

AMERICAN UNIVERSITY GENERAL TERMS AND CONDITIONS

The following terms and conditions ("Terms and Conditions") shall govern the provision of goods and/or services to American University by Vendor. As used herein, "Vendor" shall mean you/your organization and "AU" shall mean American University. The Terms and Conditions set forth herein shall prevail over any conflicting documents. Any additional or conflicting terms and conditions proposed by Vendor or affixed to any order(s), statement(s) of work, or similar documents are not agreed to by AU unless specifically agreed to in writing.

- 1. INDEPENDENT CONTRACTOR:** Nothing in these Terms and Conditions is intended nor shall be construed to create any principal/agency relationship, employer/employee relationship, or a joint venture relationship between AU and Vendor. Vendor shall at all times and for all purposes be considered an independent contractor.
- 2. EXCLUSIVITY AND OTHER VENDORS:** Nothing in these Terms and Conditions nor in any order(s) and/or statement(s) of work (if any) shall be construed to prevent AU from engaging other vendors or persons at any time to perform services or provide goods similar to that which is provided by Vendor.
- 3. TERMINATION:** AU may terminate these Terms and Conditions and/or cancel any accompanying order(s), statement(s) of work, or similar document or any part thereof for its sole convenience upon thirty (30) days written notice to the Vendor. In case of such termination for convenience, Vendor shall be paid a pro rata percentage of the price reflecting (as applicable) (a) the percentage of product delivered to and accepted by AU in the case of the provisions or goods or (b) the percentage of work performed prior to the day that notice of termination is delivered in the case of the provision of services, plus any actual direct costs resulting from termination. Vendor shall not be paid for goods shipped or work performed, or costs incurred after receipt of notice of termination, nor for costs incurred by Vendor's suppliers or subcontractors that Vendor reasonably could have avoided. Only those services and/or goods that are adequate to AU's standards and approved by AU will be eligible for payment pursuant to this Section. AU may also immediately terminate these Terms and Conditions, an order, statement of work, or similar document or any part thereof for cause if Vendor defaults, fails to comply with any of these Terms and Conditions, any agreed upon terms and conditions or specifications of an order, statement of work, or similar document, or if Vendor becomes insolvent or files for bankruptcy protection (collectively "Cause"). In case of termination for Cause, Vendor shall promptly reimburse AU for the amounts paid by AU to Vendor for the deficient services and/or goods giving rise to such Cause, in addition to any additional expenses incurred by AU for satisfactory delivery of goods and/or services, including any difference in price if such procurement of new vendor results in an amount greater than the amount contracted for with Vendor; such reimbursement will be addition to any additional remedies available to AU at law or at equity.
- 4. ACCEPTANCE:** For a period of thirty (30) days from (as applicable) scheduled final deliverable in the case of the provision of service(s) by Vendor or the delivery of products in the case of the provision of goods, AU may inspect and reject the delivered products and/or deliverables resulting from services and/or products ("Inspection Period"). The deliverables and/or products shall be deemed to have passed inspection and shall be deemed "accepted" after the expiration of the Inspection Period. If however, AU notifies Vendor at any time during the Inspection Period of a reasonable cause for rejection of the deliverables and/or products, said deliverables and/or products shall be deemed "rejected" and Vendor shall, at AU's option, provide corrected Deliverables or replacement products (as applicable) at no cost to AU or promptly issue a full refund to AU.
- 5. PAYMENT:** AU shall pay all undisputed, itemized invoices referencing a valid engagement within thirty (30) days of receipt (net 30). Vendor shall be responsible for and pay all costs associated with conducting its business, including, but not limited to, the expense and responsibility for any applicable licenses, permits, fees, and/or insurance. Vendor shall be responsible for all taxes including, but not limited to, income taxes, Social Security taxes, and worker's compensation premiums, as well as any State, District, County, local and/or Federal taxes applicable to Vendor. Vendor shall procure all licenses and permits and comply with all statutes, ordinances, and regulations applicable to the provision of goods or services to AU.
- 6. TAX EXEMPTION:** AU is a District of Columbia nonprofit, tax-exempt corporation and is exempt from paying sales or use tax in these specific states, commonwealths, and the District of Columbia as well as others: Virginia, Maryland, New York, Florida, and New Jersey; further, AU is exempt from paying federal excise taxes. Additional exemptions available upon request. Vendor shall not charge AU for such taxes. Certificate of exemption is available upon request.
- 7. MANUFACTURER'S WARRANTY, MAINTENANCE, TRAINING AND DOCUMENTS RELATED TO GOODS:** With respect to the provision of goods by Vendor, unless noted otherwise, Vendor warrants that all delivered goods provided to AU conform to the specifications approved by AU, are fit and sufficient for the purpose manufactured, are of good material and workmanship, and are free from defects both patent and latent. The warranties contained in the section shall remain in full force and effect for a period of not less than one (1) year beyond the date of final acceptance. Vendor shall supply AU with all written warranties of the manufacturer of all goods delivered and accepted by AU. Vendor also agrees to fulfill any orders in good faith and deliver goods in conformity to the specifications set forth in any order(s). In the event that AU notifies Vendor of a breach of warranties contained herein, Vendor shall correct any deficiencies in the delivered goods at no additional cost to AU. If Vendor is unable to correct any deficiencies in the delivered goods, Vendor shall either promptly provide AU with goods that conform to the AU specifications as replacement goods or shall promptly reimburse AU any amounts paid by AU to Vendor for the deficient goods. Any preventative maintenance schedules associated with the delivered goods shall be

communicated in advance showing start dates, frequency of maintenance, details of work needed, materials and tools necessary to complete, safety issues or warnings (equipment lock out and/or tag out precautions) and other relevant information.

- 8. SERVICES WARRANTY.** With respect to the provision of services, Vendor shall perform all services governed by these Terms and Conditions in accordance with any agreed upon statement(s) of work as well as the standards of care, skill, and diligence consistent with recognized and prudent industry standard practices, all applicable laws and regulations, and the degree of knowledge, skill and judgment normally exercised by service providers of the same or similar nature. Vendor represents, warrants, and covenants that it owns the services and/ that it has the rights in the services granted hereby. Vendor further warrants that (i) it has entered into and will continue to enter into the necessary licenses or other agreements with all applicable rightsholders necessary to provide the service and (ii) any content on or operation of the service does not infringe on any third party rights, including intellectual property rights. The warranties contained in the section shall remain in full force and effect for a period of not less than one (1) year beyond the date the services are delivered. In the event that AU notifies Vendor of a breach of the warranties contained herein, Vendor shall correct any deficiencies in the delivered services (which may include the re-performance of services) at no additional cost to AU.
- 9. NO MECHANICS LIEN(S):** All services performed by the Vendor under these Terms and Conditions shall be kept free from all claims, liens, and charges whatsoever. Vendor shall, from time to time upon AU's request, provide lien waivers to prove that all parties furnishing labor or materials under the terms have been paid.
- 10. INDEMNIFICATION:** Vendor shall defend, indemnify and hold AU harmless from and against all claims, demands, actions, causes of action, judgments, costs and reasonable attorneys' fees and expenses of any kind or nature for bodily injury, death, property damage, or other damages of any kind incurred by AU, its employees, trustees, officers, agents, students, executors or other third parties arising from any claim (i) resulting from Vendor's acts or omissions in connection with the services provided; or (ii) resulting from Vendor's breach of any of its obligations, representations or warranties set forth in these Terms and Conditions.
- 11. INSURANCE:** Prior to the start of the services (or prior to shipment of the product, as applicable) Vendor shall, at its sole expense, purchase and maintain the following minimum insurance for the duration of this Agreement:

Commercial General Liability against all claims of bodily injury, death, personal injury, coverage for contractual employees, or property damage with a combined single limit of \$1,000,000 each occurrence, \$2,000,000 general aggregate, and \$1,000,000 products and or completed operations aggregate.

Workers' Compensation and Employer's Liability as required by law with statutory limits. Employer's Liability shall be provided in the amounts of not less than \$500,000 per each accident for bodily injury, \$500,000 per disease per each employee, and \$500,000 policy limit per disease.

Commercial automobile liability, for bodily injury and property damage of \$1,000,000 each accident combined single limit with respect to the Vendor's owned, non-owned, hired, or borrowed vehicles, assigned to or used in performance of this Agreement.

Policies shall be endorsed to include AU, its trustees, agents, officials and employees as additional insureds for ongoing and completed operations. The Vendor and its insurers shall waive all rights of subrogation or recovery against AU. Insurance policies shall be issued by reputable insurance companies duly authorized to engage in the insurance business in the District of Columbia with an A.M. Best's rating of A-, VII or better. Certificates of Insurance shall be mailed to the Procurement & Contract's Department at the following address PRIOR to any Services being performed- American University, 4400 Massachusetts Ave., N.W., Spring Valley Building 3rd Floor, Washington D.C., 20016-8020 or at pcd@american.edu.

In the event that any portion of the services are subcontracted (as approved by AU), Vendor shall cause all such subcontractors of the Vendor to maintain the same levels of insurance as set forth in this Section 11. The Vendor shall provide proof that insurance requirements are met by the subcontractor(s), as well as all other requirements as set forth in this Section.
- 12. SAFETY & COMPLIANCE:** At all times, Vendor shall be in compliance with all applicable state, district, local and federal laws, rules and procedures as well as the policies and procedures of AU.
- 13. DAMAGES TO AU:** Vendor agrees to compensate AU and its students, guests, visitors, staff, faculty, and other persons for any loss which they may suffer due to thefts, embezzlement, negligence, misconduct, or criminal behavior by employees or agents of Vendor or its subcontractors. Should employees or agents of Vendor or Vendor's subcontractors cause damage or loss to the premises, surrounding areas, and/or furnishings or equipment contained therein, Vendor shall immediately identify the location, cause, and time of the damage to the appropriate AU contact. Vendor agrees to repair or replace any such damage or loss to AU's complete satisfaction at the Vendor's own expense.
- 14. LIMITATION OF LIABILITY:** In no event shall AU be liable for any loss of profits or for any indirect, incidental, special, exemplary, punitive, or consequential damages incurred by Vendor.

- 15. CONFIDENTIALITY:** Vendor will keep information communicated by AU confidential using at least the same degree of effort it would use to keep its own information confidential. The Vendor will treat all such information as confidential, whether or not it is identified as confidential. Vendor will not disclose to any third party or use any reports, recommendations, opinions, and/or conclusions which the Vendor may provide to AU as part of his/her goods and services, without the express, written approval of AU.
- 16. RIGHT TO AUDIT:** AU reserves the right to audit the Vendor's records. Such records shall include, but not be limited to, accounting records, written policies and procedures, personnel records, training records, invoices, hazardous materials records, sub-agreement files (including proposals of successful and unsuccessful bidders), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to the Services.
- 17. FORCE MAJEURE:** Neither party shall be responsible to the other for any losses resulting from the failure to perform, if the party's failure to perform is attributable to war, riot, strike, terrorist acts, or other work stoppage; fire; flood; epidemic, plague, pandemic, outbreak of disease or other public health crisis, including quarantine or other employee restrictions; act of government; act of God; or any other act not within the reasonable control of the aggrieved party. Any such occurrence shall be referred to as a "Force Majeure" occurrence. In the event of a Force Majeure occurrence, either party may terminate this Agreement without liability and any funds paid in advance will be fully refunded within thirty (30) days from the notice of termination.
- 18. GOVERNING LAW:** These Terms and Conditions shall be governed by and construed in accordance with the laws of the District of Columbia.
- 19. MARKS AND PUBLICITY:** Neither party may use the name, logo, trademarks, service marks or other proprietary identifying symbols of the other party in any press release, press related or advertising media without the prior written consent of the other party.
- 20. COMMITMENT TO AFFIRMATIVE ACTION / EQUAL OPPORTUNITY:** AU is an equal opportunity, affirmative action institution and, as such, operates in full compliance with the laws of the United States and the District of Columbia Human Rights Act of 1977. The policies of equal opportunity, affirmative action, and non-discrimination apply to every aspect of AU's operations and activities generally and that extends to admissions, employment, and access to AU programs and services.
- 21. NON-DISCRIMINATION:** The Vendor agrees not to discriminate in any manner on the basis of race, color, national origin, religion, sex (including pregnancy), age, sexual orientation, disability, marital status, personal appearance, gender identity and expression, family responsibilities, political affiliation, source of income, veteran status, an individual's genetic information, or any other bases under federal or local laws, and to comply with all non-discriminatory laws and policies which AU promulgates and to which AU is subject.
- 22. PATIENT OR STUDENT INFORMATION:** With respect to the provision of services, in the event that the services involve access to patient care areas and/or access to or use of protected health information OR access or involvement with student records, then the Vendor shall comply with all applicable federal, district, state and local laws, rules and regulations including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and Family Educational Rights and Privacy Act ("FERPA") in the respective performance of the Vendor's obligations hereunder.
- 23. UNIVERSITY REVENUE:** If Vendor is collecting any revenue paid via credit card on AU's behalf, Vendor shall at all times be in compliance with all Payment Card Industry standards.
- 24. ASSIGNMENT:** Unless approved by AU in writing, Vendor shall not assign its rights and obligations under these Terms and Conditions and/or any Orders to a third party.
- 25. DEBARMENT:** Vendor represents that it is not currently listed on the Excluded Party List System and/or specially excluded (debarred) from Federal Procurement and Non-procurement Programs, which identifies those parties excluded throughout the U.S. Government (unless otherwise noted) from receiving Federal contracts or certain subcontracts and from certain types of Federal financial and nonfinancial assistance and benefits. Vendor agrees to notify American University of any changes to this status within ten (10) days of that change.
- 26. INTELLECTUAL PROPERTY RIGHTS:** In the event that the services, in whole or in part, are comprised of furnishing a deliverable created by Vendor for AU, all intellectual property rights in the said deliverable, including any modifications, customizations and interfaces developed with respect to a deliverable in whole or in part, provided to AU by Vendor shall be solely the property of AU. Further, AU and the Vendor agree that any product created, conceived, and/or prepared by the Vendor in the performance of the services shall in all respects be considered a "work made for hire" within the meaning of the federal copyright and patent laws and that no other right in the deliverables shall inhere in the Vendor, or in the Vendor's representatives, heirs, or assigns. The Vendor shall indemnify and hold harmless AU, its successors, assigns and licensees, and the respective officers, directors, agents and employees, from and against any and all claims, damages, liabilities, costs

and expenses (including reasonable attorneys' fee), arising out of or in any way connected with any breach of any representation, warranty, or covenant made by the Vendor herein. Subject to any pre-existing rights of third parties and of the Vendor, the Intellectual Property Rights (other than copyright) in all reports, documents and other materials which are generated or acquired by the Vendor (or any of its sub-contractors or agents) ("Vendor Materials") in the performance of the Services shall belong to and be vested automatically in AU.

- 27. MATERIALS:** Any chemical products or other materials containing chemicals of any type brought on premise by the Vendor must be registered and have a Material Safety Data Sheet (MSDS) supplied to AU to be placed on file within the Facilities Management Department. Any and all disposal of waste products or cleaning process byproducts will be conducted in compliance with District of Columbia and Federal safety and environmental regulations.

- 28. AMENDMENTS:** Any changes, amendments, modifications, additions to or deletions from these Terms and Conditions and or any accompanying statement of work or order shall be mutually agreed upon by the parties and evidenced by an amendment, signed by both parties.