

**BASIC TERMS AND CONDITIONS FOR SERVICES PROVIDED
THE REGENTS OF THE UNIVERSITY OF MICHIGAN**

The following terms and conditions shall be observed. Any Supplier terms and conditions included with Supplier's invoice or any other document provided by Supplier shall be of no effect.

- 1.0 No Document Modifications. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by both parties.
- 2.0 Performance Standard. Supplier agrees to perform the services to the satisfaction of the University and with the standard of care and skill of an expert regularly rendering services of the type required by this Agreement and in conformance with state and federal law.
- 3.0 Acceptance. The University shall have a reasonable time (but not less than thirty [30] days) after provision of the services to inspect and/or evaluate the services provided under this Agreement and reject any or all items that are nonconforming or defective. Any acceptance by the University shall not be deemed a waiver or settlement of any defect or nonconformity in the services.
- 4.0 Warranties and Representations of Supplier. Supplier acknowledges that the University is relying on these representations and warranties as essential elements to this Agreement, representing as they do, material inducements, without which the University would not have entered into this Agreement.
 - 4.1 General Services Warranty. Supplier warrants that all services provided shall conform to the level of quality performed by experts regularly rendering this type of service. Supplier warrants for ninety (90) days after accepted completion of a requested service that its services are fully satisfactory to the University and will repair, replace or redo at no additional cost to the University any unsatisfactory services.
 - 4.2 Qualifications. Supplier warrants that it, as well as its employees, agents and subcontractors engaged to provide items or services under this Agreement (collectively "Supplier Personnel"), has and will maintain all the skills, experience, and qualifications necessary to provide the services contemplated by this Agreement, including any required training, registration, certification or licensure.
 - 4.3 Conflict of Interest. Supplier warrants that to the best of Supplier's knowledge, there exists no actual or potential conflict between Supplier and the University, and its services under this Agreement, and in the event of change in either Supplier's private interests or services under this Agreement, Supplier will inform the University regarding possible conflict of interest which may arise as a result of the change. Supplier also affirms that, to the best of Supplier's knowledge, there exists no actual or potential conflict between a University employee and Supplier.
 - 4.4 Nondiscrimination. Supplier warrants that Supplier is an equal opportunity employer and that, during the performance of this Agreement, it will comply with Federal Executive Order 11246, as amended, The Rehabilitation Act of 1973, as amended, and its regulations, and the Michigan Civil Rights Act of 1976.

- 4.5 Good Standing. Supplier warrants that Supplier is a legally organized entity in good standing under the laws of the state of its organization and, where required, in good standing under the laws of the State of Michigan.
- 4.6 Noninfringement. Supplier warrants that the Supplier's services and/or the University's use of products, processes, techniques and methodologies provided by Supplier or developed by Supplier shall not infringe upon the copyright, patent or other proprietary rights of others.
- 4.7 Not Excluded. Supplier warrants that neither Supplier, nor, to the best of Supplier's knowledge, Supplier Personnel, is excluded from participating in the Medicare or Medicaid program nor currently debarred or suspended or listed on the General Services Administration's ("GSA") List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "*Debarment and Suspension*". Supplier shall immediately notify the University if it becomes debarred or suspended during the term of this Agreement.

Supplier further represents that no adverse action by the federal government that will or may result in exclusions from a federal health care program has occurred or is pending or threatened against Supplier or its affiliates, or to the best of its knowledge, against any Supplier Personnel. Supplier agrees that it shall not perform any act that shall cause Supplier to be excluded from a federal health care program or debarred, suspended or listed in the GSA's List of Parties Excluded from Federal Procurement or Nonprocurement Programs during the term of this Agreement.

- 4.8 Bonded. Supplier warrants that it is bonded as may be required by law for the services.
- 5.0 Payment Terms. Payment shall not be due prior to thirty (30) days (a) from the date the invoice is received by the University at the address indicated in the "Bill To" field on the face of the purchase order or (b) from the date the services are performed, *whichever is later*. Invoices presented for payment must be submitted to the correct address for processing. The University may withhold payment in whole or in part for services found by the University to be defective, untimely, unsatisfactory, or otherwise not conforming to the services description, or not in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations.
- 6.0 Termination. The University may terminate this Agreement in whole or in part for its sole convenience upon thirty (30) days prior notice. Upon notice of termination, Supplier shall immediately stop all work and cause its suppliers and/or subcontractors to cease their work related to this Agreement. Supplier shall be paid for services satisfactorily provided or performed. In no event shall Supplier be paid for costs incurred or support services performed after receipt of notice of termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

The University may terminate the Agreement in whole or in part for cause upon seven (7) days written notice if Supplier fails to comply with any material term or condition of this Agreement. Late performance of services or delivery of services that are defective or do not conform to the University's specifications shall, without limitation, be causes allowing the University to terminate for cause. In this event, the University will not be liable for any amounts; but Supplier shall be liable to the University for all losses, damages, and expenses, including, without limitation, the excess cost of reprocurring similar services. If a determination is made that the

University improperly terminated the Agreement for cause, then the termination shall be deemed to have been for the University's convenience.

- 7.0 Compliance with Laws, Policies & Procedures. Supplier is advised that the University has established a compliance program to assure compliance with applicable laws and University policies designed to prevent and detect fraud, waste, and abuse. To the extent applicable to the Services, Supplier shall fully comply with all federal, state, local, and University laws, rules, regulations, ordinances, policies and licenses, including applicable building policies and procedures, the University's Ordinances (reference website <http://www.umich.edu/~regents/ordinance.html>) and any standards of the Centers for Medicare and Medicaid Services ("CMS"), Michigan Department of Community Health ("MDCH") and Joint Commission of Accreditation of Healthcare Organizations ("JCAHO"), all as may be amended from time to time. Supplier acknowledges that Information about (1) the UMHS Compliance Program, (2) UMHS policies and procedures, (3) federal and state false claims and false statements laws, as well as (4) information about whistleblower protection under these laws, is available at http://www.procurement.umich.edu/information_for_vendors.html. Supplier agrees to further disseminate information about applicable University policies, as necessary, to ensure that all Supplier Personnel and subcontractors, as applicable, involved in performing the Services are aware of the existence and location of applicable University policies as well as how and where to make reports to the University regarding any compliance concerns. To the extent that University policies provide for reviews or audits of claims or services arising from this Agreement, Supplier agrees to participate in such audit insofar as it is relevant and applicable to Supplier and Supplier Personnel's interaction with University. If Supplier identifies potential non-compliance with any applicable laws, regulations or policies in connection with the provision of the Services, Supplier shall promptly contact the University of Michigan Compliance Hotline at 866-990-0111 and provide details concerning the suspected wrongdoing sufficient to facilitate an investigation by University.

Supplier shall be solely responsible for insuring that any recommendations made in connection with the Services comply with all applicable federal, state, local and University laws, rules, regulations, policies and procedures. Unless otherwise expressly provided for in this Agreement, Supplier shall obtain and comply with all permits, licenses and similar authorizations that are necessary to provide the Services. By executing this Agreement, Supplier warrants and represents that it has all legally required licenses and permits needed to perform the Services.

8.0 Patents, Copyright, Data and Documents.

- 8.1 Whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with this Agreement, Supplier shall furnish to the University, within thirty (30) days of the creation or conception, the complete information with respect to such invention or discovery and the University shall have the sole power to determine whether and where a patent application shall be filed and to determine the disposition of title to and all rights under any application or patent that may result. Supplier shall, at the University's expense, execute (or cause to be executed) all documents and do (or cause to be done) all things necessary or proper with respect to such patent application, including causing Supplier Personnel to do the same.
- 8.2 All materials conceived or prepared by Supplier under this Agreement including but not limited to any and all notes, designs, drawings, memoranda, reports, computer programs and code (including supporting data), and the technical data, if any, furnished by Supplier pursuant to this Agreement or developed by the Supplier in connection with the

performance of services (“Work Product”) shall be the property of the University. All Work Product shall be delivered to the University upon demand, and the University shall have the right to use Work Product for any purpose that it may deem desirable without the necessity of further compensating Supplier or any other person or persons for their use.

8.3 If this Agreement is funded under a Government Prime Contract or Grant, which provides a different disposition for 8.1 and 8.2 above, the latter will govern.

9.0 Insurance.

9.1 Insurance Coverages and Levels. Unless more specific insurance provisions are specified, Supplier shall, at Supplier’s expense, obtain and maintain the following coverages:

- Commercial general liability insurance, including contractual products and completed operations insurance (\$1 million per occurrence/\$3 million annual aggregate).
- Professional Liability/Errors and Omissions Insurance with limits not less than \$1 million per occurrence and \$2 million annual aggregate if the activity is deemed professional in nature or performed by someone with a professional designation and is excluded from the Commercial General Liability Insurance.
- Worker’s Compensation at statutory limits in accordance with the appropriate State of jurisdiction including Employer’s liability (with minimum \$500,000).
- Automobile liability for owned, non-owned and hired vehicles minimum limit (\$1 million each accident).
- Supplier agrees to have the Regents of the University of Michigan added as additional insured with respect to Commercial General Liability Insurance for purposes of contract performance and incidents arising out of Agreement.
- Supplier agrees to provide the University with thirty (30) days prior written notice of any reduction in limits or cancellation of any of the above insurance.
- If any of the required insurance is on a “claims made” basis and is cancelled during the term of this agreement, Supplier agrees to purchase **tail coverage** or **prior acts coverage** so that such insurance is in effect from the date the Agreement is executed to three (3) years after its termination.
- Supplier shall provide the University with a certificate of the above insurance coverages and amounts. Compliance with the foregoing requirements as to carrying insurance and furnishing evidence of it will not relieve the Supplier of its liabilities and obligations under this Agreement.

10.0 Indemnity. Each party shall defend, indemnify and hold harmless the other party, its board members, officers, employees, agents and students (if the University) from and against any costs, losses, damages, liabilities, expenses, demands and judgments, including court costs and attorney fees which may arise out of the other party’s acts or omissions under this Agreement for which the indemnifying party would be liable in law or equity.

The indemnifying party shall keep the other reasonably apprised of the continuing status of the claim, including any proceedings resulting from it, and shall permit the other party, at its expense, to participate in the defense or settlement of the claim. When a claim is resolved by the indemnifying party’s payment of money, it shall have final authority regarding defense and settlement. When a claim resolution requires equitable relief against the non-indemnifying party

or the indemnifying party has not or will not pay the money required for resolution, the parties shall cooperate regarding defense and settlement.

- 11.0 Audit. The Supplier is responsible for keeping accurate and reasonable records related to its performance and obligations under this Agreement. In particular, records will be kept documenting any price, cost or budget computations required under the Agreement. The Supplier agrees that the University or its duly authorized representative has the right to audit any directly pertinent books, documents, papers and records related to transactions and/or performance of the terms and conditions of the Agreement. The Supplier shall make available to the University or its agents all such records and documents for audit on the Supplier's premises during regular and reasonable working hours within ten (10) business days of a written request for availability. Supplier agrees to either (a) allow the University to make and retain copies of those documents useful for documenting the audit activity and results or (b) sequester the original or copies of those documents the University identifies for later access by the University. The Supplier further agrees to disclose within ninety (90) days of receipt any independent auditors' reports, which bear directly on the performance or administration of this Agreement.

The right to audit shall include periodic examinations of records throughout the term of the Agreement and for a period of three (3) years after its termination. The right to audit shall also apply to agents and subcontractors hired by the Supplier for the purpose of fulfilling the Agreement. In the event that audits discover substantive findings related to fraud, misrepresentation or non-performance, the University may recoup the costs of the audit work from the Supplier.

- 12.0 Confidentiality. Supplier shall keep confidential and not disclose to third parties any information provided by the University or by private individuals, organizations or public agencies during the course of this Agreement, including protected customer information regarding customers of the University, as defined under the Gramm-Leach-Bliley Act, unless Supplier has received the prior written consent of the University to make the disclosure or unless required by law or legal process. Only Supplier Personnel with a need to know may have access to or use University information. This obligation of confidentiality does not extend to information that is or shall become through no fault of Supplier available to the general public.
- 13.0 Changes, Alterations and Modifications to Services. The University may at any time by a written notice change the drawings, designs, specifications, materials, packaging, and the time and place of delivery and/or completion of the services to be provided under this Agreement. Promptly upon receipt of the details of any change, Supplier shall either advise the University that the change will not affect its costs, or furnish: (a) a breakdown of estimated cost and changes resulting from the requested change, and (b) a statement of any necessary changes in the time of performance. Supplier's failure to advise the University within ten (10) days of the effect of any change in cost or performance time shall constitute Supplier's consent to conform to the change without change to pricing or without change in other terms and conditions of this Agreement. If the change causes a material increase or decrease in costs, then an equitable adjustment of the pricing to be paid to Supplier shall promptly be negotiated by the University and Supplier and incorporated as an amendment to this Agreement.
- 14.0 "Most Favored Customer" Provision. If Supplier has negotiated terms or conditions for the provision of services to another customer of Supplier which the University deems more favorable than those contained herein, the University may request and shall be afforded the opportunity to provide those services on the same terms and conditions as Supplier has negotiated to provide a third party under reasonably similar circumstances.

- 15.0 Removal of Supplier Personnel. If any Supplier Personnel repeatedly fails, in the University's sole discretion, to perform in a competent manner, and the University notifies Supplier in writing that the Supplier Personnel is no longer acceptable to the University, citing the grounds and specific supporting facts, then, after written notification from the University, Supplier shall no longer schedule the Supplier Personnel to provide or support services for the University under this Agreement or any other Agreement with the University. The University, in its sole discretion, may modify this prohibition upon presentation in writing by Supplier of adequate reasons and facts for modifying the prohibition.
- 16.0 Operational Matters.
- 16.1 On-site Supplier Personnel shall follow and adhere to the University policies and procedures applicable to the provision of the services including, by way of example only and without limitation (a) sign-in procedures, (b) identification badges, (c) executing confidentiality statements, (d) participation in any required training, parking regulations.
- 16.2 Except as otherwise expressly provided in this Agreement, Supplier shall be responsible for payment of all business expenses incurred while providing the services.
- 16.3 Supplier agrees to timely cooperate and assist with any applicable performances improvement and quality assurance activities of the University as they may relate to the services.
- 16.4 Supplier Cooperation. Supplier shall cooperate and make adjustments as necessary in the methods and timing for provision of services under this Agreement so that other Suppliers and University personnel can perform their independent obligations to the University.
- 16.5 Limitation on Supplier Personnel. Supplier agrees that unless otherwise approved by the University in writing in advance, no Supplier Personnel shall provide services if any of the following have occurred: (a) any *applicable* registration, certification, licensure (including where applicable, Medicare/Medicaid provider status) of Supplier Personnel, in any state, is or has been threatened with limitation, suspension, revocation or exclusion; (b) any *applicable* registering, certifying, or licensing board reprimands, sanctions or otherwise disciplines Supplier Personnel; or (c) a negligence or malpractice claim related to the provisions of the services or similar services has been asserted against Supplier Personnel.
- 16.6 Access to Books and Records. The parties agree that *if* this Agreement is subject to the Medicare statutes and regulations governing access to books and records of subcontractors (Section 952 of the Medicare and Medicaid provisions of the Omnibus Reconciliation Act of 1980, which amends section 1861(V) (1) of the Social Security Act), Supplier shall retain and, for four (4) years after services are furnished by Supplier, shall allow the authorized representatives of the Comptroller General, the University, and the Department of Health and Human Services access to this Agreement and to the books, records, and other documents of Supplier that are necessary to verify the nature and extent of the costs of the services. In the event Supplier receives a request for access, Supplier agrees to notify the University immediately and to consult with the University regarding what response will be made to the request. This Agreement to provide access shall continue for four (4) years after the services are terminated.

If Supplier carries out any responsibilities under this Agreement through the use of a subcontractor, including any organization related by ownership or control with Supplier, when the subcontract is worth or costs \$10,000 or more over a twelve (12) month period, Supplier shall obtain and forward to the University the subcontractor's written promise to be bound as Supplier is under this same access Agreement.

17.0 Duties of the University. Except as otherwise expressly provided in this Agreement, the University will furnish Supplier with the space, facilities and accommodations, the University deems reasonably necessary to support Supplier in the provision of the services contemplated by this Agreement.

18.0 Miscellaneous.

18.1 Use of the University Name and Marks. The University acknowledges Supplier's right to make public statements regarding the existence of the contract, its terms and conditions and an accurate description of the products or services being supplied without the consent of the University. However, other than as permitted by the previous sentence, Supplier may never make any public statement (for example a press release or any form of advertisement) describing University's relationship with Supplier or University's endorsement of Supplier or Supplier's product without the prior written consent of the University's Office of Communications. The University may withhold its consent in its absolute discretion. Supplier acknowledges that the University will require ten (10) business days to consider any request for consent. Likewise, Supplier may not use any University Trademark without prior consent obtained through the procedure described above.

18.2 Use of Premises or the University Property. Supplier shall neither use nor allow Supplier Personnel to use any part of the University premises or property for any purpose other than the delivery, installation, testing, training and maintaining of the products as may be required under this Agreement. Without limiting the generality of the statement above, Supplier shall not use the University in any manner that might jeopardize the Medicare provider status of the University or the tax exemptions or casualty insurance of the University.

18.3 Independent Contractor Status of Parties. It is expressly understood that Supplier is an independent contractor and not the agent, partner, or employee of the University. Supplier and Supplier Personnel are not employees of the University and are not entitled to tax withholding, Workers' Compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Supplier shall not have any authority to enter into any contract or agreement to bind the University and shall not represent to anyone that Supplier has such authority.

18.4 Assignment. Supplier may not subcontract, assign or transfer this Agreement or any interest or claim under this Agreement without prior written approval of the University. Notwithstanding any consent by the University to any assignment, Supplier shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirements, in writing, by the University. The Supplier shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

- 18.5 Notices. Any notice to either party must be in writing, signed by the party giving it, and served to the addresses indicated on the Request for Quotation (or to such other addressee as may be later designated by written notice) by personal delivery, recognized overnight courier service, or by the United States mail, first-class, certified or registered, postage prepaid, return receipt requested. All such notices shall be effective when received, but in no event later than three (3) days after mailing.
- 18.6 Entire Agreement, Amendment. This Agreement constitutes the entire understanding between the parties with respect to the subject matter and may not be amended except by an agreement signed by Supplier and an authorized representative of the University.
- 18.7 Severability. The terms of this Agreement are severable. If any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.
- 18.8 Governing Law, Construction and Venue. This Agreement shall be governed by and construed under the laws of the State of Michigan without regard for principles of choice of law. Any claims, demands, or actions asserted against The Regents of the University of Michigan shall be brought in the Michigan Court of Claims. Supplier, its successors and assigns, consent to the jurisdiction of the Washtenaw County Circuit Court for the State of Michigan with respect to any claims arising under this Agreement.
- 18.9 Headings. The paragraph headings in this agreement are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this Agreement.
- 18.10 Waiver. No delay or omission by either party to exercise any right or remedy under this Agreement shall be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.
- 18.11 Survivability. Provisions surviving termination or expiration of this Agreement are those which on their face affect rights and obligations after termination or expiration and also include provisions concerning indemnification, confidentiality, warranty and choice of law and venue.
- 18.12 Execution. This Agreement may be executed in duplicate, each of which when executed and delivered shall be an original. The parties acknowledge and agree that this Agreement has been mutually discussed, negotiated, and drafted by the parties.
- 18.13 No Third Party Rights. Nothing in this Agreement shall be construed as creating or giving rise to any rights in third parties or persons other than the named parties to this Agreement.
- 18.14 Force Majeure. Neither Supplier nor the University shall be liable for failure to perform its respective obligations under the Agreement when failure is caused by fire, explosion, water, act of God, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy related closings, or like causes beyond the reasonable control of the party ("Force Majeure Event"). In the event that either party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, the party shall: (a) as soon as practicable notify the other party in writing of the Force

Majeure Event and its expected duration; (b) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible, including, as applicable, abiding by the disaster plan in place for the University. In the event that any Force Majeure Event delays a party's performance for more than thirty (30) calendar days following notice by the delaying party pursuant to this Agreement, the other party may terminate this Agreement immediately upon written notice.

- 18.15 Tax Exempt Status. Supplier acknowledges that the University is a tax-exempt institution, granted such status by authorized taxing units of State of Michigan, and is exempt from Federal Excise Tax and Michigan General Sales Tax (see Michigan Public Act 167 of 1933. Section 4 as amended).
- 18.16 Dispute Resolution. Supplier and the University will attempt to settle any claim or controversy arising from this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary.
- 18.17 Freedom of Information Act. Nothing in this Agreement shall in any way limit the ability of the University to comply with any laws or legal process concerning disclosures by public bodies. The parties acknowledge that any responses, materials, correspondence or documents provided to the University are subject to the State of Michigan Freedom of Information Act ("Act") and may be released to third parties in compliance with that Act or any other law will not constitute a breach or threatened breach of this Agreement.
- 18.18 Supplier Damage to the University Property. Without regard to any other section of the Agreement, Supplier shall be responsible for the costs to return to "as was" condition from any damage caused to the building, grounds, or other equipment and furnishings caused in whole or part by Supplier Personnel while performing activities arising under this Agreement. Supplier shall immediately report in writing the occurrence of any damage to the Building/Project Manager.
- 18.19 Supplier Clean-up. Supplier will remove all packing materials, rubbish and dirt from the University premises associated with Supplier's provision of services under this Agreement.

19.0 Confidentiality of Health Information.

- 19.1 Not Business Associate. If Supplier's provision of services under this Agreement *does not* qualify Supplier as a "Business Associate" of the University as defined in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, (which act and regulations as amended, restated and superseded from time to time, are collectively referred to as "HIPAA"), then Supplier will take all necessary steps to ensure Supplier Personnel do not seek or obtain access to protected health information created, maintained, or received by the University. In the event the scope of Supplier's services changes or HIPAA changes (including governmental guidance offered on HIPAA) such that the University concludes the Agreement must be amended or further documents executed to ensure the University's compliance with HIPAA, the parties agree to promptly take all actions necessary to ensure the University compliance with HIPAA.
- 19.2 Business Associate. If Supplier's provision of services under this Agreement *does* qualify Supplier as a "Business Associate" of the University under HIPAA and as

implemented in the University's HIPAA policies and procedures, then Supplier shall sign a separate Business Associate Agreement with the University ("BA Agreement"), the form of which is found at <http://www.procurement.umich.edu/forms.html> , if it has not already done so, that provides all the protections required by HIPAA. The terms and conditions and obligations of Supplier under the new or existing BA Agreement are incorporated into this Agreement where Supplier acts in the capacity as the University's Business Associate.