

FRANCIS MARION UNIVERSITY GENERAL CONTRACT TERMS AND CONDITIONS

AGREEMENT: means any transaction or agreement arising out of, relating to, or contemplated by the relationship of which this purchase order forms a part. The terms and conditions of this document (including the purchase order) shall apply notwithstanding any additional or different terms and conditions in any invoice or other document, including without limitation, (i) a purchase order or other instrument submitted by the State, (ii) any invoice, confirmation, or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE: (a) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the responsible Procurement Officer. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, contractor may assign monies receivable under the contract provided that the University shall have no obligation to make payment to an assignee until thirty days after contractor (not the assignee) has provided the responsible Procurement Officer with (i) proof of the assignment, (ii) the identity (by contract number) of the specific University contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made. (b) If contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), or its corporate, partnership or other structure, or its FEIN, contractor shall provide the Procurement Officer prompt written notice of such change. (c) Any name change, transfer, assignment, or novation is subject to the conditions and approval required by Regulation 19-445.2180, which does not restrict transfers by operation of law.

BACKGROUND CHECK: If Contractor must bring one or more of its employees onto the University campus or other property in order to perform a service, Contractor is required to conduct a criminal background check on said employee(s) prior to bringing or sending the employee(s) to the University campus or other property. Contractor agrees that any employee with a criminal history that Contractor reasonably believes poses a threat to property or persons, will not be brought or sent to the University campus or other University property. Contractor agrees to impose this same criminal background check requirement on any subcontractors used by Contractor to fulfill its responsibilities under this Contract. University reserves the right to verify compliance by Contractor upon request.

CHOICE-OF-LAW: The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. The UN Convention on the International Sale of Goods shall not apply to this agreement.

CONTRACTOR PERSONNEL: (for Service Contracts only): The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

The Contractor certifies that its employees, volunteers, and participants are not registered sex offenders and have not been convicted of a felony. The Contractor will be responsible for compliance with federal civil rights laws while on University property or while conducting associated activities off University property. Failure to comply with the above may result in unilateral and immediate revocation of the contract.

The use of all tobacco products is prohibited in or on all University property. Tobacco products include all forms of tobacco and smoke-related products, including but not limited to, cigarettes, cigars, pipes, chewing tobacco, snuff, water pipes (hookahs), bidis, kreteks, smokeless tobacco, electronic cigarettes and other devices allowing for the ingestion, combustion, inhalation or other use of tobacco.

CONTRACTOR'S LIABILITY INSURANCE: (a) Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees or subcontractors. (b) Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.

(2) Auto Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

(3) Worker's Compensation: As required by the State of South Carolina, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

(b) The University, and its officers, officials, employees and volunteers, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used. The endorsement must contain the following language:

"Francis Marion University, including its current and former trustees, officers, directors, employees, volunteer workers, agents, assigns and students, is added to this policy as additional insured."

(c) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, the University, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, the University, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

(d) Prior to commencement of the work, the Contractor shall furnish the University with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the University before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The University reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.

(e) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the University immediately upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced.

(f) Contractor hereby grants to the State and the University a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or the University by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the State or the University has received a waiver of subrogation endorsement from the insurer.

(g) Any deductibles or self-insured retentions must be declared to and approved by the University. The University may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(h) The University reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

CONTRACTOR'S OBLIGATION: The Contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work. The Contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. The Contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements.

CONTRACTOR'S USE OF STATE PROPERTY: Upon termination of the contract for any reason, the University shall have the right, upon demand, to obtain access to, and possession of, all University properties, including, but not limited to, current copies of all University application programs and necessary documentation, all data, files, intermediate materials and supplies held by you. You shall not use, reproduce, distribute, display, or sell any data, material, or documentation owned exclusively by the University without the University's written consent, except to the extent necessary to carry out the Work.

CORRECTION OF DEFECTS: If any part of the goods and/or services becomes defective or is deficient or fails due to defect in design, material or workmanship, or otherwise fails to meet the requirements of the Agreement, the Proponent that has been awarded the business, upon request, shall make good every such defect, deficiency or failure without cost to the University. The Proponent shall pay all transportation costs, both ways between the factory or repair depot and the point of use.

Any item, which fails in any way to meet the terms of the Scope and/or Agreement, is subject to rejection or an adjusted price basis, upon mutual agreement.

When commodities are rejected, they must be removed by the Proponent from the premises of the University within five (5) business days after notification by the University unless public health and safety requires immediate destruction or other disposal of such rejected delivery in which case the University may take such actions as it deems necessary. Such costs shall be the responsibility of the Proponent. Rejected items left longer than five (5) business days may be considered as abandoned, and the University shall have the right to dispose of them.

DEMOGRAPHIC PORTRAYAL: If the work depicts University students, staff, and/or faculty, then the depiction must accurately represent University demographics.

FORCE MAJEURE: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God that which by the exercise of reasonable diligence, the contractor is unable to prevent. Should the performance of any work be delayed or prevented herein set forth, the Proponent agrees to give immediate written notice and explanation of the cause and probable duration of any such delay and to provide written notice as to when work obligations resume. In any case, such delay shall not exceed the length of time of the interruption/disruption.

GENERAL INDEMNITY: The Vendor shall hold and save the University, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of this Contract and that are attributable to the negligence or intentionally tortious acts of the Vendor provided that the Vendor is notified in writing within 30 days that the University has knowledge of such claims. The Vendor represents and warrants that it shall make no claim of any kind or nature against the University's agents who are involved in the delivery or processing of Vendor goods to the University. The representation and warranty in the preceding sentence shall survive the termination or expiration of this Contract.

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA): If applicable, Contractor will comply with all confidentiality obligations under the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, and its implementing regulations at 45 C.F.R. Parts 160, 162, and 164, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (collectively, "HIPAA").

HOLD HARMLESS: Contractor shall hold the University, its officers, agents, and employees harmless from liability from any claims, damages, and actions of any nature arising from the use of any work furnished by Contractor, provided that such liability is not attributable to negligence on the part of the University or failure of the University to use the materials in the manner outlined by Contractor in descriptive literature or specifications submitted with Contractor's offer.

ILLEGAL IMMIGRATION: (An overview is available at www.procurement.sc.gov) By accepting this purchase order, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the University upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. You agree to include in any contracts with your subcontractors language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

INDEMNIFICATION-THIRD PARTY CLAIMS - GENERAL (NOV 2011): Without limitation, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of

this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

INDEPENDENT CONTRACTOR: Vendor shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Vendor represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the University unless notified by the contractor in advance of an agreement of the University.

INFORMATION AND CONFIDENTIALITY The contractor shall not use the name or markings of Francis Marion University for any purpose, including but not limited to marketing, without the express written consent of the University. Contractors shall be liable for the disclosure of the College's confidential information whether the disclosure is intentional, negligent, or accidental.

INSPECT/REJECT: University reserves the right to inspect any equipment offered or completed service and to reject equipment or service if it is not acceptable as determined by University.

INTELLECTUAL PROPERTY INDEMNITY: Vendor shall hold and save the University, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party related to the use of any copyrighted material, patented or unpatented invention, articles, device or appliance delivered in connection with this contract.

INTELLECTUAL PROPERTY INFRINGEMENT: (a) Without limitation and notwithstanding any provision in this Contract, Contractor shall, upon receipt of notification, defend and indemnify the University, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item.

(b) University shall allow Contractor to defend such claim to the extent allowed by law so long as the defense is diligently and capably prosecuted. University shall allow Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes no obligation upon University. University shall reasonably cooperate with Contractor's defense of such claim.

(c) In the event an injunction or order shall be obtained against University's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either: (i) procure for University the right to continue to use, or have used, the acquired item, or (ii) replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by University. If neither option, is practical, University may require that Contractor remove the acquired item from University, refund to University any charges paid by University therefore, and take all steps necessary to have University released from any further liability.

(d) Contractor's obligations under this clause do not apply to a claim to the extent (i) that the claim is caused by Contractor's compliance with specifications furnished by the University unless Contractor knew its compliance with the University's specifications would infringe an IP right, or (ii) that the claim is caused by Contractor's compliance with specifications furnished by the University if the University knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor.

(e) As used in this clause, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this Contract. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work.

(f) Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Contract.

INTELLECTUAL PROPERTY USE: This software/hardware may be used by the University for academic, research and development, or commercial purposes.

LIABILITY OF UNIVERSITY: (A) University shall not be responsible or liable with respect to any subject matter of this agreement or terms and conditions related thereto under any contract, negligence, strict liability or other theory: (i) for error or interruption of use, (ii) for loss or inaccuracy or corruption of data or cost of procurement of substitute goods, services or technology or loss of business; or (iii) for any indirect or non-objectively measurable, exemplary, incidental, special or consequential damages.

(B) University's total liability to contractor will not exceed the total amount of fees paid to contractor under this contract for the 12-month period prior to the date of the claim, whether or not the contractor has been advised of the possibility of such damages.

(C) Any term or condition is void to the extent it requires the university to pay liquidated damages to anyone for any reason.

LICENSES AND PERMITS: You are responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State of South Carolina, county, city or other government entity or unit to accomplish the Work.

MATERIAL AND WORKMANSHIP: Unless otherwise specifically provided in the purchase order, all equipment, material, and articles incorporated in the Work are to be new and of the most suitable grade for the purpose intended.

NO INDEMNITY OR DEFENSE: Any term or condition is void to the extent it requires the University to indemnify, defend, or pay attorney's fees to anyone for any reason.

OWNERSHIP Except for items that have pre-existing copyrights, all exhibits, drawings, plans, specifications, notes, reports, data, recommendations, artwork, memoranda and any other work product or information prepared or furnished by the contractor to Francis Marion University in the performance of the work shall be the property of Francis Marion University.

PAYMENT TERMS: Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the Vendor under the Contract.

PERFORMANCE AND DEFAULT: If, through any cause, Vendor shall fail to fulfill in timely and proper manner the obligations under this agreement, the University shall have the right to terminate this contract by giving written notice to the Vendor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this contract prepared by the Vendor shall, at the option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any acceptable work completed on such materials. Notwithstanding, Vendor shall not be relieved of liability to the University for damages sustained by the University by virtue of any breach of this agreement, and the University may withhold

any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the University from such breach can be determined. The University reserves the right to require at any time a performance bond or other acceptable alternative guarantees from a successful Vendor without expense to the University.

In case of default by the Vendor, the University may procure the services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. In addition, in the event of default by the Contractor under this contract, or upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the University may immediately cease doing business with the Contractor, immediately terminate this contract for cause, and may act to debar the Contractor from doing future business with the University

PUBLICITY: Contractor shall not publish any comments or quotes by University employees, or include the University in either news releases or a published list of customers, without the prior written approval of the Procurement Officer.

PURCHASE ORDERS: Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The University shall order any work to be furnished under this Contract by issuing a purchase order. Purchase orders may be used to elect any options available under this Contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this Contract. Purchase orders may be electronic. Although no particular form is required, University is able to process the standard electronic University form more quickly than nonstandard forms. The Purchase order requirement may be waived if approved in writing by University Procurement and Business Services.

PURCHASING CARD: Contractor agrees to accept payment by the South Carolina Purchasing Card for no extra charge. The Purchasing Card is issued by Visa. The purchasing card allows University agencies to make authorized purchases from a Contractor without the requirement to issue a purchase order.

STORAGE OF MATERIALS: Absent approval of the using governmental unit, Contractor shall not store items on the premises of the using governmental unit prior to the time set for installation.

SUBCONTRACTING: Work proposed to be performed under this contract by the Vendor or its employees shall not be subcontracted without prior written approval.

TERMS AND CONDITIONS NOT LIMITED: The terms and conditions herein do not supersede or otherwise cancel or substitute for terms and conditions, restrictions, or other regulations stated by the State of South Carolina. The University is bound by the laws of the State of South Carolina when applicable. State of South Carolina terms and conditions, restrictions, and regulations supersede the terms and conditions found herein.

UNIVERSITY: means Francis Marion University.

WARRANTIES: Contractor warrants all items acquired shall conform to all Contractor's representations, the requirements of this Contract, and all published documentation. Contractor warrants it will meet the performance standards, benchmarks, and delivery schedule specified.

WEB ACCESSIBILITY : (a) University is committed to providing equitable access to electronic information, information technology, technology services, and the environments that use the information technology. Contractors will provide electronic and information technology that meets the applicable accessibility requirements of §§ 504 and 508 of the Rehabilitation Act of 1973, as amended; complies with the Americans with Disabilities Act of 1990, as amended; and is in reasonable compliance with applicable university standards, including conformation to WCAG 2.0 A and AA standards.

(b) In addition, all college and system office web sites shall be designed to be accessible, so that people with disabilities have access to online information, data, and services comparable to those provided to individuals who do not have disabilities. Contractor agrees to collaborate with University's Office of Communications and/or other designees to design and implement enhancements surrounding compliance.

(c) Contractor shall: (i) upon request, provide the University with its accessibility testing results and written documentation verifying accessibility; (ii) promptly respond to and resolve accessibility complaints; and (iii) indemnify and hold the University harmless in the event of claims arising from inaccessibility.

(d) University may perform an accessibility audit at any point during the project, including early planning, design, development, testing, or after delivery. If the audit determines that the software is not accessible, then Contractor will pay the cost of the audit.