

UNIVERSITY OF KENTUCKY GENERAL TERMS AND CONDITIONS

1. **Definitions:**

Contract – The entire written agreement between the parties including, but not limited to, the Invitation for Bid or Request for Proposal and its specifications, terms, and conditions, solicitation instructions, solicitation addenda, contractor’s offer, the contract document, and contract amendments if any, including, without limitations, these General Terms and Conditions and the purchase order or price agreement document excluding correspondence of any type unless specifically accepted by both parties in writing.

Contractor – A person, company, corporation, organization or other legal entity with whom the University has executed a Contract.

University – The University of Kentucky, an agency and instrumentality of the Commonwealth of Kentucky.

“Authorized Employees” means Contractor’s employees or work force members (as defined by 45 C.F.R. 160.103) who have a need to know or otherwise access University Data to enable Contractor to perform its obligations under this Agreement.

“Authorized Persons” means (i) Authorized Employees; and (ii) Contractor’s contractors, agents, outsourcers, and auditors who have a need to know or otherwise access University Data to enable Contractor to perform its obligations under this Agreement, and who are bound in writing by confidentiality and data protection obligations, including, without limitation, those set forth in a business associate agreement, sufficient to protect University Data in accordance with the terms and conditions of this Agreement.

“University Data” means any information, in an electronic, written, or oral form, that is made available to the Contractor by the University. University Data includes, but is not limited to, PII, trade secrets, sales and marketing plans, financial data, supplier information, and intellectual property.

“Personally Identifiable Information (PII)” means any information about an individual, including (1) any information that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII, includes, but is not limited to, Personal Information as defined by KRS 61.931(6) and Protected Health Information (PHI) as defined by 45 CFR 160.103.

2. **Applicability of General Terms and Conditions:**

These terms are in addition to the terms and conditions set forth in any solicitation document and/or purchase agreement and should be read in conjunction with the same unless the document indicates otherwise. To the extent that Contractor terms and conditions conflict with these University of Kentucky General Terms and Conditions, the latter shall control. Either party’s failure to insist upon the performance of any provision of these General Terms and Conditions shall not be construed as a waiver of that party’s present or future right to such performance and each party’s obligation in respect thereto shall continue in full force and effect.

3. Contract Provisions by Reference:

It is mutually agreed by and between the University and the Contractor that the University's acceptance of the Contractor's offer by the issuance of a Purchase Order or Contract shall create an agreement between the parties thereto containing the following:

- All specifications, terms and conditions in the solicitation document except as amended in the contract.
- The provision of the awarded contract to include all terms, special conditions, specifications, and the Contractor's offer.
- The University of Kentucky General Terms and Conditions.

Unless otherwise specified, in the event of any conflicts, the documents shall control in the following order:

- 1) the written contract or purchase order (if any);
- 2) contractor's exceptions, if expressly accepted by University;
- 3) the RFP, bid or other solicitation document;
- 4) University of Kentucky General Terms and Conditions; and
- 5) Contractor's offer.

4. Governing Law:

The contractor shall conform to and observe all laws, ordinances, rules and regulations of the United States of America, Commonwealth of Kentucky and all other local governments, public authorities, boards or offices relating to the property or the improvements upon same (or the use thereof) and will not permit the same to be used for any illegal or immoral purposes, business or occupation. The resulting contract shall be governed by Kentucky law and any claim relating to this contract shall only be brought in the Franklin Circuit Court in accordance with KRS 45A.245.

5. Indemnification:

The Contractor shall indemnify, hold and save harmless the University, its affiliates and subsidiaries and their officers, agents, and employees from losses, claims, suits, actions, expenses, damages, costs (including attorney fees of attorneys of the University's choice and court costs) expenses, all liability of any nature or kind arising out of or relating to the Contractor's performance hereunder. This clause shall survive the termination of any contract for as long as necessary to protect the University.

6. Insurance:

The successful Contractor shall procure and maintain, at its expense, the following minimum insurance coverages insuring all services, work activities and contractual obligations undertaken in this contract. These insurance policies must be with insurers acceptable to the University. Insurance requirements may be modified in the Special Conditions of any solicitation document. In such cases, the insurance requirements of the Special Conditions shall prevail.

COVERAGES

Workers' Compensation

Employer's Liability

Commercial General Liability, including operations/ completed operations, products, and contractual liability (including defense and investigation costs) including this contract.

Business Automobile Liability, covering owned, leased, or non-owned autos

LIMITS

Statutory Requirements (Kentucky)

\$500,000/\$500,000/\$500,000

\$1,000,000 each occurrence (BI & PD combined) \$2,000,000 Products and Completed Operations Aggregate

\$1,000,000 each occurrence (BI & PD combined)

The successful Contractor agrees to furnish Certificates of Insurance for the above described coverage's and limits to the University of Kentucky Division of Purchasing. The University, its trustees and employees must be added as Additional Insured on the Commercial General

Liability policy with regards to the scope of this RFP/contract. Any deductibles or self-insured retention in the above-described policies must be paid and are the sole responsibility of the Contractor. Coverage is to be primary and non-contributory with other coverage, if any, purchased by the University. All of these required policies must include a Waiver of Subrogation, except Workers' Compensation, in favor of the University, its trustees and employees.

7. Termination for Convenience:

The University of Kentucky, Purchasing Division, reserves the right to terminate the resulting contract without cause with a thirty (30) day written notice. Upon receipt by the contractor of a "notice of termination," the contractor shall discontinue all services with respect to the applicable contract. The cost of any agreed upon services provided by the contractor will be calculated at the agreed upon rate prior to a "notice of termination" and a fixed fee contract will be pro-rated (as appropriate).

8. Termination for Non-performance:

Default

The University may terminate the resulting contract for non-performance, as determined by the University, for such causes as:

- Failing to provide satisfactory quality of service, including, failure to maintain adequate personnel, whether arising from labor disputes, or otherwise any substantial change in ownership or proprietorship of the Contractor, which in the opinion of the University is not in its best interest, or failure to comply with the terms of this contract;
- Failing to keep or perform, within the time period set forth herein, or violation of, any of the covenants, conditions, provisions or agreements herein contained;

- Adjudicating as a voluntarily bankrupt, making a transfer in fraud of its creditors, filing a petition under any section from time to time, or under any similar law or statute of the United States or any state thereof, or if an order for relief shall be entered against the Contractor in any proceeding filed by or against contractor thereunder. In the event of any such involuntary bankruptcy proceeding being instituted against the Contractor, the fact of such an involuntary petition being filed shall not be considered an event of default until sixty (60) days after filing of said petition in order that Contractor might during that sixty (60) day period have the opportunity to seek dismissal of the involuntary petition or otherwise cure said potential default; or
- Making a general assignment for the benefit of its creditors, or taking the benefit of any insolvency act, or if a permanent receiver or trustee in bankruptcy shall be appointed for the Contractor.

Demand for Assurances

In the event the University has reason to believe Contractor will be unable to perform under the Contract, it may make a demand for reasonable assurances that Contractor will be able to timely perform all obligations under the Contract. If Contractor is unable to provide such adequate assurances, then such failure shall be an event of default and grounds for termination of the Contract.

Notification

The University will provide ten (10) calendar days written notice of default. Unless arrangements are made to correct the non-performance issues to the University's satisfaction within ten (10) calendar days, the University may terminate the contract by giving forty-five (45) days notice, by registered or certified mail, of its intent to cancel this contract.

9. Attorney's Fees:

In the event that either party deems it necessary to take legal action to enforce any provision of the contract, and in the event the University prevails, the Contractor agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation.

10. Breach of University Data:

Contractor acknowledges and agrees that, in the course of its engagement by University, Contractor may receive or have access to University Data. Contractor shall comply with the terms and conditions set forth in this Agreement and the Business Associate Agreement between University and Contractor in its collection, receipt, transmission, access, storage, disposal, use and disclosure of such University Data and be responsible for the unauthorized collection, receipt, transmission, access, storage, disposal, use and disclosure of University Data under its control or in its possession by all Authorized Persons. Contractor shall be responsible for, and remain liable to, University for the actions and omissions of all Authorized Persons that are not Authorized Employees concerning the treatment of University Data as if they were Contractor's own actions and omissions.

In recognition of the foregoing, Contractor agrees and covenants that it shall:

- keep and maintain all University Data in strict confidence, using such degree of care as is appropriate to avoid unauthorized acquisition, access, use or disclosure;

- use and disclose University Data solely and exclusively for the purposes for which the University Data, or access to it, is provided pursuant to the terms and conditions of this Agreement, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available University Data for Contractor’s own purposes or for the benefit of anyone other than University, in each case, without University’s prior written consent;
- not, directly or indirectly, disclose University Data to any person other than its Authorized Employees, including any, subcontractors, agents, outsourcers or auditors (an “Unauthorized Third Party”), without express written consent from University unless and to the extent required by applicable law, in which case, Contractor shall (i) notify University before such disclosure or as soon thereafter as reasonably possible; (ii) be responsible for and remain liable to University for the actions and omissions of such Unauthorized Third Party concerning the treatment of such University Data as if they were Contractor’s own actions and omissions; and (iii) require the Unauthorized Third Party that has access to University Data to execute a written agreement agreeing to comply with the terms and conditions of the Contract, including, without limitation, executing a business associate agreement where applicable;
- abide by all applicable federal and state laws, rules, and regulations regarding privacy and confidentiality, including PII and otherwise; and
- limit the acquisition, access, use and disclosure of University Data to Authorized Persons only in the amount minimally necessary for Contractor to perform its obligations under this Agreement.

11. Regulatory Requirements and General IT Controls:

Contractor shall implement administrative, physical and technical safeguards to protect data that are no less rigorous than accepted industry practices including the International Organization for Standardization's standards: ISO/IEC 27001:2013 (Information Security Management Systems – Requirements) and ISO-IEC 27002:2013 (Code of Practice for International Security Management) and shall ensure that all such safeguards, including the manner in which data is created, received, maintained, transmitted, collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.

12. Auditing of University Data:

Contractor represents and warrants that it maintains adequate internal audit functions to annually assess internal controls in its environment, and to protect the security and confidentiality of any of University’s data. Contractor agrees to provide documentation regarding its internal controls to University upon request. Contractor will provide to University all internal or external audit reports, certifications, information, documentation, electronic records and data regarding Contractor’s internal controls, and if requested by University, Contractor will grant University and its University agents or subcontractors, the right to audit Contractor’s operations, systems and software to confirm internal controls are present and operating.

If the information presented to University regarding Contractor’s internal controls is not acceptable to University in its reasonable discretion, Contractor agrees that it will undertake, at its sole cost and expense, an independent SSAE 16 Type II audit or comparable independent attestation to confirm Contractor’s controls over its processes. Contractor shall present an action plan acceptable to

University, to correct any and all portions of the systems, software, products, documentation, or internal controls. Contractor shall undertake all activities relating to its preparation of the action plan, and to its correction of any inadequate controls or mitigation of risks revealed by deficiencies in its internal controls at Contractor's sole cost and expense and within a reasonable time period as agreed upon by University. Should Contractor fail to provide adequate internal controls as described in the Contract, or to present an action plan acceptable to University within the mutually agreed upon time frame, University shall be entitled, in its sole discretion, to terminate the Contract with no liability whatsoever to Contractor upon written notice to the Contractor.

13. Contractor Personnel:

Upon University request, Contractor shall be responsible, at its sole cost and expense, for conducting full background checks on any and all employees, consultants, independent contractor, or work force members (as defined by 45 C.F.R. 160.103) that Contractor intends to utilize in providing services to University. Such background checks shall cover a period of not less than five years prior to the date the background check is initiated and shall include but is not limited to the following: comprehensive review of criminal history, drug test and screen, credit review, and a confidentiality agreement regarding access to University information signed by the individual. At the University's sole and absolute discretion, the results of the background check or drug screening are unsatisfactory to University, University can refuse to accept any such proposed Consultant or personnel, and Contractor shall provide University with another Consultant, or personnel that passes the background screening and drug testing procedures to University's satisfaction at no additional cost to University.

14. Compensable Damages for Breach:

The Contractor agrees that the following items shall be included as compensable damages for any breach of a contract with the University.

- Replacement costs.
- Cost of repeating the competitive bidding procedure expenses.
- Expenses incurred as the result of delay in obtaining replacements.

The enumeration of compensable damage contained in this section is not intended to be exclusive and will not operate to bar recovery by the University for any other damages occasioned by the Contractor's breach of a contract. However, in cases where contract provides for liquidated damages, said liquidated damages shall be in lieu of all other damages, including those enumerated

15. Assignment and Subcontracting:

The Contractor(s) may not assign or delegate its rights and obligations under any contract in whole or in part without the prior written consent of the University. Any attempted assignment or subcontracting shall be void.

16. Contractor's Responsibility in Performing Work:

The Contractor is solely responsible for the fulfillment of the contract with the University.

Contractor and its agents, subcontractors, and representatives shall be independent contractors and not act as agents of the University. All persons furnished or retained by Contractor in connection with any contract shall be considered employees or agents of the Contractor.

Contractor shall control all employee misconduct while on the University's premises. Any employee under the influence of alcohol or controlled substances, other than prescription medications, shall not be allowed on the premises of the University and shall be permanently dismissed if found to be so. Further, offensive language, sexual or other types of harassment of students, employees or visitors to the University campus could result in immediate and permanent dismissal of the offending person(s) from the University site.

Contractor shall comply with the University's tobacco-free policy. This policy prohibits the use of tobacco in or around its facilities including UK HealthCare. Additional information on this policy is available at: <http://www.uky.edu/TobaccoFree/>.

Contractor shall ensure that employees abide by any applicable University policies and regulations concerning behavior/conduct.

17. Contractor Cooperation in Related Efforts:

The University reserves the right to undertake or award other contracts for additional or related work to other entities. The contractor shall fully cooperate with such other contractors and University employees and carefully fit its work to such additional work. The contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by University employees. This clause shall be included in the contracts of all contractors with whom this contractor will be required to cooperate. The University shall equitably enforce this clause to all contractors to prevent the imposition of unreasonable burdens on any contractor.

18. Additions, Deletions or Contract Changes:

The University reserves the right to add, delete, or change related items or services to any contract. No modification or change of any contract provision shall be made, unless such modification is mutually agreed to in writing by the Contractor and the University, and incorporated as a written modification to the contract. Memoranda of understanding and correspondence shall not be interpreted as a modification to or part of the contract, unless specifically agreed to by both parties.

19. Permits, Licenses and Taxes:

The contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations and ordinances of all federal, state and local governments in which work under this contract is performed.

The contractor must furnish certification of authority to conduct business in the Commonwealth of Kentucky as a condition of contract award. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. However, the contractor need not be registered as a prerequisite for responding to the RFP.

The contractor shall pay any sales, use, personal property and other tax arising out of this contract and the transaction contemplated hereby. Any other taxes levied upon this contract, the transaction or the equipment or services delivered pursuant hereto shall be the responsibility of the contractor.

The contractor will be required to accept liability for payment of all payroll taxes or deductions required by local and federal law including (but not limited to) old age pension, social security or annuities.

20. Royalties, Patents, Copyrights and Trademarks:

The Contractor shall pay all applicable royalties and license fees. If a particular process, products or device is specified in the contract documents and it is known to be subject to patent rights or copyrights, the existence of such rights shall be disclosed in the contract documents and the Contractor is responsible for payment of all associated royalties. To the fullest extent permitted by law the Contractor shall indemnify, hold the University harmless, and defend all suits, claims, losses, damages or liability resulting from any infringement of patent, copyright, and trademark rights resulting from the incorporation in the Work or device specified in the Contract Documents.

Unless provided otherwise in the contract, the Contractor shall not use the University's name nor any of its trademarks or copyrights, although it may state that it has a Contract with the University.

21. Copyright Ownership and Title to Designs and Copy:

Contractor and University both consider the products and results of the services to be rendered by Contractor to be a work made for hire. Contractor acknowledges and agrees that the work and all rights therein, including, without limitation, copyright, belongs to and shall be the sole and exclusive property of the University. For any work that is not considered a work made for hire under applicable law, title and copyright ownership shall be assigned to the University.

Title to all dies, type, cuts, artwork, negatives, positives, color separations, progressive proofs, plates, copy, and any other requirement not stated herein required for completion of the finished product for use in connection with any University job shall be the property of and owned by the University. Such items shall be returned to the appropriate department upon completion and/or delivery of work unless otherwise authorized by the University. In the event that time of return is not specified, Contractor shall return all such items to the appropriate University department within one week of delivery.

22. Proprietary Information, Data Duplication, and Disclosure:

Contractor agrees that any information disclosed from the University to the Contractor for the purpose of any contract shall be used only in the performance of the contract. Contractor will keep information confidential, will not disclose it to any third party except as authorized by the Owner, and will only disclose it to those within its organization who need to use it in performance of the Contract. Upon completion or termination of this contract, Contractor shall return all such information to the University or make such other disposition thereof as may be directed or approved by the University.

No item furnished under this contract, or tools, plans, designs or specifications for producing the same which have been specifically designed for by the University shall be duplicated or used by Contractor. Upon completion or termination of this contract, Contractor shall return all items, tools, plans, designs or specifications to the University or make such other disposition thereof as may be directed by or approved by the University.

Contractor agrees that it will not, without prior written approval of the University, publicize this contract or disclose, confirm or deny any details thereof to third parties, or use the University's name in connection with Contractor's sales promotion or publicity without prior written approval of the University.

Nothing in this provision shall restrict Contractor's right to use or disclose any information which is or becomes generally known to the public without breach of this provision by Contractor, or is rightfully obtained without restriction from other sources.

23. Contractor's Responsibility for Records, Audits and Reports:

Contractor 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 any contract and for a period of five (5) years thereafter, unless required to be retained for a longer period by state or federal statute. Should such audit disclose incorrect billings or improprieties, the University reserves the right to charge the Contractor for the cost of the audit and pursue appropriate reimbursement.

Contractor will be responsible for providing line item usage reports to the UK Purchasing Division on a quarterly basis. The Purchasing Division reserves the right to request other pertinent reports.

24. Non-discrimination and Equal Opportunity:

Contractor shall comply with the University's nondiscrimination policy and shall not in its operations or employment practices discriminate on the basis of race, color, national origin, ethnic origin, religion, creed, age, physical or mental disability, veteran status, uniformed service, political belief, sex, sexual orientation, gender identity, gender expression, pregnancy, marital status, genetic information, social or economic status, or smoker or nonsmoker status, as long as the person complies with the University's policy concerning smoking.

Contractor is subject to and shall comply with all applicable Federal, state and local laws and regulations governing equal employment opportunity and affirmative action including, but not limited to, the Kentucky Equal Employment Act of 1978 (KRS 45.550 et. seq. of the Kentucky Revised Statutes) and the Federal requirements set forth in Titles VI and VII of Civil Rights Act of 1964, as amended; Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; Executive Order 11246 as amended; The Age Discrimination in Employment Act of 1967, as amended; the Age Discrimination Act of 1975, as amended; The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; Title II of the Genetic Information Nondiscrimination Act of 2008, as amended; and all regulations and administrative rules established pursuant to the foregoing laws.

25. Contractor and Subcontractor Responsibility with Federally Funded Contracts:

Contractor shall abide by the requirements of 41 CFR §§ 60-1.4(a). This regulation prohibits discrimination against qualified individuals because of race, color, religion, sex, sexual orientation, gender identity or national origin.

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.

Contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals based 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.

During the performance of this Contract, Contractor agrees as follows:

(a) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) Contractor will, in all solicitation or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.

(c) Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.

(d) Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Contract or understanding, a notice advising the said labor union or workers' representative of Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

(e) Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

(f) Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(g) In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government Contracts or Federally-assisted construction Contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) Contractor will include the provisions of paragraphs (1) through (8) of Section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

26. Open Records:

Any contract with the University, and all related information and documentation may be subject to public disclosure under the Kentucky Revised Statutes 61.870 et. seq. Contractor is hereby notified that the University strictly adheres to this statute and the interpretations thereof rendered by the courts and the Kentucky Attorney General. Contractor shall be deemed to have knowledge of this law and the means of protecting Contractor's legitimate interests.

27. Debarred, Suspended and Ineligible Status:

Contractor certifies that is has not been debarred, suspended, or declared ineligible as defined in the Federal Acquisition Regulation (FAR 48 C.F.R Ch. 1 Subpart 9.4). Contractor will immediately notify the University if the Contractor is placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors.

28. Conflicts of Interest:

Contractor affirms that, to the best of Contractor's knowledge, there exist no conflicts of interest between the Contractor of the University or its employees as defined by all applicable Kentucky Revised Statutes and University of Kentucky ethics and compliance policies and procedures.

In the event of change in Contractor's interests, Contractor shall inform the University regarding any conflicts of interest that are likely to arise as a result of such change. Contractor hereby represents that it has not participated in any illegal or unethical conduct in connection with the contract. If, at any time, the University determines the Contractor is in violation of the forgoing representation, the University may cancel the contract upon written notice to the Contractor and the University shall have no further obligation to the Contractor.

29. General Warranties:

Contractor warrants that all goods shall conform to the specifications of the contract and shall be merchantable, free from defects (including defects in design and fit) and suitable for the intended purposes. Contractor further warrants that all services shall conform to the specifications of the contract and shall be performed in a professional and workmanlike manner. These warranties shall remain in effect for at least one year following University's acceptance of the goods or services or for the duration of Contractor's standard warranty period if such period exceeds one year. The foregoing warranties are in addition to, and shall not limit, any other warranties or buyer protections that exist by operation of law.

30. Price Warranty:

Contractor warrants that the price(s) for the articles or services sold to the University hereunder are not less favorable than those extended to any other customer (whether government or commercial) for the same or similar articles or services in similar quantities. In the event Contractor reduces its price(s) for such articles or services during the term of this contract, Contractor agrees to reduce the prices hereof accordingly. Contractor warrants that prices shown on this contract shall be complete, and no additional charges of any type shall be added without the University's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, customs, duties, taxes, storage, insurance, boxing and crating.

31. Final Inspection and Acceptance:

The University reserves the right to perform inspection and/or expediting of the materials and fabrication thereof at the facility of the Contractor or its suppliers at any reasonable times. All materials and services are subject to final inspection and acceptance by the University at destination, notwithstanding any prior payments or inspection at the source. Such final inspection shall take place within thirty (30) days from the date of delivery or installation or completion of services which ever is latest.

In addition to other remedies which may be available under law or in equity, when services are not delivered on the date agreed on by the contractor and the University, or if inferior or incomplete work is found, the Purchasing Division (in concurrence with the department) reserves the right to reject such materials and request replacement as stated above or authorize the contractor to issue a credit based on the University's cost for all material found unacceptable the University, at its option may return to the Contractor any nonconforming or defective item(s), at no cost to the University, and require correction or replacement of the item(s). If the University does not require correction or replacement of nonconforming or defective item(s), Contractor shall repay such portion of the contract price or such additional amount as is equitable under the circumstances. The rights of the University are in addition to and shall not be limited by Contractor's standard warranties.

32. Delivery, Transportation and Packaging:

The Contractor covenants that, if awarded a contract, the Contractor shall:

Adequately pack all commodities and equipment according to accepted commercial practice and according to the packing and marking instructions stated in the contract documents or purchase order.

Make deliveries as stated in the contract; it is understood by the Contractor that all deliveries shall be made by the end of the University's fiscal year in which the contract is awarded unless otherwise specified in a specific contract.

Make deliveries during normal working day hours to the point or points specified in the contract documents or purchase order unless otherwise noted.

33. Price Redetermination:

Prices quoted shall be firm and fixed unless otherwise stipulated in the Special Conditions of the Invitation For Bid. For multiple year contracts, prices shall remain firm and fixed during the initial term of the contract. At the end of the initial contract term, and at the end of each contract term thereafter, the Contractor may request a price adjustment. Such requests must be submitted in writing at least 60 calendar days prior to the end of the contract term and shall include the cause for the adjustment, the amount of change requested, and documentation to support the requested adjustment.

Only pass through price adjustments will be considered and any proposed price increase must be proven to be general throughout the industry. Requests for price increases must be accompanied by sufficient documentation to justify the request including, for example, certified letters from a manufacturer or published price indices such as the Producer Price Index that substantiate a price increase.

The University Contracting Officer must agree to and approve any proposed price adjustment before its effective date. The adjusted price(s) become effective starting with the term beginning after the approval and shall be firm and fixed for the next contract term.

34. Procurement Card:

The University utilizes a procurement card program as a method of payment. The University assumes that all successful bidders will accept the University's procurement card as a method of payment unless a specific exception is stated in the bidder's response to the Invitation For Bid. No additional charges may be added for acceptance of the procurement card.

35. Freight:

The University's freight terms are F.O.B. destination, freight prepaid and allowed. If shipment is indicated on the purchase order as freight prepaid and added, the Contractor will prepay the freight charges and, if mutually agreed to, add them to the invoice. Separate freight invoices will not be accepted. Collect shipments will be returned at Contractor's expense unless otherwise instructed by the University.

36. Damaged or Inferior Material:

When services are not delivered on the date agreed on by the contractor and the University, or if inferior or incomplete work is found, the Purchasing Division (in concurrence with the department) reserves the right to reject such materials and request replacement as stated above or authorize the contractor to issue a credit based on the University's cost for all material found unacceptable.

37. University of Kentucky HealthCare Enterprise:

The University of Kentucky includes a clinical enterprise, UK HealthCare, which consists of the Colleges of Medicine, Dentistry, Pharmacy, Nursing, Health Sciences and Public Health, the University Hospital Ambulatory Surgery Center, a multi-site physician group practice known as the Kentucky Clinic, and such other facilities as may be added from time to time which provide education, research, and an array of clinical programs. When providing goods or services to the UK HealthCare enterprise, the Contractor understands and agrees to abide by any and all regulatory requirements unique to a clinical enterprise including, but not limited to, the following:

The Contractor represents and warrants that UK HealthCare operates in accordance with a corporate compliance program and the Contractor agrees to adhere to the UK HealthCare compliance standards. The Contractor is informed that a copy of the compliance plan is available from the UK HealthCare Office of Corporate Compliance. Contractor acknowledges that any violation of the compliance plan can, at the sole discretion of the University; result in the immediate termination of this contract upon written notice to the Contractor. The Contractor recognizes that it is under an affirmative obligation to immediately report to UK HealthCare's Corporate Compliance Officer any actions by an agent or employee of UK HealthCare which Contractor believes, in good faith, violates any ethical, professional or legal standard.

Contractor will be required to comply with the Health Insurance Portability Accountability Act of 1996 (HIPAA). As a precondition of entering into a contract with the University, the Contractor will be required, as applicable, to complete a Business Associate Agreement for the purpose of complying with the Administrative Simplification provisions of HIPAA and regulations issued pursuant thereto. A Business Associate Agreement shall be incorporated herein by reference where applicable

Contractor shall comply with any and all applicable accreditation standards promulgated by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), or such other accrediting organization as UK HealthCare is applicable, as the same now exist or are subsequently promulgated and said standards are hereby incorporated by reference.

In the event that the Contractor provides any patient care services as part of its duties under the contract, Contractor shall require any employee or subcontractor to meet and maintain any credentialing standards determined by UK HealthCare in its reasonable discretion to be applicable.

In the event that Contractor provides any patient care services as part of its duties under the contract, Contractor shall maintain professional liability insurance in a minimum amount of \$1,000,000 per person and \$3,000,000 per occurrence on its employees providing said services and require any subcontractor providing said services to maintain such coverage.

38. Payment Card Industry – Data Security Standard Requirements (PCI-DSS):

Contractor shall be required to comply with the Gramm-Leach-Bliley Act (GLBA). To the extent any purchase includes services, including support, such that the provider of the service (defined in the GLBA as "Service Provider") may receive "customer information" through the course of contracted activities with the University, Service Provider agrees to the following additional terms and conditions:

(a) Throughout the term of this Agreement, Service Provider shall implement and maintain “appropriate safeguards”, as that term is used in § 314.4(d) of the FTC Safeguard Rule, 16 C.F.R. § 314, for all “customer information,” as that term is defined in 16 C.F.R. § 314.2(b), received by Service Provider pursuant to this Agreement.

(b) Service Provider shall promptly notify the University, in writing, of each instance of (i) unauthorized access to or use of any customer information that could result in substantial harm or inconvenience to a customer of the University or (ii) unauthorized disclosure, misuse, alteration, destruction or other compromise of any customer information. Within 30 days of the termination or expiration of this Agreement, Service Provider shall destroy all records, electronic or otherwise, in its or its agents' possession that contains such customer information and shall deliver a written certification of the destruction to the University.

(c) Service provider consents, upon reasonable advance notice, to University's right to conduct an on-site audit of Service Provider's security program.

(d) Notwithstanding any other provisions of this Agreement, University may terminate this Agreement for cause if Service Provider has allowed a material breach of its security program, if Service Provider has lost or materially altered customer information, or if the University reasonably determines that Service Provider's security program is inadequate.

(e) Service Provider shall defend, indemnify, and hold harmless University, its agents, officers, board members, and employees from and against any and all claims, damages, losses, and expenses, including reasonable attorney's fees, for any claims arising out of or in any way relating to any allegations of security breaches, violations of the Safeguard Rule caused by Service Provider's negligence, intentional acts or omissions, or any loss or material alteration of customer information.

(f) Service Provider shall reimburse the University for any damages, including but not limited to any costs required to reconstruct lost or altered information, resulting from any security breach, loss, or alteration of customer information.

Contractor hereby agrees as follows:

(a) Contractor shall be responsible for the security of cardholder data that it possesses, even temporarily, including any functions relating to storing, processing and transmitting of cardholder data on behalf of the University of Kentucky. In the case of a payment processing system and/or equipment purchased from Contractor that is covered by PA DSS (Payment Application Data Security Standard), Contractor warrants and represents that its software and/or equipment shall not impede the University's PCI DSS (Payment Card Industry Data Security Standard) compliance efforts. In the event that Contractor's software and/or equipment does impede such efforts, the University may, in its sole discretion, upon thirty (30) days' notice and opportunity to cure, terminate this Agreement, with any prepaid amounts refunded to University on a pro-rata basis.

(b) Contractor warrants and represents that, as of the effective date of this Agreement, it has complied with all applicable requirements for validation and compliance with the PCI DSS (Payment Card Industry Data Security Standard), as appropriate for its Service Provider level. Contractor agrees to supply the current status of its PCI DSS compliance, and evidence of its most recent validation of compliance, upon execution of this Agreement. Further, Contractor must supply to the University a new status report and evidence of validation of compliance at least annually and upon request by the University. Contractor will immediately notify the University if it learns that it is no longer PCI DSS

compliant and will immediately report to the University the steps being taken to remediate the non-compliance status. In no event should Contractor's notification to the University be later than seven (7) calendar days after Contractor learns it is no longer PCI DSS compliant. Failure to maintain PCI DSS compliance shall be a breach of contract and the University may, at its sole discretion, terminate this Agreement if Contractor does not become compliant within thirty (30) days, with any prepaid amounts refunded to University on a pro-rata basis.

(c) Contractor warrants and represents that, as of the effective date of this Agreement; it has complied with all applicable requirements for validation with the PA DSS (Payment Application Data Security Standard) for its payment processing system. Contractor agrees to supply evidence of its most recent validation upon execution of this Agreement. Further, Contractor agrees to maintain PA DSS validation for the installed payment processing system version throughout the term of any maintenance agreement with the University. If the PA DSS validation deadline for the payment system lapses, Contractor acknowledges that it shall be in breach of this Agreement and the University may, at its sole discretion, terminate this Agreement if Contractor does not become compliant within thirty (30) days, with any prepaid amounts refunded to University on a pro-rata basis.

(d) While doing business in University facilities or on its property, if credit card payments will be processed over the internet via the Contractors own system and/or equipment and through its own merchant account, Contractor will provide its own internet connection to process such payments, and will not be permitted to use the University network and equipment.

39. Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act:

To the extent Company receives Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, 61.932 and 61.933 (the "Act"), Company shall secure and protect the Personal Information by, without limitation: (i) complying with all requirements applicable to non-affiliated third parties set forth in the Act; (ii) utilizing security and breach investigation procedures that are appropriate to the nature of the Personal Information disclosed, at least as stringent as University's and reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction; (iii) notifying University of a security breach relating to Personal Information in the possession of Company or its agents or subcontractors within seventy-two (72) hours of discovery of an actual or suspected breach unless the exception set forth in KRS 61.932(2)(b)2 applies and Company abides by the requirements set forth in that exception; (iv) cooperating with University in complying with the response, mitigation, correction, investigation, and notification requirements of the Act, (v) paying all costs of notification, investigation and mitigation in the event of a security breach of Personal Information suffered by Company; and (vi) at University's discretion and direction, handling all administrative functions associated with notification, investigation and mitigation.

40. Disaster Recovery:

At the University's request, Contractor shall prepare and submit to University for its acceptance and approval, a comprehensive disaster recovery and business resumption plan, detailing Contractor's in-place procedures for daily back-up of data and systems, storage and protection of back-up media, and contingency plans and other details regarding Contractor's disaster recovery and business resumption plan.

At least as often as once per year and at Contractor's sole cost and expense, Contractor will undertake a comprehensive test of its disaster recovery and business resumption plans. Contractor will share all records, reports, internal or external audits, documentation and all other materials regarding such testing with University.

- **Source Code Escrow**

Contractor agrees that if Contractor is licensing, selling, renting, leasing or otherwise providing any software to University, or creating, modifying, customizing or developing any software for University under the Agreement, that Contractor will at all times during the Term of the Agreement, at its sole cost and expense, maintain the source code (and any and all updates, enhancements, changes or additions thereto) for such software in escrow, with a third party escrow agent acceptable to University.

Contractor agrees that the source code shall be placed in escrow and released to University in the event that Contractor fails to meet its obligations to University under the Agreement, fails to support the software as required under the Agreement, materially breaches the Agreement, or suffers an event of bankruptcy (collectively "Release Events").

- **Encryption**

Contractor agrees to ensure the confidentiality and integrity of University Data in storage and in transit through the implementation of strong encryption controls that are acceptable to the University. If Contractor determines that strong encryption of University Data is not appropriate, Contractor must apply compensating controls, approved by University, to ensure the confidentiality and integrity of University Data and document the rationale for the approach taken.

- **Retention**

Immediately upon termination, cancellation or expiration of the Agreement for any reason unless Contractor is otherwise instructed by University, or upon University's written request at any time, Contractor shall return or remove and destroy any and all University Data in whatever form or medium in Contractor's possession or control of Contractor or its agents or subcontractors, and certify such complete and full return or removal and destruction of all University Data in writing.

Contractor agrees to retain data for the appropriate statutory requirements. Contractor further agrees to extend to the retained data any and all protections, limitations, and restrictions contained in the Contract and any addenda or exhibits thereto and the Business Associate Agreement between University and Contractor, and to limit any further uses and disclosures of the retained data to the purposes of the appropriate statutory requirements for so long as Contractor retains University Data. Contractor agrees that any retained data will be destroyed at the expiration of such period according to University's direction.

Contractor's obligations under this Section shall survive the expiration or termination of this Agreement for any reason.

- **Offshoring**

Contractor shall not transmit, export, download, store, or maintain any University Data beyond the borders of the United States of America.

Revised February 28, 2017