa, and their agencies. In addition, the Supplier shall carry workers' compensation and employer liability insurance as required by Iowa law with a Waiver of Subrogation in favor of the University, the State of Iowa and their agencies as well as automobile liability in the amount One Million Dollars (\$1,000,000) all to be reflected on the Certificate of Insurance. Prospective Bidders shall maintain insurance until contract completion., Supplier shall require its subcontractors to carry insurance that meets these same requirements. Verifying subcontractor insurance compliance is the responsibility of Supplier. Universities reserve the right to waive or reduce the insurance requirements at their sole discretion.

Certificates of Coverage: Supplier shall not cancel or amend required insurance coverage except with the advance written approval of the Universities. Supplier shall submit certificates of insurance, which indicate coverage and notice provisions as required by this Contract, to the Universities upon execution of this Contract. The certificates shall be subject to approval by the Universities. The insurer shall name the Universities in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the Universities. Approval of the insurance certificates by the Universities shall not relieve the Supplier of any obligation under this Contract. Certification forms must include the appropriate Contract ID or project description on the face of each Certificate submitted to the Universities.

Failure on the part of Supplier to procure or maintain required insurance shall constitute a material breach of contract upon which the Universities may immediately terminate the Contract, or, at their discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all moneys so paid by the Universities shall be repaid by the Supplier to the Universities upon demand, or Universities may offset the cost of the premiums against any moneys due to Supplier.

- 2. ASSIGNMENT.** This Contract (including any future amendments incorporated into the Contract) may not be assigned, transferred, sold, or subcontracted by Supplier without the prior written consent of the Universities. Should Supplier be purchased (in whole or in part) by another organization or should Supplier wish to assign, transfer, or subcontract the Contract to another Supplier, the Universities shall have the right to terminate the Contract upon reasonable written notification, without penalty to the Universities.
- 3. INDEMNIFICATION.** Supplier shall indemnify and hold harmless the Universities and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from (i) the material non-performance, non-compliance or breach with terms and obligations of this Contract or (ii) any negligent or wrongful act or omission of the Supplier or its subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party or person.

Supplier's indemnification obligation shall not be limited in any way by any definition or boundary on the amount or type of damages, compensation or benefits payable by or for Supplier or any subcontractor under workers' compensation, disability benefits or other employee benefit acts.

4. **LAWS.** Terms and provisions of this Contract shall be construed in accordance with the laws of the State of Iowa, and any and all litigation or actions commenced in connection with this Contract resulting shall be instituted in the appropriate court(s) of the State of Iowa.
5. **LATE PAYMENT FEES.** The Universities will not pay any late payment fees or interest charges unless an invoice remains unpaid for more than 60 days per Iowa Code §8A.514(3).
6. **ACCESS TO SUPPLIER RECORDS/AUDITS.** Supplier shall retain all records and documents and shall provide unlimited access, at all reasonable times and upon reasonable notice, to all accounting records and supporting documentation relating to the goods and services furnished during the term of this Contract and for a period of seven (7) years thereafter, unless required to retain for a longer period by state or federal law. The Universities reserve the right to audit such records and employ the Auditor of the State of Iowa or any other auditor the Universities deem appropriate to perform an audit of Supplier records. Should such audit disclose incorrect billings or improprieties, the Universities reserve the right to charge Supplier for the cost of the audit and pursue appropriate reimbursement. Evidence of criminal intent will be turned over to the proper authority.
7. **CODE OF FAIR PRACTICE.** Supplier shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, national origin, age, sex, pregnancy, disability, genetic information, status as a U.S. veteran, service in the U.S. military, sexual orientation, gender identity, associational preferences, or any other classification that deprives the person of consideration as an individual. Supplier shall take affirmative action to ensure that applicants are employed and that the employees are treated during employment without regard to their race, creed, color, religion, national origin, age, sex, pregnancy, disability, genetic information, status as a U.S. veteran, service in the military, sexual orientation, gender identity, associational preferences, or any other classification that deprives the person of consideration as an individual except where it relates to a bona fide occupational qualification. In performance of this Contract, Supplier shall comply with provisions stipulated in Executive Order 11246 or amended by executive order 11375.

In the event of Supplier's noncompliance with the above nondiscrimination clause of this Contract or with any of the aforesaid or related regulations, this Contract may be canceled, terminated, or suspended in whole in part and Supplier may be declared ineligible for further agreements with the Universities. In addition, the Universities may take any actions or other sanctions as may be imposed or remedies invoked as provided by the Code of Iowa.

8. **MOST FAVORED NATION.** Supplier represents that the terms, conditions and prices established under this Contract are equal to or better than those offered to other comparable colleges, universities or public institutions. If during the term of this Contract, Supplier offers more favorable terms, conditions or prices to another institution, comparable universities, teaching hospitals, colleges, and/or community colleges, Supplier agrees to notify the Universities. The Contract shall be amended to reflect the more favorable terms, conditions or prices.
9. **TERMINATION.**
 - a. If Supplier is adjudged bankrupt or makes a general assignment for the benefit of creditors or if a receiver is appointed on account of Supplier's insolvency, then the Universities may, after giving Supplier written notice, terminate this Contract, without penalty to the Universities.
 - b. If Supplier has failed to deliver goods or services, has delivered non-conforming goods or services or is otherwise in material breach of this Contract, the Universities shall provide a 10-calendar day right

to cure notice ("Cure Notice"). The Universities may, within their sole discretion, accept or reject any or all proposed cure actions. If after such 10-calendar day notice the Supplier continues to be in default, the Universities may, within their sole discretion, terminate the Contract without any further obligation or penalty and procure substitute services from another source and charge the difference between the contracted price and the market price to the Supplier.

- c. With the mutual agreement of both parties, the Contract may be terminated on an agreed date prior to the end of the contract period without penalty to either party.
- d. The Universities may terminate this Contract without penalty for any reason by giving a 30- calendar day notice.
- e. *Non-Appropriation of Funds* Notwithstanding any other provisions of this Contract, if funds anticipated for the continued fulfillment of this Contract are at any time not forthcoming or insufficient, either through the failure of the Iowa Legislature or the Federal government to provide funds or alteration of the program under which funds were provided, then the Universities shall have the right to terminate the Contract without penalty by giving written notice documenting lack of funding.
- f. *Convenience of the Federal Government* Notwithstanding any other provisions of this Contract, if this Contract is federally funded then Universities shall have the right to terminate this Contract at the direction of the Federal Government for convenience with 30 calendar days written notice. If allowed by the Federal Government, Universities will pay the Supplier for work performed up to the point notice was received by the Supplier.
- g. *Supplier Termination Duties.* Unless stated otherwise in this Contract, Supplier shall upon termination of this Contract: (i) cease all work under this Contract and remove Supplier's property from Universities' premises if applicable; (ii) cease using Universities trademarks, service marks, and similar items; (iii) cease using and return to Universities within 30 days of termination the materials, data, or other personal property provided by Universities to Supplier; (iv) transfer to Universities within 30 days of termination the work product produced by Supplier under this Contract; (v) submit invoices to Universities within 30 days of termination for any goods or services provided to Universities prior to termination but not previously invoiced; and (vi) refund to Universities within 30 days of termination any payments made by Universities to Supplier for goods not delivered or services not rendered by Supplier and any pre-payments made by Universities to Supplier for services that Supplier would have been obligated to perform after the termination date if this Contract had not been terminated.
- h. *Universities Termination Duties.* Unless stated otherwise in this Contract, Universities shall upon termination of this Contract pay to Supplier undisputed invoices for goods and services provided prior to the termination of this Contract unless Universities are prohibited from doing so by the Iowa legislature, federal government, or sponsoring entity. Universities shall have no obligation to pay future amounts due under this Contract.

10. **TAXES.** The Universities are exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Supplier's employees' wages. The Universities are exempt from State and Local Sales and Use Taxes on the services. Tax Exemption Certificates will be furnished upon request.

Supplier certifies it is either:

- a. registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by the Code of Iowa Chapter 423; or
- b. not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in the Code of Iowa §§ 423.1(47) & (48). Supplier also acknowledges that the Universities may declare the Contract void if the above certification is false. Supplier also understands that fraudulent certification may result in the Universities or its representative filing for damages for breach of contract.

11. **SOFTWARE ACCESSIBILITY.** Technology provided to the Iowa Regent Universities shall comply with World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.1 AA and Revised Section 508 Standards for accessibility for persons with disabilities. Technology includes, but is not limited to, software,

hardware, web applications, web pages, websites, and nonweb technologies. The Universities reserves the right to request that the Supplier provide acceptable audit and/or test results that document the technology's compliance and the testing methodology utilized. If the technology provided by Supplier does not meet WCAG 2.1 AA and Revised Section 508 standards, the Universities may demand that the Supplier promptly make modifications that will bring them into compliance. In addition, the Universities may take whatever steps necessary to ensure compliance with the above listed standards and may subtract any costs arising from such mitigation effort from future fees payable to Supplier under any resultant Contract.

12. **COMPLIANCE WITH LAWS.** Supplier, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, and orders when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or suppliers. Supplier, its employees, agents, and subcontractors shall also comply with all federal, state, and local laws regarding business permits and licenses that may be required to carry out the work performed under the Contract. Supplier may be required to submit its affirmative action plan to the State of Iowa Department of Management to comply with the requirements of 11 IAC 121. If Supplier will be on Universities' property, Supplier shall comply with the policies, rules, and directives of Universities.

13. **DATA PRIVACY AND SECURITY LAWS.** Supplier shall comply with all applicable international, federal, state, and/or local data privacy laws, including, but not limited to, the European Union General Data Protection Regulation, the Personal Information Protection Law of the People's Republic of China, and the Data Security Law of the People's Republic of China.

14. **EXPORT CONTROL.** Supplier shall comply with all U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 774, in the performance of this Contract. In the absence of available license exemptions/exceptions, Supplier shall be responsible for obtaining the appropriate licenses or other authorizations, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance. Supplier shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

Prior to disclosing or transferring to the Universities any hardware, technical data, software or product utilizing any hardware or technical data or software which is subject to export controls under federal law, Supplier shall notify the Universities in writing of the nature and extent of the export control. The Universities shall have the right to decline any such technical data or product utilizing such data. In the event Supplier sends any such technical data or product that is subject to export control, without notice of the applicability of such export control, the Universities has the right to immediately terminate this Contract.

15. **PACKAGING, TRANSPORTATION, AND HANDLING.** All packaging, transportation and handling of hazardous materials shall be in accordance with applicable federal and state regulations including, but not limited to, the Material Safety Data Sheet provision of O.S.H.A. Hazard Communication Standard 29 CFR 1910.1200, and Iowa Administrative Code.

16. **GOVERNMENTAL IMMUNITY.** The Iowa Tort Claims Act, Iowa Code Chapter 669, limits the liability of Universities Iowa Board of Regents, the State of Iowa (collectively, the "State Entities"), and their officers, employees, and agents. In addition, Article VII, Section 1 of the Constitution of the State of Iowa prohibits State Entities from being responsible for the debts or liabilities of any individual, association, or corporation. Any provision in this Contract will be deemed modified to limit the liability of the State Entities and their officers, employees, and agents as set forth in these laws. Universities reserves any immunities, defenses, or other limitations on liability to which Universities are entitled by law.

17. **FORCE MAJEURE.** If a Force Majeure Event prevents a party from complying with an obligation under this Contract, the inability to comply will not constitute a breach of this Contract. "Force Majeure Event" means an event beyond the reasonable control of the party and incapable of being avoided by the party through the exercise of reasonable care. "Force Majeure Event" specifically excludes increases in prices, changes in economic conditions, financial difficulties of the party, strikes or labor unrest within the party's workforce, or

delay or failure to perform by the party's subcontractor unless the subcontractor's delay or failure is caused by a Force Majeure Event. If a Force Majeure Event occurs, the noncomplying party shall promptly notify the other party of the Force Majeure Event, its effect on the party's performance, and how long the noncomplying party expects it to last. The noncomplying party shall update that information as reasonably necessary. During a Force Majeure Event, the noncomplying party shall use reasonable efforts to limit damages to the other party and to resume its performance under this Contract. If Supplier's performance is delayed more than 30 days, then Universities may terminate this Contract by giving notice to Supplier.

18. **USE BY OTHER ENTITIES**. The parties agree that other public entities, including state agencies, local governments, local school systems, and public institutions of higher education (each a "Public Entity"), may utilize the terms of this Contract to purchase goods and services from Supplier. Universities may provide a Public Entity with a copy of this Contract so that the Public Entity can determine whether it wishes to procure the goods or services pursuant to the terms of this Contract. A Public Entity wishing to enter into a contract to procure goods or services pursuant to the terms of this Contract must issue to Supplier its own purchase order or similar document that references this Contract and incorporates it by reference or may, at its option, choose to have a copy of this Contract executed in its own name with Supplier. Universities shall incur no obligations or liability under the contract between Supplier and the Public Entity. Supplier shall look solely to the Public Entity for payment and the fulfillment of other obligations in the contract between the Public Entity and Supplier.
19. **COOPERATION WITH SPONSOR REQUIREMENTS**. If Universities are using funds received from the federal government or other sponsoring entity to procure the goods and services, Universities may need information, documentation, certifications, and similar items from Supplier or may need to permit a representative of the federal government or sponsoring entity to access Supplier's facilities in order to fulfill University's obligations to the federal government or sponsoring entity. If requested to provide these items or access, Supplier shall timely provide the items and access.
20. **SUBCONTRACTORS**. If Supplier did not previously identify a subcontractor in a Proposal submitted by Supplier to Universities in connection with this Contract, Supplier shall obtain written approval from Universities prior to the subcontractor starting work for this Contract. Supplier shall enter into a contract with the subcontractor that contains provisions preserving the rights of Universities and requiring the subcontractor to perform its work in compliance with this Contract. Supplier shall remain responsible for goods provided and services performed under this Contract and for the acts and omissions of the subcontractor. Supplier shall be responsible for payment to its subcontractors.
21. **NON-EXCLUSIVE**. This Contract is not exclusive. Universities may select other Suppliers to provide goods or services similar or identical to the goods or services provided by Supplier to Universities, and Supplier may provide to other client's goods and services similar or identical to the goods and services provided by Supplier to Universities.
22. **NOTICE**. All notices under this Contract shall be in writing and shall be deemed to have been given by one of the following methods:
 - a. upon hand delivery
 - b. the next business day after sending by a nationally recognized overnight carrier with written confirmation of receipt
 - c. if sent by email, when the recipient acknowledges having received the email. Unless otherwise stated in this Contract, Supplier shall deliver notices to the address or e-mail address of University's Agent identified on the purchase order. Unless otherwise stated in this Contract, Universities shall deliver notices to Supplier at Supplier's address on the purchase order or the e-mail address provided by Supplier.
23. **AMENDMENTS**. No modification of this Contract will be effective unless it is in writing and signed by the parties.

24. **CUMULATIVE REMEDIES: FAILURE TO ENFORCE.** Except as otherwise stated in this Contract, the remedies provided in this Contract are in addition to any other remedies a party may have at law or in equity. A failure to enforce an obligation or exercise a right or remedy under this Contract will not preclude a party from enforcing the obligation or exercising the right or remedy on other occasions.
25. **ENTIRE CONTRACT.** This Contract is the entire contract between the parties. Unless otherwise specified in this Contract, this Contract supersedes all prior contracts or agreements between Universities and Supplier for the goods and services provided in this Contract.
26. **UNIVERSITY MARKS.** Supplier shall not use the name, trademarks, service marks, or logos of Universities ("University Marks") or the name of any Universities employees in any publicity, advertisement, or endorsement or as a business reference without the prior written consent of Universities.
27. **ELECTRONIC SIGNATURES.** Universities and Supplier consent to the use of electronic signatures in connection with the signing of this Contract. The parties agree the electronic signatures shall be legally binding with the same force and effect as manually executed signatures if they are made using a technology designed for electronic signatures (e.g., DocuSign, Adobe Sign).
28. **INTELLECTUAL PROPERTY RIGHTS.** Unless otherwise provided in this Contract, any computer programs, software, data, reports, documentation, media, copyrightable work, discoveries, inventions, or other items created, developed, or produced under this Contract ("Work Product") are the sole and exclusive property of Universities and any copyrightable Work Product shall be deemed a "work for hire" under United States copyright laws. If the Work Product is not a "work for hire" under United States copyright law, Supplier hereby irrevocably assigns to Universities all right, title, and interest in the Work Product, including all intellectual property rights, effective from the moment of creation of the Work Product. If Supplier incorporates in the Work Product items not created, developed, or produced under this Contract ("Supplier Proprietary or Third Party Material") or if the Work Product requires Supplier Proprietary or Third Party Material to operate or be useable, Supplier hereby grants Universities a nonexclusive, royalty-free, perpetual, irrevocable license (with the right to sublicense) to make, have made, reproduce, distribute, modify, prepare derivative works of, display, perform, sell, and otherwise use Supplier Proprietary or Third Party Material in connection with the Work Product. Supplier shall sign documents and provide assistance reasonably requested by Universities to confirm University's interest in the Work Product and its license to Supplier Proprietary or Third Party Material.
29. **CONFIDENTIAL INFORMATION.**
- a. *Definitions.* **"Confidential Information"** means the following items disclosed or received in connection with this Contract: (i) student records; (ii) personnel records; (iii) medical records; (iv) consumer records; (v) social security numbers; (vi) credit card numbers, bank account numbers, and similar identifiers for financial accounts; (vii) Audit Reports (defined below); (viii) information disclosed by Discloser to Recipient in tangible form that is marked "confidential" or "proprietary" or similar legend; and (ix) information disclosed orally by Discloser to Recipient that is orally designated as confidential or proprietary at the time of disclosure and that is designated as such in writing within two weeks of such disclosure. The term "Confidential Information" shall not be deemed to include information that (i) is or becomes a matter of public knowledge through no act or omission of Recipient; (ii) was in Recipient's lawful possession prior to the disclosure without restriction on disclosure; (iii) is lawfully disclosed to Recipient by a third party that lawfully and rightfully possesses such information without restriction on disclosure; or (iv) information that Recipient can document resulted from its own research and development, independent of receipt of the disclosure from Discloser.
- "Discloser"** means the party providing the Confidential Information.
- "Recipient"** means the party receiving the Confidential Information.
- "PII"** means personally identifiable information, such as the following items, disclosed or received in connection with this Contract: (i) Confidential Information that can be used, either alone or when

combined with other information, to identify a specific student, employee, patient, consumer, or other individual; (ii) social security numbers; and (iii) credit card numbers, bank account numbers, and similar identifiers for financial accounts.

- b. *Use.* Recipient may use Confidential Information only if required to accomplish the purpose of this Contract. Recipient shall not use Confidential Information for any other purpose or reverse engineer, decompile, or disassemble Confidential Information without the prior written consent of Discloser.
- c. *Disclosure.* Recipient shall not disclose Confidential Information to any third party, except as provided in this Contract or with written permission of Discloser. Recipient may disclose Confidential Information on a need-to-know basis to its employees, agents, or contractors if Recipient requires them to abide by the terms of this Contract. If Recipient is legally required to disclose Confidential Information, Recipient shall notify Discloser no less than 10 days prior to the disclosure (unless legally prohibited from doing so) to afford Discloser the opportunity to take legal action to prevent or limit the scope of such disclosure.
- d. *Standard of Care.* Recipient shall take the same precautions to protect Confidential Information from unauthorized access, use, or disclosure as Recipient employs with respect to its own confidential information of a like nature, but in no case shall Recipient employ less than reasonable precautions. If the Confidential Information contains PII, the precautions must include administrative, physical, and technical safeguards to protect the security and integrity of the PII in accordance with industry standards. If Recipient has access to or stores PII electronically, Recipient shall no less than annually obtain a SSAE 16(SOC2)/ISAE 3402 (Type 2) or similar third party audit report and an application penetration test of the system that will access or store PII ("**Audit Reports**"). Recipient shall promptly remediate any material deficiencies identified in the Audit Reports. Upon Discloser's request, Recipient shall provide Discloser with a copy of the Audit Reports.
- e. *Remediation of Unauthorized Disclosures.* Recipient shall notify Discloser within 48 hours of learning of any loss or unauthorized access, use, or disclosure of Confidential Information ("**Security Breach**"). Recipient shall: (i) designate and make available to Discloser a knowledgeable contact person with whom Discloser may communicate regarding the Security Breach, (ii) submit status reports to Discloser on a daily basis or a frequency approved by Discloser, and (iii) provide Discloser with information about the Security Breach as reasonably requested by Discloser. Recipient shall cooperate and coordinate with Discloser in addressing the response to the Security Breach. If Recipient's breach of this Contract results in the loss or unauthorized access, use, or disclosure of PII, Discloser may submit to Recipient an invoice for reasonable, documented costs Discloser incurs in connection with the Security Breach, including the following: (i) providing notification of the Security Breach to relevant government and industry self-regulatory agencies, credit bureaus, the media (if required by applicable law), and individuals whose PII may have been lost, accessed, misused, or disclosed ("**PII Subjects**"); (ii) providing credit monitoring and/or identity restoration services to PII Subjects who elect the service for a period of one year after the date on which those individuals were notified of the Security Breach; (iii) operating a call center to respond to questions from PII Subjects for a period of one year after the date on which those individuals were notified of the Security Breach; and (iv) any fines or penalties levied against Discloser.
- f. *Proprietary Rights.* Unless stated otherwise in this Contract, Discloser retains all title and rights to its Confidential Information. Recipient shall not remove any copyright or trademark notice, proprietary legend, or indication of confidentiality set forth on or contained in Confidential Information.
- g. *Return of Confidential Information.* Upon written request from Discloser, Recipient shall return to Discloser or destroy Confidential Information and any copies made by Recipient. If requested by Discloser, Recipient shall provide a certification that Confidential Information was destroyed (if applicable).
- h. *FERPA.* University is an educational institution subject to the Family Educational Rights and Privacy Act ("**FERPA**"). If Supplier has access to records relating to students while performing its obligations under this Contract, Supplier agrees that it is a "**School Official**" (as that term is used in FERPA) and shall comply with all obligations of a School Official with respect to the access and disclosure of the records.
- i. *HIPAA.* If University determines Supplier may have access to data that is protected by the Health

Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), the parties shall execute a Business Associate Agreement that complies with all then-applicable regulations promulgated pursuant to HIPAA.

- j. *PCI DSS*. If Supplier has access to or will collect, store, process, use, or transmit credit, debit, or other payment cardholder information while performing its obligations under this Contract, Supplier shall comply with the Payment Card Industry Data Security Standard ("**PCI DSS**").

FEDERAL COMPLIANCE. The Universities may have received a federal grant or have entered into an agreement with another entity that is the recipient of a federal grant. Universities may be using funds from that grant to procure the goods or services in this Contract. The grant requires Universities to include provisions covering the following in all contracts using the grant funds. Universities cannot deviate from or alter these provisions. Clauses in this document may not be applicable to this Contract due to the type of goods or services to be provided, dollar thresholds, type of funding or other reasons. Clauses that are not applicable are deemed self-deleting, shall not be removed from this document, and will be considered by all parties to be without force and effect. Supplier shall comply with these provisions, as applicable, and shall include them in its subcontracts. These provisions are also electronically available in [Appendix II to 2 CFR Part 200](#). Where necessary to make the context of these provisions applicable to this Contract, the terms “non-Federal entity” and “recipient” shall mean “Supplier”.

Equal Employment Opportunity - Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

Davis-Bacon Act, as amended (40 U.S.C. 3141-3148) - When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) - Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Rights to Inventions Made Under a Contract or Agreement - If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient

must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Procurement of recovered materials (2 CFR §200.322) - A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines

Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793) - This Contractor and Subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

This Contractor and Subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.