

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.

**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 and Dispute Resolution:**

Contracts with the University shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Any claim, action, suit, or proceeding between the University and the Contractor that arises from or relates to any contract between the parties shall be brought in the Franklin Circuit Court in accordance with Kentucky Revised Statutes (KRS 45A.245).

Pursuant to KRS 45A.230, any dispute arising under the Contract shall be submitted to the University's Executive Vice President for Finance and Administration.

**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**

**LIMITS**

**Workers' Compensation**

**Statutory Requirements (Kentucky)**

**Employer's Liability**

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

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

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

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

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

## **7. Termination for Convenience**

The University reserves the right to terminate any contract at any time, in whole or in part, by thirty (30) day written notice to Contractor. Upon receipt by the Contractor of the "notice of termination", the Contractor shall discontinue all services with respect to the applicable contract. The University, after deducting any amount(s) previously paid, shall pay for all services rendered or goods supplied by the Contractor, as well as any reasonable costs incurred by Contractor up to the time of termination but not including Contractor's loss of profit. The cost of any agreed upon services provided by the Contractor will be calculated at the agreed upon rate prior to "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. 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

#### **11. 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.

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

**13. 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.

**14. 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 shall pay any sales, use, personal property, and other taxes arising out of this contract and the transactions 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.

**15. 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 or damages 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.

**16. 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.

**17. 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.

**18. 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. The University reserves the right to audit such records and employ any auditor the University deems appropriate to perform an audit of Contractor's records. 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.

**19. Non-discrimination and Equal Opportunity:**

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; and all regulations and administrative rules established pursuant to the foregoing laws. Expressly, Contractor shall not discriminate in employment on the basis of race, color, religion, age, sex, national origin, physical or mental disability, or because he or she is a disabled veteran or a veteran of the Vietnam era.

**20. 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.

**21. 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.

**22. 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 foregoing representation, the University may cancel the contract upon written notice to the Contractor and the University shall have no further obligation to the Contractor.

**23. 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.

**24. 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.

**25. 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, 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.

**26. 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.

**27. 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 Product Price Index that substantiate a price increase.

**28. 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.

## **29. 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 and Accountability Act of 1996 (HIPAA). As a precondition of entering into a contract with the University, the Contractor will be required to complete a Business Associate Agreement for the purpose of complying with the Administrative Simplification provisions of HIPAA and regulations issued pursuant thereto.

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.