

# THE UNIVERSITY OF ALABAMA®

## GENERAL TERMS AND CONDITIONS

### 1. **Definitions:**

Contract – The entire written agreement between the parties and executed by a person authorized to execute contracts on behalf of a party, including, but not limited to, the Invitation for Bid or Request for Proposal and its specifications, terms, and conditions, solicitation instructions, solicitation addenda, contractor's offer, the contract document, and contract amendments if any, including, without limitations, these General Terms and Conditions and the purchase order or agreement document excluding correspondence of any type unless specifically accepted by both parties in writing. In the event Contractor enters into terms of use, end user agreements, or other agreements or understandings, whether electronic, click-through, or shrink-wrap, and whether verbal or written, with University employees or other end users not authorized to execute contracts on behalf of the University, such agreements shall be null, void, and without effect as a part of the Contract, and the terms of this Contract shall apply. Contract is non-exclusive and shall not prohibit the University from entering into similar contracts, unless explicitly stated in the Contract.

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

Premises - Any premises owned, operated, licensed, leased, or under partial or complete control of University. Premises shall also include any other areas in which Contractor will perform the work, pursuant to this Contract.

University – The Board of Trustees of The University of Alabama, instrumentality of the State of Alabama.

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

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

### 3. **Contract Provisions by Reference:**

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

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

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

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

**4. Governing Law and Dispute Resolution:**

This provision shall govern any disputes or questions of law arising from or relating to the Contract. Further, the University does not agree to alter or waive any statutory rights available to it, including, but not limited to, any applicable statute of limitation. The University does not agree to indemnify or hold any entity, person, or party harmless from any claim or damages. The University does not agree to any terms or provisions that provide for liquidated damages with respect to the Contract. The University does not waive and specifically reserves all immunities to which it is entitled by the constitution, laws, and statutes of the United States and the State of Alabama, including, without limitation, the immunities contained within Article 1, section 14, of the Constitution of Alabama. University hereby expressly reserves the right to assert such immunity as a defense to any action or proceeding relating to or arising from the Contract. Any claim against the University must be made through the Alabama State Board of Adjustment. Alabama law, without regard to its conflicts of law provisions, shall exclusively apply to the Contract, questions of immunity related to the University, and any disputes between the parties. Any provision of the Contract that may be considered a consent to suit or a waiver of immunity by the University is hereby stricken and rendered null and void. The University does not consent to binding arbitration. Exclusive jurisdiction and venue of any claims that are not barred by immunity, nor required to be filed before the State Board of Adjustment, shall lie in the United States District Court for the Northern District of Alabama, Western Division (Tuscaloosa), or the Circuit Court of Tuscaloosa County, Alabama.

**5. Indemnification:**

Contractor shall and does release, discharge, indemnify, and hold harmless the Board of Trustees of the University, its affiliated foundations, and their respective trustees, directors, officers, employees, agents, and representatives, from any and all claims for personal injury, death, or property damage and any other losses, damages, claims, suits, rights of action, costs, liabilities, charges or expenses, including attorney's fees, that arise out of, in connection with, or are related to products provided or services rendered, or those to be provided or rendered, under the Contract. Further, Contractor hereby unconditionally, irrevocably, and absolutely agrees to protect, defend, indemnify, and hold harmless The Board of Trustees of the University, its affiliated foundations, and each of their respective past, present, and future trustees, directors, officers, employees, agents, and representatives, and each of the foregoing's heirs, personal representatives, successors and assigns, from and against any and all adverse consequences incurred, paid or sustained by any of the foregoing, in each case in connection with, arising out of, based upon, relating to or otherwise involving: (i) Contractor misrepresentation of any facts related to the Contract or its breach; (ii) Contractor non-fulfillment of any covenant or condition under the Contract; and (iii) any liability or damages for personal injury, death or breach of contract, arising directly or indirectly from the Contract. Adverse consequences shall mean any and all manner of claims, controversies, damages, liabilities, losses, penalties, fines, amounts paid in settlement and reasonable incurred costs, expenses and fees (including reasonable attorneys' fees and court costs) but excluding consequential damages and lost profits. In no event shall the University be liable for any damages resulting from the Contract or Contractor's provision of services or products pursuant to the Contract.

**6. Insurance:**

The University's General Insurance Requirements found at the following link will apply to this Contract:  
<https://finance-estus.fa.ua.edu/financepub/procpub/Purchasing/UA-Contractor-Ins-Req.pdf>

**7. Termination for Convenience:**

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

**8. Termination for Non-performance:**

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

- Failing to provide satisfactory quality of service, including, failure to maintain adequate personnel, whether arising from labor disputes, or otherwise any substantial change in ownership or proprietorship of the Contractor, which in the opinion of the University is not in its best interest, or failure to comply with the terms of Contract;
- Failing to perform within the time period set forth herein, or violation of, any of the covenants, conditions, provisions or agreements herein contained;
- Adjudicating as a voluntarily bankrupt, making a transfer in fraud of its creditors, filing a petition under any section from time to time, or under any similar law or statute of the United States or any state thereof, or if an order for relief shall be entered against the Contractor in any proceeding filed by or against Contractor thereunder. In the event of any such involuntary bankruptcy proceeding being instituted against the Contractor, the fact of such an involuntary petition being filed shall not be considered an event of default until sixty (60) days after filing of said petition in order that Contractor might during that sixty (60) day period have the opportunity to seek dismissal of the involuntary petition or otherwise cure said potential default; or
- Making a general assignment for the benefit of its creditors, or taking the benefit of any insolvency act, or if a permanent receiver or trustee in bankruptcy shall be appointed for the Contractor.

**Demand for Assurances**

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

**Notification**

The University will provide ten (10) calendar days written notice of default. Unless arrangements are made to correct the non-performance issues to the University's satisfaction within ten (10) calendar days, the University may terminate the Contract by giving thirty (30) days' notice, by registered or certified mail, of its intent to cancel this Contract.

**9. Cancellation for Lack of Funding:**

Contract may be cancelled without further obligation on the part of The University of Alabama in the event that sufficient, appropriated funding is unavailable to assure full performance of its terms. The Contractor shall be notified in writing of such non-appropriation at the earliest opportunity. No penalty shall accrue in the event this section is exercised.

**10. Force Majeure:**

Neither party will be liable for losses, defaults or damages which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it in any contract resulting from this Request for Proposal because of acts of God, the public enemy, acts of government, earthquakes, floods, typhoon, civil strife, fire for other causes beyond the reasonable control of the party so delayed in or so unable to perform provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

**11. Attorney's Fees:**

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

**12. Compensable Damages for Breach:**

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

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

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

**13. Assignment and Subcontracting:**

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

**14. Contractor's Responsibility in Performing Work:**

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

Nothing in the Contract shall be deemed to constitute either party, or any employee, agent, or representative of either party, an employee, agent, or representative of the other party. All persons furnished or retained by Contractor in connection with any Contract shall be considered employees or agents of the Contractor.

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

Contractor shall ensure that its employees abide by University policies and regulations concerning behavior and conduct on University Premises.

Contractor Cooperation in Related Efforts

The University reserves the right to undertake or award other contracts for additional or related work to other entities. The Contractor shall fully cooperate with such other Contractors and University employees and carefully fit its work to such additional work. The Contractor shall not commit or permit any act, which will interfere with the performance of work by any other Contractor or by University employees.

Premises and Equipment

Contractor shall take reasonable and proper care of any Premises and equipment furnished to the Contractor by the University and return them to University at termination of the Agreement. Any modifications to the existing Premises must receive written authorization from the University and be in compliance with all applicable State and Federal codes as well as University policies.

Personnel Obligations

Each party hereto shall be solely responsible for all personnel actions regarding employees on its respective payroll. Each party shall withhold all applicable federal, state and local employment taxes and payroll insurance with respect to its employees, insurance premiums, contributions to benefit and deferred compensation plans, licensing fees and workers' compensation costs and shall file all required documents and forms.

#### Background checks/drug testing

Contractor shall conduct a thorough background check on all employees providing service to the University, which shall include drug testing.

#### Employee Conduct

Contractor employees must conduct themselves at all times in a pleasant, courteous manner toward the public, providing excellent customer service. Operations shall be conducted in an orderly and proper manner so as not to annoy, disturb, or be offensive to others.

Contractor and its employees will comply with all applicable ethical standards.

#### Contractor Personnel Responsibilities

Contractor shall be responsible for the acts of its employees and agents while performing services for The University of Alabama. Accordingly, Contractor agrees to take all necessary measures to prevent injury and loss to persons or property while on the University's Premises. Contractor shall be responsible for all damages to persons or property on and off campus caused solely or partially by the Contractor or any of its agents or employees. The University may choose to repair any damage that Contractor or its employees or agents may cause to the University's Premises or equipment. When the University makes a repair to such damage, the Contractor shall reimburse the University promptly for the cost of the repair.

Contractor must provide The University of Alabama with a written procedure on how the Contractor handles personnel complaints. The Contractor's supervisors upon notification by The University of Alabama will handle any complaint, deemed by The University of Alabama to be of serious nature. Contractor's supervisors will provide a written response of the outcome of the complaint to The University of Alabama within a reasonable amount of time.

The University shall have the right to review and advise Contractor, in writing, regarding the employment and retention of Contractor's personnel for the implementation of this Agreement. The Contractor acknowledges that it has sufficient personnel to transfer to the University on an as-needed basis to fulfill the obligations of this agreement. Notwithstanding the above, the University may submit written notice to remove or reassign personnel for good cause and Contractor shall comply. Contractor must have standard documented disciplinary procedure.

#### **15. Additions, Deletions or Contract Changes:**

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

#### **16. Standing Contract Price Adjustments:**

The University of Alabama will consider price adjustment clauses necessary to assure the most aggressive pricing structure. Adjustments can be made no more than once per year on Standing Contracts upon mutual agreement of both parties.

#### **17. Permits, Licenses and Taxes:**

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations and ordinances of all federal, state, and local governments in which work under this Contract is performed. The Contractor shall pay any sales, use, personal property, income and other taxes arising out of this Contract and the transactions contemplated hereby. Any other taxes levied upon this Contract, the transaction, or the equipment or services delivered pursuant hereto shall be the responsibility of the Contractor.

**18. Royalties, Patents, Copyrights and Trademarks:**

The Contractor shall pay all applicable royalties and license fees. If a particular process, product or device is specified in the Contract documents and it is known to be subject to patent rights, or copyrights, the existence of such rights shall be disclosed in the Contract documents and the Contractor is responsible for payment of all associated royalties. To the fullest extent permitted by law the Contractor shall indemnify, hold the University harmless, and defend all suits, claims, losses or damages resulting from any infringement of patent, copyright, and trademark rights resulting from the incorporation in the work or device specified in the Contract documents. Unless provided otherwise in the Contract, the Contractor shall not use the University's name nor any of its trademarks or copyrights, although it may state that it has a Contract with the University.

**19. Copyright Ownership and Title to Designs and Copy:**

Contractor and University acknowledge and agree that the products and results of the services to be rendered by Contractor are a work made for hire, as that term is used in regard to copyrights and law. Contractor acknowledges and agrees that the work and all rights therein, including, without limitation, copyright, belongs to and shall be the sole and exclusive property of the University. For any work that is not considered a work made for hire under applicable law, title and copyright ownership are hereby assigned to the University by the Contractor. Contractor agrees to execute all documents as may be necessary or requested by the University to effectuate these provisions.

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

**20. Name, Symbols, Designs, etc:**

Contractor acknowledges and agrees that The University of Alabama owns all rights, title, and interests in and to its University Indicia and that each of the University Indicia is valid. Contractor agrees that "University Indicia" shall include, without limitation, the University's trademarks, service marks, designs, team names, nicknames, abbreviations, trade dress, uniforms, helmet designs, city/state names in the appropriate context, slogans, logos, graphics, mascots, seals, colors, and other symbols associated with or referring to the University that are adopted and used or approved for use by the University. Contractor shall not have any right to use any of the University Indicia or any similar mark as, or as part of, a trademark, service mark, trade name, fictitious name, domain name, company or corporate name, a commercial or business activity, or advertising or endorsements anywhere in the world without the prior express written consent of the University.

Any Contractor providing products to the University of Alabama that include a University logo or insignia must have or obtain an Internal Campus Supplier License from IMG College Licensing prior to the award of bid. The standard licensee requirements include but may not be limited to submitting artwork electronically, maintaining product liability insurance, and compliance with labor code standards. Evidence of licensure or permission from the UA licensing department will be required in order to process any orders for goods displaying University trademarks. Use of trademarks is strictly limited to products as specified in this bid.

If the license cannot be obtained in a sufficient time frame the University reserves the right to award to the next qualified vendor. For information on how to obtain an Internal Campus Supplier License, please go to the IMG College Licensing website: <http://www.clc.com/Licensing-Info.aspx>

When a product ordered by the University includes the application of any of the aforementioned University Indicia, Contractor agrees, if the product is rejected by the University and returned to the Contractor for non-compliance with required specifications, to physically destroy the product and render it completely incapable of use. Placing the product in a trash receptacle for collection by a public or private trash collector, without additional efforts to make the product incapable of use, is not sufficient. Contractor may not sell, donate, or in any other way distribute a rejected product that includes a University Indicia.

Any domain name, trademark or service mark registration obtained or applied for that contains the University Indicia or any similar mark upon request shall be assigned or transferred to the University without compensation.

**21. Publicity and Advertising:**

No advertising or publicity matter having or containing any reference to The University of Alabama or any of its faculty/staff shall be made by Contractor or any one on Contractor's behalf unless Contractor has written consent of the University.

**22. Athletic Compliance:**

Contractor shall comply with and will be responsible for assuring that their employees and representatives will comply with the Constitution, Bylaws, and Rules of the NCAA and any intercollegiate athletics conference of which University is a member. Further, Contractor shall be obliged to comply with NCAA legislation, interpretations and policies, and all institutional and conference policies, on the use of a student-athlete's name or likeness.

**23. Proprietary Information, Data Duplication, and Disclosure:**

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

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

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

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

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

Contractor shall retain all records and documents and shall provide unlimited access, at all reasonable times and upon reasonable notice, to all accounting records and supporting documentation relating to the goods and services furnished during any Contract and for a period of five (5) years thereafter, unless required to be retained for a longer period by state or federal statute. The University reserves the right to audit such records and employ any auditor the University deems appropriate to perform an audit of Contractor's records. Should such audit disclose incorrect billings or improprieties, the University reserves the right to charge the Contractor for the cost of the audit and pursue appropriate reimbursement. The University reserves the right to request any pertinent report.

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

Contractor is subject to and shall comply with all applicable Federal, state and local laws and regulations governing equal employment opportunity and affirmative action including, but not limited to, Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, Executive Order 11246, Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Assistance Act, the Age Discrimination Act of 1975, and the Americans with Disabilities Act of 1990; and all regulations and administrative rules established pursuant to the foregoing laws. Expressly, Contractor shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, age, disability, or veteran status in admission or access to, or treatment of employment in, its programs and services.

**This Contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). THESE REGULATIONS PROHIBIT DISCRIMINATION AGAINST QUALIFIED INDIVIDUALS BASED ON THEIR STATUS AS PROTECTED VETERANS OR INDIVIDUALS WITH DISABILITIES, AND PROHIBIT DISCRIMINATION AGAINST ALL INDIVIDUALS BASED ON THEIR RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY OR NATIONAL ORIGIN. MOREOVER, THESE REGULATIONS REQUIRE THAT COVERED PRIME CONTRACTORS AND SUBCONTRACTORS TAKE AFFIRMATIVE ACTION TO EMPLOY AND ADVANCE IN EMPLOYMENT INDIVIDUALS WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, NATIONAL ORIGIN, DISABILITY OR VETERAN STATUS.**

**26. Open Records:**

Any Contract with the University, and all related information and documentation may be subject to public disclosure under Alabama Code 36-12-40 and 36-12-41. Contractor is hereby notified that the University is governed by this statute and the interpretations thereof rendered by the courts and the Alabama Attorney General. Contractor, to the extent it deems appropriate, is responsible for becoming familiar with this law and assumes the responsibility of protecting any of Contractor's interests that may be effected thereby.

**27. Debarred, Suspended and Ineligible Status:**

Contractor certifies that neither it, nor any of its employees who will provide or perform services under this Contract have been debarred, suspended, or declared ineligible as defined in the Federal Acquisition Regulation (FAR 48 C.F.R Ch. 1 Subpart 9.4). Contractor will immediately notify the University if the Contractor or any of its employees who will provide or perform services under this Contract is placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors.

**28. Conflicts of Interest:**

Contractor affirms that, to the best of Contractor's knowledge, there exist no conflicts of interest between the Contractor and the University or its employees as defined by all applicable Code of Alabama and University of Alabama ethics and compliance policies and procedures. In the event of change in Contractor's interests, Contractor shall inform the University regarding any conflicts of interest that are likely to arise as a result of such change. Contractor hereby represents that it has not participated in any illegal or unethical conduct in connection with the Contract. If, at any time, the University determines the Contractor is in violation of the foregoing representation, the University may cancel the Contract upon written notice to the Contractor and the University shall have no further obligation to the Contractor.

**29. Disclosure Statement:**

In compliance with the policies of The Board of Trustees of the University of Alabama, The University of Alabama System Office, this University, and with Alabama state law, this Disclosure Statement shall be completed for all Contracts, such as proposals, bids, and Contracts, including consulting/professional service Contracts unless otherwise exempted (“Agreements”). The Board of Trustees of The University of Alabama reserves the right to refuse to enter into or to cancel, without penalty, any Contract or agreement with any entity or individual who does not provide all of the information requested below, or who makes false or incomplete disclosures.

Prior to award of this Contract, the Vendor Disclosure Statement will be required to be submitted advising The University of Alabama System of any potential conflicts of interest as it relates to all Contracts, such as proposals, bids, and Contracts.

The form will be completed and signed electronically through DocuSign, and a copy of the final document will be emailed to the vendor. Please keep this document on file and attach it to any subsequent agreements over the next year. The form will be considered active for a period of no less than 1 year or the length of the Contract. Contractors are expected to promptly disclose any relationship which may arise in the future, or any existing relationship which may become known by submitting an updated form.

The Vendor Disclosure Statement can be found here: <http://purchasing.ua.edu/vendor-disclosure-statement/>

**30. General Warranties:**

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

**31. Price Warranty:**

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

**32. Final Inspection and Acceptance:**

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

In addition to other remedies which may be available under law or in equity, the University, at its option may return to the Contractor any nonconforming or defective item(s), at no cost to the University, and require correction or replacement of the item(s). If the University does not require correction or replacement of nonconforming or defective item(s), Contractor shall repay such portion of the Contract price or such additional amount as is equitable under the circumstances. The rights of the University are in addition to and shall not be limited by Contractor’s standard warranties.

**33. Delivery, Transportation and Packaging:**

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

- Adequately pack all commodities and equipment according to accepted commercial practice and according to the packing and marking instructions stated in the Contract.
- Make deliveries as stated in the Contract; it is understood by the Contractor that all deliveries shall be made by the end of the University's fiscal year in which the Contract is awarded unless otherwise specified in a specific Contract.
- Make deliveries during normal working day hours to the point or points specified in the Contract unless otherwise noted.

The University prefers that items are shipped/ delivered on a standard 40 x 48 wooden pallet to help meet the University's sustainability efforts.

**34. Freight:**

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

**35. Smoke-Free Campus Environment Policy:**

Smoking is prohibited at all times and at all locations on The University of Alabama campus, including University owned and leased facilities, properties and grounds. Please review the University's policy:

[Smoke-Free Campus Environment](#)

**36. Collector of Sales and Use Taxes:**

The University of Alabama is a public institution as described in Alabama Department of Revenue Sales and Use Tax Rules, 810-6-3-.47.04, and is specifically exempted under the law from state sales and use taxes on all tangible personal property purchased for its sole use and benefit and under its control.

If you or your company have received an official University of Alabama Purchase Order, a University of Alabama Purchasing Card Order, or received a payment from The University of Alabama, the related purchase or payment is exempt from state sales and use taxes as stipulated in the code of Alabama 1975, Sections 40-23-31 and 4023-83. State #63-00080

**37. Certification Pursuant to Act No. 2006-557:**

Code of Alabama 1975 41-4-116 provides that every bid submitted and Contract executed shall contain a certification that the vendor, Contractor, and all of its affiliates that make sales for delivery into Alabama or leases for use in Alabama are registered, collecting and remitting Alabama state and local sales, use and/or lease tax on all taxable sales and leases into Alabama. By accepting a purchase order or Contract, the Contractor is hereby certifying full compliance with Act No. 2006-557; are not barred from bidding or entering into a Contract pursuant to 41-4-116; and acknowledge that The University of Alabama may declare the purchase order/Contract void if certification is false.

The furnishing of materials, supplies, equipment, or services to The University of Alabama under a purchase order or Contract constitutes assurance by the Contractor of his compliance with applicable provisions of and pertinent regulations promulgated under Executive Order 10925, date March 6, 1961, and Executive Order 11246, issued by the President of the United States of America, and Public Law 88=352,88th Congress, the "Civil Rights Act of 1964."

Contractor represents and warrants that all articles and services covered by the Contract meet or exceed the Safety Standards established and promulgated under the Federal Law and its regulations in effect or proposed as of this date of Contract.

**38. Safeguarding Rules of the Gramm-Leach-Bliley Act:**

To comply with the requirements of the Safeguarding Rules of the Gramm-Leach-Bliley Act ("GLB") dealing with the confidentiality of customer information, Contractor agrees that the terms of this section are incorporated into and are a material part of the Contract between Contractor and the University.

1) Definitions:

- a. Customer Information, as defined in 16 CFR §314.2(b), required to be protected under the Gramm Leach Bliley Act (GLB), includes Student Financial Information (defined below) as well as any credit card information received in the course of business by the University, whether or not such credit card information is covered by GLB. Customer Information includes both paper and electronic records.
- b. Student Financial Information is that information that the University has obtained from a customer in the process of offering a financial product or service, or such information provided to the University by another financial institution. Offering a financial product or service includes offering student loans to students, receiving income tax information from a student's parent when offering a financial aid package, and other miscellaneous financial services as defined in 12 C.F.R. § 225.28. Examples of student financial information include addresses, telephone numbers, bank and credit card account numbers, income and credit histories, and Social Security numbers, in both paper and electronic format.

2) Acknowledgment of Access to Customer Information: Contractor acknowledges that the Contract allows the Contractor access to Customer Information. Specifically, access to the following categories of Customer Information is anticipated under the Contract: names, e-mail and mailing addresses, bank and credit card account numbers, payment information, and sales information.

3) Prohibition on Unauthorized Use or Disclosure of Customer Information: Contractor agrees to hold the Customer Information in strict confidence. Contractor shall not use or disclose Customer Information received from or on behalf of the University except as permitted or required by the Contract or this section, as required by law, or as otherwise authorized in writing by the University.

4) Safeguard Standard: Contractor agrees that it will protect the Customer Information it receives from or on behalf of the University according to commercially acceptable standards and no less rigorously than it protects its own confidential information.

Return or Destruction of Customer Information: Upon termination, cancellation, expiration or other conclusion of the Contract, Contractor shall:

- a. Return to the University or, if return is not feasible, destroy all Customer Information in whatever form or medium that Contractor received from or created on behalf of the University. This provision shall also apply to all Customer Information that is in the possession of subcontractors or agents of Contractor. In such case, Contractor shall retain no copies of such information, including any compilations derived from and allowing identification of Customer Information. Contractor shall complete such return or destruction as promptly as possible, but not less than thirty (30) days after the effective date of the conclusion of this Contract. Within such thirty (30) day period, Contractor shall certify in writing to the University that such return or destruction has been completed.

- b. If Contractor believes that the return or destruction of Customer Information is not feasible, Contractor shall provide written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction is not feasible, Contractor shall extend the protections of this section to Customer Information received from or created on behalf of the University, and limit further uses and disclosures of such Customer Information, for so long as Contractor maintains the Customer Information.
- 5) Term and Termination:
- a. This section "A" shall take effect upon execution of the Contract by the University.
- b. In addition to the rights of the parties established by the underlying Contract, if the University reasonably determines in good faith that Contractor has materially breached any of its obligations under this section, the University, in its sole discretion, shall have the right to:
- (i) exercise any of its rights to reports, access and inspection under this section; and/or
  - (ii) require Contractor to submit to a plan of monitoring and reporting, as the University may determine necessary to maintain compliance with this section, and/or
  - (iii) provide Contractor with a fifteen (15) day period to cure the breach; and/or
  - (iv) terminate the Contract immediately if Contractor has breached a material term of this section and cure is not possible.
- c. Before exercising any of these options, the University shall provide written notice to Contractor describing the violation and the action it intends to take.
- 6) Subcontractors and Agents: If Contractor provides any Customer Information which was received from, or created for, the University to a subcontractor or agent, then Contractor shall require such subcontractor or agent to agree to the same restrictions and conditions as are imposed on Contractor by this section.
- 7) Maintenance of the Security of Electronic Information: Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Customer Information received from, or on behalf of, the University.
- 8) Reporting of Unauthorized Disclosures or Misuse of Customer Information: Contractor shall report to University any use or disclosure of Customer Information not authorized by this section or in writing by the University. Contractor shall make the report to the University not less than one (1) business day after Contractor learns of such use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Customer Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the University.
- 9) Indemnity. Contractor shall defend and hold the University harmless from all claims, liabilities, damages, or judgments involving a third party, including the University's costs and attorney fees, which arise as a result of Contractor's failure to meet any of its obligations under this section.
- 10) Survival. The respective rights and obligations of Contractor under subsection 5 of the section above shall survive the termination of the Contract.

**39. State of Alabama Immigration Law:**

Pursuant to the State of Alabama Immigration Law, by signing this Contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

**40. Compliance Pursuant to Act No. 2016-312:**

In compliance with Act 2016-312, as codified in Alabama Code section 41-16-5, Contractor certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade. This certification is required only for Contracts valued in excess of \$15,000.

**41. Hazardous Materials and OSHA Communication Standards:**

Contractor shall be responsible for providing Material Safety Data Sheets(MSDS) to the appropriate user(s).

Contractor shall retain title and/or ownership and responsibility for hazardous materials delivered in error. Within three working days of notification, Contractor must retrieve hazardous materials that are delivered in error.

Contractor is responsible for the safe and legal disposal of all hazardous materials generated in the performance of the Agreement. In addition, Contractor shall be responsible for providing its employees chemical safety training mandated by OSHA Hazard Communication Standard.

Contractor shall provide the University with safety/recall updates for any equipment/products provided.

**42. Child Protection/Youth Protection:**

Contractor shall comply with University's [Child Abuse Reporting Policy and Procedures](#) and [Youth Protection Policy](#).

**43. Compliance with Alabama Data Breach Notification Act of 2018:**

To the extent Contractor maintains, stores, processes or is otherwise permitted access to *data in electronic form* containing the *Sensitive Personally Identifying Information* of any Alabama resident in connection with Contractor's provision of services to University, Contractor agrees to comply with all aspects of the Alabama Data Breach Notification Act of 2018 codified in Ala. Code §§8-38-1, et. seq.

Contractor agrees that in addition to implementing reasonable security measures as required by the Act (including an appropriate disposal of records), Contractor shall conduct a prompt and good faith investigation of potential *breaches of security*. In the event of a *breach* involving *data stored in an electronic form*, Contractor shall notify University as expeditiously as possible, but in no event later than 10 days following the determination of the *breach of security* or reason to believe the breach occurred, to allow University sufficient time to comply with its breach notification requirements under the Act.

Contractor understands that its failure to comply with the notification provisions of the Alabama Data Breach Notification Act constitutes a material breach of its agreement with the University and may subject Contractor to the penalty provisions of the Alabama Deceptive Trade Practices Act, Ala. Code §8-19-11.

For the purposes of this provision, *italicized terms* shall have the meaning ascribed in Ala. Code §§8-38-2.

**44. FERPA Compliance:**

Contractor, their subsidiaries, affiliates, assignees, as well as the employees, agents, and representatives of those entities agree to abide by relevant privacy laws, including, but not limited to, the limitations on re-disclosure of personally identifiable information from education records set forth in The Family Educational Rights and Privacy Act (FERPA), 34 CFR § 99.33 (a)(2).

**45. University's Responsibilities:**

University will not be held responsible for any disruption of utility services beyond University's control, including but not limited to, Acts of God, accidents, or repairs.

**46. Legal Notices:**

A copy of any legal notice sent by Contractor regarding the University, or received by Contractor from a third party and related to the University, will also be sent to the Office of Counsel, University of Alabama Office, 222 Rose Administration Building, Box 870106, Tuscaloosa, Alabama 35487.

**47. Press Releases:**

Contractor will not issue any press releases nor post information concerning this contract without the prior written approval of the University. Approvals can only be made by the University office of media relations.

**48. Compliance with Section Nine of Act 2012-491:**

Contractor and University affirm, for the duration of the Contract, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a party found to be in violation of this provision shall be deemed in breach of the Contract and shall be responsible for all damages resulting therefrom. Furthermore, Contractor certifies that it will provide its one-page E-Verify Company Profile Document to the University. During the performance of the Contract, Contractor shall participate in the E-Verify Program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations.

**49. Automatic Renewal Provisions:**

Such provisions shall not bind the University.

**50. Severability:**

All of the terms, provisions, and conditions of this Contract shall be deemed to be severable in nature. If for any reason the provisions hereof are held to be invalid or unenforceable to any extent, then, to the extent that such provisions are valid and enforceable, a court of competent jurisdiction shall construe and interpret this Contract to provide for maximum validity and enforceability of this Contract.