

Regents Universities

Standard Contract Terms and Conditions

1. **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.
2. **Amendments to the Contract** This Contract shall not be changed, modified, altered, or amended in any respect without the mutual consent of the parties hereto, which consent shall be evidenced by a written amendment to the Contract executed by both parties.
3. **Indemnification** The 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 (A) the material non-performance, non-compliance or breach with terms and obligations of this Contract or (B) 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.

The 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 the Supplier or any subcontractor under workers' compensation, disability benefits or other employee benefit acts.
4. **Immunity from Liability** The Universities, their agents, successors, and assigns are immune from liability and suit for or from Supplier's activities.
5. **Severability of the Contract** In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, but this Contract shall be construed as if such invalid or unenforceable provision had never been contained. Further, in the event that any provision of this Contract shall be held to be unenforceable by virtue of its scope, but may be made enforceable by a limitation thereof, such provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the laws of the jurisdiction in which enforcement is sought.
6. **Termination – 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.

7. **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.
- 8 **Use of Name or Intellectual Property** Supplier shall not use the name or any intellectual property identifying Universities, including, but not limited to, any Universities trademarks or logos, or the name of any employees of Universities in any publicity, advertisement or endorsement or as a business reference, without the expressed prior written consent of the applicable Universities.
9. **Force Majeure** Subsequent to acceptance by the Universities, neither party shall be liable for damages due to: lightning, fire, explosion, pest damage, strikes or labor disputes of third parties, floods, acts of God, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, fuel or energy shortages, acts or omissions of communications carriers, unauthorized use of the products, or other causes beyond the party's reasonable control whether or not similar to the foregoing.
10. **Right to Retention** The Universities may withhold from payment to Supplier, in such an amount or amounts as may be necessary to cover:

Payments that may be earned or due for justified third party claims associated with labor, services, equipment, or materials furnished and/or product or service not provided or not remedied/cured.
11. **Failure to Enforce** The Universities shall not be required to enforce any right or remedy available under the Contract; however, if the Universities elect to waive a right or remedy under this Contract, the Universities shall not be precluded from asserting said right or remedy thereafter.
12. **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 statute. 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.
13. **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.

14. **Gratuities** The laws of the State of Iowa provide that it is a criminal offense to offer, promise or give anything of value or benefit to a state employee with the intent to influence that employee's acts, opinion, judgment, or exercise of discretion with respect to that employee's duties. Evidence of violation of this statute will be turned over to the proper authority.
15. **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.
16. **Termination** 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.

If the 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.

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.

The Universities may terminate this Contract without penalty for any reason by giving a 30 calendar day notice.

17. **Taxes** The Universities are exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Supplier's employee's 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). The Supplier also acknowledges that the Universities may declare the Contract void if the above certification is false. The Supplier also understands that fraudulent certification may result in the Universities or its representative filing for damages for breach of contract.

18. **Software Accessibility:** Software solutions, when provided to the Universities as a part of this Contract, shall be compliant with Federal statute Section 508 standards and W3C.org Web Content Accessibility Guidelines (WCAG 2.0 Level AA) for accessibility for persons with disabilities for the minimum level of accessibility. Please review the links provided for specifics related to these referred to standards and guidelines. WCAG guidelines www.w3.org/TR/WCAG20/ and Section 508 www.section508.gov/. The Universities reserve the right to request that the Supplier provide audit and/or test results that document the software's compliance and the testing methodology utilized.

19. **Subcontractors** Supplier shall be responsible for the acts and performance of any subcontractor that Supplier may engage to fulfill any of its obligations set forth in the Contract. Supplier shall be responsible for payment to all subcontractors and suppliers.

- (a) All services provided for Supplier by a subcontractor shall be pursuant to an appropriate agreement between Supplier and subcontractor. The Contract shall contain provisions that (1) preserve and protect the rights of the Universities, and (2) require services be performed in accordance with the requirements of the Contract.
- (b) Supplier is specifically advised that any person, firm, or other party to whom it is

proposed to award a subcontract under this Contract must be acceptable to the Universities. Any subcontractor(s) must have been identified in the Supplier's proposal in response to the Universities' RFP/RFQ or be approved in writing by the Universities prior to the subcontractor(s) starting work relating to the Contract.

20. **Targeted Small Business** The Universities are committed to the development of Targeted Small Businesses, a State of Iowa program. If subcontracting is necessary, the Supplier will make every effort to use Targeted Small Businesses in the performance of this Contract. A report will be required at the completion of the Contract indicating the extent of Targeted Small Businesses participation.
21. **Supplier's Responsibility** Supplier shall obtain all necessary permits, licenses and other government approvals necessary to perform its obligations pursuant to this Contract, and comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any government authority.
22. **Responsibility for Those Performing the Work.**
 - a. Supplier shall be responsible for the acts and omissions of all Supplier's employees and all subcontractors, their agents and employees, and all other persons under contract with Supplier, while performing the duties and responsibilities associated with this Contract.
 - b. Supplier shall at all times enforce strict discipline and good order among Supplier's employees and shall not employ any unfit person or anyone not skilled in the task assigned.
 - c. Incompetent or incorrigible employees shall be dismissed from the project by Supplier, when so determined by the Universities. Dismissed individuals shall be prohibited from being employed or utilized by Supplier as part of the services Supplier provides to the Universities without the written consent of the Universities.
23. **Insurance** Without limiting any liabilities or any other obligations of the Vendor, Vendor shall provide and maintain the minimum insurance coverages listed below unless otherwise agreed to in writing. Coverage will be provided with forms and insurers acceptable to the University, until all obligations under contract are satisfied.
 - a. Applicable Workers' Compensation insurance to cover liability imposed by Federal and State statutes having jurisdiction over Vendor employees engaged in the performance of the Vendor's service, and Employers Liability insurance with a minimum limit of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.)
 - b. Commercial General Liability insurance with a minimum limit of ONE MILLION DOLLARS (\$1,000,000) each occurrence. This policy shall include coverage for bodily

injury, property damage, personal injury, coverage for contractual employees), blanket contractual and products and completed operations. Said policy shall contain a severability of interests provision.

- c. Commercial Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence with respect to Vendor's owned, borrowed, hired or non-owned vehicles, assigned to or used in performance of the Services.
- d. Umbrella Liability insurance with a minimum limit of \$1,000,000 per occurrence and shall apply to all underlying and primary liability coverages required above.
- e. The Commercial General Liability policy required herein shall be endorsed to include the State of Iowa; University of Iowa; Board of Regents, State of Iowa, their agents, officials and employees as additional insured.
- f. Errors and Omission (Professional Services Liability) with a minimum limit of \$1,000,000 per claim and \$1,000,000 annual aggregate. The policy shall include coverage for contingent bodily injury liability.
- g. Vendor and its insurers providing the required coverages shall waive all rights of subrogation or recovery against the State of Iowa, Board of Regents, State of Iowa, The University of Iowa, their agents, officials and employees.
- h. Two (2) Certificates of Insurance showing Vendor's current coverages and limits must be submitted with the Vendor's proposal. Prior to a signed Agreement, Vendor must procure required insurance and provide University with two (2) Certificates of Insurance. Certificate must reference RFP 13084. Vendor's proposal must include the cost of the required insurance.
- i. Failure on the part of the Vendor to procure or maintain required insurance shall constitute a material breach of contract upon which the University may immediately terminate an Agreement, or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith.
- j. All Moneys so paid by the Regent institutions shall be repaid by the Vendor to the Regent institutions upon demand, or the Regent institutions may offset the cost of the premiums against any Moneys due to Vendor in excess of those required shall not be charged to the Regent institutions without prior approval of The University of Iowa.
- k. The University reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements, and shall be notified in writing of any material changes or cancellation of insurance

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, 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 University has the right to immediately terminate this Contract.

25. **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.
26. **Termination for 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.
27. **Federal Compliance:** Supplier shall comply with the provisions set forth below if applicable and shall include them in its subcontracts. These provisions are available in Appendix A to 2 CFR 215 on the following website:

<http://www.gpo.gov/fdsys/pkg/CFR-2005-title2-vol1/pdf/CFR-2005-title2-vol1-part215-appA.pdf>

Equal Employment Opportunity -All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR, 1964-1965 Comp., p. 339), as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) -All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C B74), 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 shall 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 is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) -When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency. This does not apply to Federal disaster funding unless otherwise specified by local regulations.

Contract Work Hours and Safety Standards Act (40 U.S.C 327-333) -Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall 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 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall 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 -Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 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 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended -Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall 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 who apply or bid for an award of \$100,000 or more shall 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 shall 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 recipient.

Debarment and Suspension (E.O.s 12549 and 12689)-A contract award with an amount expected to equal or exceed \$25,000 and certain other contract awards (see 2 CFR 180.220) shall not be made to parties listed on the government-wide Excluded Parties List System, in accordance with the OMB guidelines at 2 CFR part 180 that implement E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System 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 E.O. 12549. [69 FR 26281, May 11, 2004, as amended at 70 FR 51879, Aug. 31, 2005]

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.

Vietnam-era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA), (38 U.S.C. 4212) - 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.

FAR Employment Eligibility Verification This contract may involve funding subject to applicable Federal Acquisitions Regulations (FAR) Employment Eligibility Verification clauses of the prime contract. Supplier shall comply with all terms and conditions of the FAR Employment Eligibility Verification clause (FAR 52.222-54).