

**The Board of Regents of the University System of Georgia by and on behalf of the
University of Georgia (UGA)**

Purchase Terms and Conditions

A. GENERAL INFORMATION

1. **Priority of Contract Provisions.** Any pre-printed contract terms and conditions included on Contractor's forms or invoices shall be null and void, unless expressly accepted in writing by UGA Procurement. These terms and conditions apply equally to Contracts and Purchase Orders issued by UGA.
2. **Reporting Requirements.** Contractor shall provide all reports required by the procurement.

B. DURATION OF CONTRACT

1. **Contract Term.** The Contract between UGA and the Contractor shall begin and end on the dates specified in UGA Standard Contract Form or Purchase Order, unless terminated earlier in accordance with the applicable terms and conditions. Pursuant to O.C.G.A. Section 50-5-64, this Contract shall not be deemed to create a debt of UGA for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal.
2. **Contract Renewal.** If applicable, UGA shall have the option, in its sole discretion, to renew the Contract for additional renewals as defined in the UGA Contract on a year-to-year basis by giving the Contractor written notice of the renewal decision at least sixty (60) days prior to the expiration of the initial term or renewal term. Renewal will depend upon the best interests of UGA, funding, and Contractor's performance. Renewal will be accomplished through the issuance of a Notice of Award Amendment. Upon UGA's election, in its sole discretion, to renew any part of this Contract, Contractor shall remain obligated to perform in strict accordance with this Contract unless otherwise agreed by UGA and the Contractor.
3. **Contract Extension.** In the event that this Contract shall terminate or be likely to terminate prior to the making of an award for a new contract for the identified goods and services, UGA may, with the written consent of Contractor, extend this Contract for such period as may be necessary to afford UGA a continuous supply of the identified goods and services.

C. DESCRIPTION OF GOODS AND SERVICES

1. **Specifications in Bidding Documents.** The Contractor shall provide all goods and services required and in compliance with the specifications contained in the solicitation, if applicable, and the terms of the Contract or Purchase Order, plus those goods, services and deliverables as may additionally be described in the Response, if applicable.
2. **Product Shipment and Delivery.** All products shall be shipped F.O.B. destination. Destination shall be the location(s) specified in the solicitation or any provided Purchase Order or Contract. All items shall be at the Contractor's risk until they have been delivered and accepted by the receiving entity.

All items shall be subject to inspection on delivery. Hidden damage will remain the responsibility of the Contractor to remedy without cost to UGA, regardless of when the hidden damage is discovered.

3. **Non-Exclusive Rights.** The Contract is not exclusive. UGA reserves the right to select other contractors to provide goods and services similar to goods and services described in the Contract during the term of the Contract.
4. **Export Control.** If the supplier is providing any items, data, or services under this order that are controlled by the Department of State, Directorate of Defense Trade Controls, International Traffic in Arms Regulations (ITAR), or 500 or 600 series items, data, or services that are controlled by the Department of Commerce, Bureau of Industry and Security, Export Administration Regulations (EAR), it must notify (by sending an email to drunge@uga.edu), and receive prior written authorization from, the University's Office of Export Control before delivery. The notification provided by the supplier shall include the name of the University of Georgia point of contact, identify each ITAR-controlled or 500 or 600 series CCL-controlled commodity, including the associated U.S. Munitions List (USML) category number(s) or 500 or 600 series Commerce Control List (CCL) Export Control Classification Number(s)), and indicate whether or not the determination was reached as a result of a commodity jurisdiction or self-classification process. The supplier agrees that if it fails to notify the University that it is providing ITAR-controlled or 500 or 600 series CCL-controlled items, data or services, it shall reimburse the University for any fines, legal costs and other fees imposed by the above-named regulatory agency for any violation of export controls regarding the provided items, data, or services.

D. COMPENSATION

1. **Pricing.** The Contractor will be paid for the goods and services sold pursuant to the Contract in accordance with the solicitation, if applicable, and final pricing documents as incorporated into UGA Standard Contract Form or Purchase Order and the terms of the Contract or Purchase Order. Unless clearly stated otherwise in UGA Standard Contract, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties.
2. **Payment Terms.** Unless otherwise provided in the Contract or Purchase Order, payment shall be Net 30 days from the date of receipt of a properly executed invoice. All invoices must reference the Contract or Purchase Order.
3. **Discount.** Time, in connection with discount offered, will be computed from date of delivery and acceptance at Destination of the supplies or materials to carrier when final inspection and acceptance are at those points, or from date invoice is received if the latter is later than the date of delivery.
4. **Billings.** The Contractor shall submit, on a regular basis, an invoice for goods and services supplied to UGA under the Contract at the billing address specified in the Purchase Order or Contract. UGA shall pay all approved invoices in arrears and in accordance with applicable provisions of State law. UGA Purchase Order number must show on all invoices, packing lists, and bills of lading.

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from UGA for any goods or services provided

by or on behalf of the Contractor under the Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Contract.

- 5. Delay of Payment Due to Contractor's Failure.** If UGA in good faith determines that the Contractor has failed to perform or deliver any service or product as required by the Contract, the Contractor shall not be entitled to any compensation under the Contract until such service or product is performed or delivered. In this event, UGA may withhold that portion of the Contractor's compensation which represents payment for services or products that were not performed or delivered. To the extent that the Contractor's failure to perform or deliver in a timely manner causes UGA to incur costs, UGA may deduct the amount of such incurred costs from any amounts payable to Contractor. UGA's authority to deduct such incurred costs shall not in any way affect UGA's authority to terminate the Contract.

- 6. Set-Off Against Sums Owed by the Contractor.** In the event that the Contractor owes UGA and/or UGA any sum under the terms of the Contract, pursuant to any judgment, or pursuant to any law, UGA and/or UGA may set off the sum owed to UGA and/or UGA against any sum owed by UGA and/or UGA to the Contractor in UGA's sole discretion.

E. TERMINATION

- 1. Immediate Termination.** Pursuant to O.C.G.A. Section 50-5-64, this Contract will terminate immediately and absolutely if UGA determines that adequate funds are not appropriated or granted or funds are de-appropriated such that UGA cannot fulfill its obligations under the Contract, which determination is at UGA's sole discretion and shall be conclusive. Further, UGA may terminate the Contract for any one or more of the following reasons effective immediately without advance notice:
 - (i)** In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;
 - (ii)** UGA determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;
 - (iii)** The Contractor fails to comply with confidentiality laws or provisions; and/or
 - (iv)** The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process, which is materially false, deceptive, incorrect or incomplete.

- 2. Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for UGA to declare the Contractor in default of its obligations under the Contract:
 - (i)** The Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform, to UGA's satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without

limitation, the express warranties made by the Contractor;

- (ii) UGA determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;
- (iii) The Contractor fails to make substantial and timely progress toward performance of the Contract;
- (iv) The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or UGA reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- (v) The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations, orders and Board of Regents or University of Georgia policies when performing within the scope of the Contract;
- (vi) The Contractor has engaged in conduct that has or may expose the State or UGA to liability, as determined in UGA's sole discretion; or
- (vii) The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State, UGA, or a third party.

3. Notice of Default. If there is a default event caused by the Contractor, UGA shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in UGA's written notice to the Contractor. If the breach or noncompliance is not remedied within the period of time specified in the written notice, UGA may:

- (i) Immediately terminate the Contract without additional written notice; and/or
- (ii) Procure substitute goods or services from another source and charge the difference between the Contract and the substitute contract to the defaulting Contractor; and/or,
- (iii) Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

4. Termination Upon Notice. Following thirty (30) days' written notice, UGA may terminate the Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for goods and services provided under the Contract to UGA up to and including the date of termination.

5. Termination Due to Change in Law. UGA shall have the right to terminate this Contract without penalty by giving thirty (30) days' written notice to the Contractor as a result of any of the following:

- (i) UGA's authorization to operate is withdrawn or there is a material alteration in the programs administered by UGA; and/or

(ii) UGA's duties are substantially modified.

6. Payment Limitation in Event of Termination. In the event of termination of the Contract for any reason by UGA, UGA shall pay only those amounts, if any, due and owing to the Contractor for goods and services actually rendered up to and including the date of termination of the Contract and for which UGA is obligated to pay pursuant to the Contract or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to UGA under the Contract in the event of termination. UGA shall not be liable for any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract.

7. The Contractor's Termination Duties. Upon receipt of notice of termination or upon request of UGA, the Contractor shall:

- (i) Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize cost, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting there from, and any other matters UGA may require;
- (ii) Immediately cease using and return to UGA, any personal property or materials, whether tangible or intangible, provided by UGA to the Contractor;
- (iii) Comply with UGA's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract;
- (iv) Cooperate in good faith with UGA, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and
- (v) Immediately return to UGA any payments made by UGA for goods and services that were not delivered or rendered by the Contractor.

F. CONFIDENTIAL INFORMATION

1. Access to Confidential Data. The Contractor's employees, agents and subcontractors may have access to confidential data maintained by UGA to the extent necessary to carry out the Contractor's responsibilities under the Contract. The Contractor shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by UGA. If it is reasonably likely the Contractor will have access to UGA's confidential information, then:

- (i) The Contractor shall provide to UGA a written description of the Contractor's policies and procedures to safeguard confidential information;
- (ii) Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
- (iii) The Contractor must designate one individual who shall remain the responsible

authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and

- (iv) The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Contract.

The private or confidential data shall remain the property of UGA at all times. Some services performed for UGA may require the Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Contract.

2. **No Dissemination of Confidential Data.** No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of UGA, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of UGA. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of UGA.
3. **Subpoena.** In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify UGA and cooperate with UGA in any lawful effort to protect the confidential information.
4. **Reporting of Unauthorized Disclosure.** The Contractor shall immediately report to UGA any unauthorized disclosure of confidential information.
5. **Survives Termination.** The Contractor's confidentiality obligation under the Contract shall survive termination of the Contract.

G. INDEMNIFICATION

1. **Contractor's Indemnification Obligation.** The Contractor agrees to indemnify and hold harmless UGA and State officers, employees, agents, and volunteers (collectively, "Indemnified Parties") from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, related to or arising from:
 - (i) Any breach of the Contract;
 - (ii) Any negligent, intentional or wrongful act or omission of the Contractor or any employee, agent or subcontractor utilized or employed by the Contractor;
 - (iii) Any failure of goods to comply with applicable specifications, warranties, and certifications under the Contract;
 - (iv) The negligence or fault of the Contractor in design, testing, development, manufacture, or otherwise with respect to the goods or any parts thereof provided under the Contract;
 - (v) Claims, demands, or lawsuits that, with respect to the goods or any parts thereof,

allege product liability, strict product liability, or any variation thereof;

- (vi) The Contractor's performance or attempted performance of the Contract, including any employee, agent or subcontractor utilized or employed by the Contractor;
- (vii) Any failure by the Contractor to comply with the "Compliance with the Law" provision of the Contract;
- (viii) Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Georgia or the United States;
- (ix) Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or
- (x) Any failure by the Contractor to adhere to the confidentiality provisions of the Contract.

2. **Duty to Reimburse State Tort Claims Fund.** To the extent such damage or loss as covered by this indemnification is covered by the State of Georgia Tort Claims Fund ("the Fund"), the Contractor (and its insurers) agrees to reimburse the Fund. To the full extent permitted by the Constitution and the laws of Georgia and the terms of the Fund, the Contractor and its insurers waive any right of subrogation against UGA, the Indemnified Parties, and the Fund and insurers participating there under, to the full extent of this indemnification.
3. **Litigation and Settlements.** The Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnified Parties. No settlement or compromise of any claim, loss or damage entered into by the Indemnified Parties shall be binding upon Contractor unless approved in writing by Contractor. No settlement or compromise of any claim, loss or damage entered into by Contractor shall be binding upon the Indemnified Parties unless approved in writing by the Indemnified Parties.
4. **Patent/Copyright Infringement Indemnification.** Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit instituted against UGA and indemnify UGA against any award of damages and costs made against UGA by a final judgment of a court of last resort in such suit insofar as the same is based on any claim that any of the goods constitutes an infringement of any United States Letters Patent or copyright, provided UGA gives the Contractor immediate notice in writing of the institution of such suit, permits Contractor to fully participate in the defense of the same, and gives Contractor all available information, assistance and authority to enable Contractor to do so. Subject to approval of the Attorney General of Georgia, UGA shall tender defense of any such action to Contractor upon request by Contractor. Contractor shall not be liable for any award of judgment against UGA reached by compromise or settlement unless Contractor accepts the compromise or settlement. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement shall be binding upon UGA unless approved by UGA.

In case any of the goods is in any suit held to constitute infringement and its use is

enjoined, Contractor shall, at its option and expense:

- (i) Procure for UGA the right to continue using the goods;
- (ii) Replace or modify the same so that it becomes non-infringing; or
- (iii) Remove the same and cancel any future charges pertaining thereto.

Contractor, however, shall have no liability to UGA if any such patent or copyright infringement or claim thereof is based upon or arises out of:

- (i) Compliance with designs, plans or specifications furnished by or on behalf of UGA as to the goods;
- (ii) Use of the goods in combination with apparatus or devices not supplied or authorized by Contractor;
- (iii) Use of the goods in a manner for which the same was neither designed nor contemplated; or

5. Survives Termination. The indemnification obligation of the Contractor shall survive termination of the Contract.

H. INSURANCE

Contractor shall procure and maintain, at its own expense, any insurance as specified in the Purchase Order or Contract. Unless otherwise specified in the Contract or Purchase Order, the contractor shall, at its own expense, procure and maintain, without interruption during the entire term of this contract, insurance of the kinds and limits listed in the Contract or Purchase Order. . Certificate(s) of insurance issued by the contractor's insurance carrier(s) shall be furnished to University of Georgia before beginning work and **shall name Board of Regents of the University System of Georgia, by on behalf of the University of Georgia including its officers, employees and agents as Additional Insureds** on the General Liability and Business Automobile Liability policies. Any insurance coverage required under the Contract or Purchase Order are minimum limits required and are not intended to limit the responsibility or liability of the Contractor. Contractor may not utilize a subcontractor to fulfill its obligations of this contract, unless permission is received in writing from the Director of Purchasing, or his official designee. If any subcontractor is used to fulfill this contract, they or the Contractor on their behalf, shall carry the same coverage and limits of insurance outlined in the Contract or Purchase Order. It shall be the Contractor's responsibility to ensure compliance of this requirement.

All insurance coverage shall be issued by insurance carriers licensed by the Insurance Commissioner to conduct business in the State of Georgia and have a minimum current A.M. Best rating of A-, Class VII or better in the most recently published A.M. Best Insurance Report. If during the term of the policy, a company's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer rated at least "A-" Class "VII" in the most recently published A.M. Best Insurance Report.

Each policy shall be endorsed to provide that the policy not be canceled, non-renewed, changed or allowed to lapse for any reason without thirty (30) days of written notice to the

University of Georgia. Insurance policies meeting the requirements stated above shall be maintained for the duration of the project. Renewal certificates shall be sent to the University of Georgia thirty (30) days prior to any expiration date of coverage. University of Georgia shall be entitled, upon request and without expense, to receive copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification or particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties or to underwriting on such policies.

I. BONDS

The Contractor shall provide all required bonds in accordance with the terms of the contract or Purchase Order and as stated in UGA Standard Contract Form.

J. WARRANTIES

- 1. Construction of Warranties Expressed in the Contract with Warranties Implied by Law.** All warranties made by the Contractor and/or subcontractors in all provisions of the Contract and the Contractor's Response, if applicable, whether or not the Contract specifically denominates the Contractor's and/or subcontractors' promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the materials, goods and services to be provided, or by provision of samples to UGA shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade, the warranty of merchantability, and the warranty of fitness for a particular purpose. The warranties expressed in the Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Contractor. The provisions of this section apply during the term of the Contract and any extensions or renewals thereof.
- 2. Warranty – Nonconforming Goods.** All goods delivered by Contractor to UGA shall be free from any defects in design, material, or workmanship. If any goods offered by the Contractor are found to be defective in material or workmanship, or do not conform to Contractor's warranty, UGA shall have the option of returning, repairing, or replacing the defective goods at Contractor's expense. Payment for goods shall not constitute acceptance. Acceptance by UGA shall not relieve the Contractor of its warranty or any other obligation under the Contract.
- 3. Compliance with Federal Safety Acts.** Contractor warrants and guarantees to UGA that the goods provided under the Contract are in compliance with, as applicable, Sections 5 and 12 of the Federal Trade Commission Act; the Fair Packaging and Labeling Act; the Federal Food, Drug, and Cosmetic Act; the Consumer Product Safety Act; the Federal Environmental Pesticide Control Act; the Federal Hazardous Substances Act; the Fair Labor Standards Act; the Wool Products Labeling Act; the Flammable Fabrics Act; the Occupational Safety and Health Act; the Office of Management and Budget A-110 Appendix A; and the Anti-Kickback Act of 1986.
- 4. Originality and Title to Concepts, Materials, and Goods Produced.** Contractor represents and warrants that all the concepts, materials, goods and services produced, or provided to UGA pursuant to the terms of the Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses,

permits or other intellectual property rights in such concepts, materials and works. The Contractor represents and warrants that the concepts, materials, goods and services and UGA's use of same and the exercise by UGA of the rights granted by the Contract shall not infringe upon any other work, other than material provided by the Contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the goods and services contemplated by the Contract.

5. **Conformity with Contractual Requirements.** The Contractor represents and warrants that the goods and services provided in accordance with the Contract will appear and operate in conformance with the terms and conditions of the Contract.
6. **Authority to Enter into Contract.** The Contractor represents and warrants that it has full authority to enter into the Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to UGA.
7. **Obligations Owed to Third Parties.** The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to the Contract are or will be fully satisfied by the Contractor so that UGA will not have any obligations with respect thereto.
8. **Title to Property.** The Contractor represents and warrants that title to any property assigned, conveyed or licensed to UGA is good and that transfer of title or license to UGA is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.
9. **Industry Standards.** The Contractor represents and expressly warrants that all aspects of the goods and services provided or used by it shall at a minimum conform to the standards in the Contractor's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Contract, which shall take precedence.
10. **Contractor's Personnel and Staffing.** Contractor warrants that all persons assigned to perform services under this Contract are either lawful employees of Contractor or lawful employees of a Subcontractor authorized by UGA as specified in the contract or Purchase Order. All persons assigned to perform services under this Contract shall be qualified to perform such services. Personnel assigned by Contractor shall have all professional licenses required to perform the services.
11. **Use of State Vehicles.** Contractor warrants that no State vehicles will be used by Contractor for the performance of services under this Contract. Contractor shall be responsible for providing transportation necessary to perform all services.

K. PRODUCT RECALL.

In the event that any of the goods are found by the Contractor, UGA, any governmental agency, or court having jurisdiction to contain a defect, serious quality or performance

deficiency, or not to be in compliance with any standard or requirement so as to require or make advisable that such goods be reworked or recalled, the Contractor will promptly communicate all relevant facts to UGA and undertake all corrective actions, including those required to meet all obligations imposed by laws, regulations, or orders, and shall file all necessary papers, corrective action programs, and other related documents, provided that nothing contained in this section shall preclude UGA from taking such action as may be required of it under any such law or regulation. The Contractor shall perform all necessary repairs or modifications at its sole expense except to any extent that the Contractor and UGA shall agree to the performance of such repairs by UGA upon mutually acceptable terms.

L. CONTRACT ADMINISTRATION

- 1. Order of Preference.** In the case of any inconsistency or conflict among the specific provisions of UGA Standard Contract Terms and Conditions (including any amendments accepted by both UGA and the Contractor attached hereto), any applicable solicitation (including any subsequent addenda and written responses to bidders' questions), and the Contractor's Response, any inconsistency or conflict shall be resolved as follows:
 - (i)** First, by giving preference to the specific provisions of UGA Standard Contract Terms and Conditions or Purchase Order
 - (ii)** Second, by giving preference to the specific provisions of the solicitation.
 - (iii)** Third, by giving preference to the specific provisions of the Contractor's Response, except that objections or amendments by a Contractor that have not been explicitly accepted by UGA in writing shall not be included in this Contract and shall be given no weight or consideration.
- 2. Intent of References to Bid Documents.** The references to the parties' obligations, which are contained in this document, are intended to supplement or clarify the obligations as stated in the solicitation and the Contractor's Response, if applicable. The failure of the parties to make reference to the terms of the solicitation or the Contractor's Response in this document shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the solicitation and the Contractor's Response. The contractual obligations of UGA cannot be implied from the Contractor's Response.
- 3. Compliance with the Law.** The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders now or hereafter in effect when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or contractors. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under the Contract. Contractor and Contractor's personnel shall also comply with all State and UGA policies and standards in effect during the performance of the Contract; including but not limited to the State of Georgia's policies and standards relating to personnel conduct, security, safety, confidentiality, non-discrimination, anti-harassment, gifts, gratuities and ethics. Further, the provisions of O.C.G.A. Section 45-10-20 et seq. have not and must not be violated under the terms of this Contract.

4. Drug-free Workplace. The Contractor hereby certifies as follows:

- (i) Contractor will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Contract; and
- (ii) If Contractor has more than one employee, including Contractor, Contractor shall provide for such employee(s) a drug-free workplace, in accordance with the Georgia Drug-free Workplace Act as provided in O.C.G.A. Section 50-24-1 et seq., throughout the duration of this Contract; and
- (iii) Contractor will secure from any subcontractor hired to work on any job assigned under this Contract the following written certification: "As part of the subcontracting agreement with (Contractor's Name), (Subcontractor's Name) certifies to the contractor that a drug-free workplace will be provided for the subcontractor's employees during the performance of this Contract pursuant to paragraph 7 of subsection (b) of Code Section 50-24-3."
- (iii) Contractor may be suspended, terminated, or debarred if it is determined that:
 - a. Contractor has made false certification here in above; or
 - b. Contractor has violated such certification by failure to carry out the requirements of O.C.G.A. Section 50-24-3(b).

5. Tobacco and Smoke-Free Campus Policy. In accordance with the Tobacco and Smoke-Free Campus Policy of the Board of Regents of the University System of Georgia, the use of all forms of tobacco products is prohibited on property owned, leased, rented, in the possession of, or in any way used by the University. "Tobacco Products" is defined as cigarettes, cigars, pipes, all forms of smokeless tobacco, clove cigarettes and any other smoking device that use tobacco such as hookahs or simulate the use of tobacco such as electronic cigarettes. Further, this policy prohibits any advertising, sale, or free sampling of tobacco products on University property unless specifically stated for research purposes. This prohibition includes but is not limited to all areas indoors and outdoors, buildings and parking lots owned, leased, rented or otherwise used by the University. The use of tobacco products is prohibited in all vehicles – private or public – located on University property. Additionally, all events hosted by the University or by outside groups on behalf of the University shall be tobacco-free. Failure to comply with this policy by contractor or its subcontractors shall constitute a material breach of these terms.

6. Sexual Harassment Prevention. The State of Georgia promotes respect and dignity and does not tolerate sexual harassment in the workplace. The State is committed to providing a workplace and environment free from sexual harassment for its employees and for all persons who interact with state government. All State of Georgia employees are expected and required to interact with all persons including other employees, contractors, and customers in a professional manner that contributes to a respectful work environment free from sexual harassment. Furthermore, the State of Georgia maintains an expectation that its contractors and their employees and subcontractors will interact with entities of the State of Georgia, their customers, and other contractors of the State in a professional manner that contributes to a respectful work environment free from sexual harassment.

Pursuant to the University of Georgia's Non-Discrimination and Anti-Harassment Policy (the "Policy"), all contractors who are on State premises or who participate in any University program or activity must comply with the Non-Discrimination and Anti-Harassment Policy located at <https://eoo.uga.edu/policies/non-discrimination-anti-harassment-policy>.

If Contractor has employees and subcontractors that are on University premises or participate in any University program or activity, Contractor certifies that such employees and subcontractors have received, reviewed, and agreed to comply with the University of Georgia Non-Discrimination and Anti-Harassment Policy located at <https://eoo.uga.edu/policies/nondiscrimination-anti-harassment-policy>.

7. **Amendments.** The Contract may be amended in writing from time to time by mutual consent of the parties. If the contract award exceeds the delegated purchasing authority of UGA, then UGA must obtain approval of the amendment from the Department of Administrative Services (DOAS). All amendments to the Contract must be in writing and fully executed by duly authorized representatives of UGA and the Contractor.
8. **Third Party Beneficiaries.** There are no third-party beneficiaries to the Contract. The Contract is intended only to benefit UGA and the Contractor.
9. **Choice of Law and Forum.** The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of State law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to UGA.
10. **Assignment and Delegation.** The Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of UGA. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.
11. **Use of Third Parties.** Except as may be expressly agreed to in writing by UGA, Contractor shall not subcontract, assign, delegate or otherwise permit anyone other than Contractor or Contractor's personnel to perform any of Contractor's obligations under this Contract or any of the work subsequently assigned under this Contract. No subcontract which Contractor enters into with respect to performance of obligations or work assigned under the Contract shall in any way relieve Contractor of any responsibility, obligation or liability under this Contract and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Contractor under the Contract shall also apply to the subcontractors. Any contract with a subcontractor must also preserve the rights of UGA. UGA shall have the right to request the removal of a subcontractor from the Contract for good cause.
12. **Integration.** The Contract or Purchase Order represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in the Contract.
13. **Headings or Captions.** The paragraph headings or captions used in the Contract or Purchase Order are for identification purposes only and do not limit or construe the

contents of the paragraphs.

- 14. Not a Joint Venture.** Nothing in the Contract or Purchase Order shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties thereto. Each party shall be deemed to be an independent contractor contracting for goods and services and acting toward the mutual benefits expected to be derived here from. Neither Contractor nor any of Contractor's agents, servants, employees, subcontractors or contractors shall become or be deemed to become agents, servants, or employees of UGA. Contractor shall therefore be responsible for compliance with all laws, rules and regulations involving its employees and any subcontractors, including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Contract.
- 15. Joint and Several Liability.** If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Contract, and for any default of activities and obligations.
- 16. Supersedes Former Contracts or Agreements.** Unless otherwise specified in the Contract or Purchase Order, this Contract or Purchase Order supersedes all prior Contracts or Agreements between UGA and the Contractor for the goods and services provided in connection with the Contract or Purchase Order.
- 17. Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of UGA and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract or Purchase Order shall not be construed as affecting any subsequent right to require performance or to claim a breach.
- 18. Notice.** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to the person who signed the Contract on behalf of the party at the address identified in UGA Standard Contract Form. Each such notice shall be deemed to have been provided:

 - (i) At the time it is actually received; or,
 - (ii) Within one (1) day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,
 - (iv) Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.
 - (iv) From time to time, the parties may change the name and address of the person designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

- 19. Cumulative Rights.** The various rights, powers, options, elections and remedies of any party provided in the Contract shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.
- 20. Severability.** If any provision of the Contract or Purchase Order is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Contract or Purchase Order. Further, if any provision of the Contract is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law. Any agreement of the parties to amend, modify, eliminate, or otherwise change any part of this Contract or Purchase Order shall not affect any other part of this Contract or Purchase Order, and the remainder of this Contract or Purchase Order shall continue to be of full force and effect.
- 21. Time is of the Essence.** Time is of the essence with respect to the performance of the terms of the Contract. Contractor shall ensure that all personnel providing goods and services to UGA are responsive to UGA's requirements and requests in all respects.
- 22. Authorization.** The persons signing this Contract represent and warrant to the other parties that:
- (i) It has the right, power and authority to enter into and perform its obligations under the Contract; and
 - (ii) It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Contract and the Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
- 23. Successors in Interest.** All the terms, provisions, and conditions of the Contractor Purchase Order shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.
- 24. Record Retention and Access.** The Contractor shall maintain books, records and documents in accordance with generally accepted accounting principles and procedures and which sufficiently and properly document and calculate all charges billed to UGA throughout the term of the Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Georgia or any authorized representative of UGA, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Contract, wherever such records may be located during normal business hours. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses

incorrect billings or improprieties, UGA reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

- 25. Solicitation.** The Contractor warrants that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure the Contract upon an agreement or understanding for commission, percentage, brokerage or contingency.
- 26. Immunity from Liability.** Every person who is a party to the Contract is hereby notified and agrees that UGA is immune from liability and suit for or from Contractor's and/or subcontractors' activities involving third parties and arising from the Contract.
- 27. Public Records.** The laws of the State of Georgia, including the Georgia Open Records Act, as provided in O.C.G.A. Section 50-18-70 et seq., require procurement records and other records to be made public unless otherwise provided by law.
- 28. Clean Air and Water Certification.** Contractor certifies that none of the facilities it uses to produce goods provided under the Contract are on the Environmental Protection Agency (EPA) List of Violating Facilities. Contractor will immediately notify UGA of the receipt of any communication indicating that any of Contractor's facilities are under consideration to be listed on the EPA List of Violating Facilities.
- 29. Debarred, Suspended, and Ineligible Status.** Contractor certifies that the Contractor and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Georgia or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify UGA if Contractor is debarred by the State of Georgia or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.
- 30. Use of Name or Intellectual Property.** Contractor agrees it will not use the name or any intellectual property, including but not limited to, UGA trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of UGA.
- 31. Taxes.** It ems and/ or services in the Contract or Purchase Order are exempt from Federal Excise Taxes (number 56700047K), and no payment will be made for any taxes levied on Contractor's employee's wages. UGA is exempt from State and Local Sales and Use Taxes. The Georgia Department of Revenue requires no exemption number be given for State of Georgia agencies purchases supported by official purchase orders unless otherwise specified. Tax Exemption Certificates will be furnished upon request and can be obtained at www.busfin.uga.edu/forms/salestax.pdf. Contractor or an authorized subcontractor has provided UGA with a sworn verification regarding the filing of unemployment taxes or persons assigned by Contractor to perform services required in this Contract, which verification is incorporated herein by reference.
- 32. Certification Regarding Sales and Use Tax.** By executing the Contract the Contractor certifies it is either (a) registered with State of Georgia Department of Revenue, collects, and remits State sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the O.C.G.A.; or (b) not a "retailer" as defined in O.C.G.A. Section 48-8-2. The Contractor also acknowledges that UGA may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may

result in UGA or its representative filing for damages for breach of contract.

- 33. Delay or Impossibility of Performance.** Neither party shall be in default under the Contract if performance is delayed or made impossible by an act of God. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract.
- 34. Obligations Beyond Contract Term.** The Contract shall remain in full force and effect to the end of any specified term or until terminated or canceled pursuant to the Contract. All obligations of the Contractor incurred or existing under the Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Contract.
- 35. Counterparts.** The parties agree that the Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.
- 36. Further Assurances and Corrective Instruments.** The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Contract.
- 37. Transition Cooperation and Cooperation with other Contractors.** Contractor agrees that upon termination of this Contract for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to UGA or another contractor. The Contractor shall provide full disclosure to UGA and the third-party UGA. The Contractor shall transfer licenses or assign agreements for any software or third-party services used to provide the services to UGA or to another contractor.
 - (i)** Further, in the event that UGA has entered into or enters into agreements with other contractors for additional work related to services rendered under the Contract, Contractor agrees to cooperate fully with such other contractors. Contractor shall not commit any act, which will interfere with the performance of work by any other contractor.
- 38. Electronic/facsimile transmission.** If this order is transmitted by facsimile machine, or by other means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to the Contractor.
- 39. Title.** Unless specified otherwise within the Contract or Purchase Order, title shall pass to UGA only upon actual receipt and acceptance of the items by UGA.
- 40. Attachments.** Attachments are a part hereof as if fully written herein.
- 41. Authority.** Only University of Georgia Procurement officers may execute or amend a UGA purchase order.

For any further information regarding UGA Purchasing Terms and Conditions, please contact the University's Procurement Office at 706-542-2361.