

RESEARCH FOUNDATION GENERAL PROVISIONS
for
INFORMATION TECHNOLOGY ACQUISITIONS
12/10/2014

1) **Definitions**

Throughout this document, the following words have the following meanings.

- a) "Research Foundation" shall mean California State University, Long Beach Research Foundation.
- b) "Contractor" shall mean the person or entity providing goods or services to Research Foundation.
- c) "The Parties" shall mean "Research Foundation" and "Contractor."
- d) "University" shall mean California State University, Long Beach,

2) **Commencement of Work**

Contractor shall not commence work under the Contract until Contractor has received a fully executed Contract and been given written approval to proceed. Any work performed by Contractor prior to the date of approval shall be considered as having been performed at Contractor's own risk and as a volunteer

3) **Entire Agreement, Modification & Integration**

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of each party. No modification, alteration or variation of the Contract shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated in writing in the Contract shall be binding on any of the parties hereto.

4) **Severability**

Contractor and Research Foundation agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of its presumed non-applicability. Should the illegal or unenforceable provision be a material or essential term of the Contract, the Contract shall be terminated in a manner commensurate with the interests of both parties, to the maximum extent reasonable.

5) **Independent Status**

Contractor and its employees and agents, and subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers, employees or agents of Research Foundation or the State of California. While Contractor may be required by this Contract to carry Workers' Compensation Insurance, in no event shall Contractor and its employees and agents be entitled to unemployment or Workers' Compensation benefits from the Research Foundation.

6) **Governing Law**

To the extent not inconsistent with applicable federal law, this Contract shall be construed in accordance with and governed by the laws of the State of California.

7) **Contractor's Power and Authority**

Contractor warrants it has full power and authority to enter into this Contract and will hold Research Foundation harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor shall not enter into any arrangement, agreement or contract with any third party that might abridge any rights of the Research Foundation under this Contract.

8) **Assignments**

Contractor shall not assign this Contract, either in whole or in part, without Research Foundation's written consent, which will not be unreasonably withheld.

9) **Personnel**

Contractor shall give its personal attention to the performance of the Contract and shall make every effort consistent with sound business practices to honor Research Foundation's requests regarding Contractor's assignment of its employees. However, Contractor maintains the sole right to determine the assignment of its employees in order to keep all phases of work under its control. If an employee of Contractor is unable to perform due to illness, resignation or other factors beyond Contractor's control, Contractor shall use its best effort to provide suitable substitute personnel.

10) **Waiver of Rights**

Any action or inaction by Research Foundation or the failure of Research Foundation on any occasion to enforce any right or provision of this Contract shall not be a waiver by Research Foundation of its rights hereunder and shall not prevent Research Foundation from enforcing such provision or right on any future occasion. Research Foundation's rights and remedies provided in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

11) **Time**

Time is of the essence in the performance of this Contract.

12) **Cancellation**

Research Foundation has the right to cancel this Contract at any time and without future financial obligation upon thirty (30) days written notice to Contractor.

13) **Termination for Default**

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Research Foundation may terminate the Contract and be relieved of the payment of any consideration to Contractor should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, the Research Foundation may proceed with the work in any manner deemed proper by the Research Foundation. The cost to the Research Foundation shall be deducted from any sum due the Contractor under the Contract, and the balance, if any, shall be paid the Contractor upon demand.

14) Rights and Remedies of Research Foundation for Default

- a) In the event any Deliverables furnished or services provided by Contractor in the performance of this Contract should fail to conform to the requirements herein, or to the sample submitted by Contractor, Research Foundation may reject the same, and it shall thereupon become Contractor's duty to forthwith reclaim and remove all nonconforming deliverables and correct the performance of services, without expense to the Research Foundation, and to immediately replace all such rejected items with others conforming to the specifications or samples. Should Contractor fail, neglect, or refuse to do so, Research Foundation shall thereupon have the right, but not the obligation, to purchase in the open market, in lieu thereof, a corresponding quantity of any such items and to deduct the cost of such cover from any moneys due or that may thereafter become due to Contractor.
- b) In the event Contractor fails to make prompt delivery of any item as specified in the Contract, the same conditions as to Research Foundation's right, but not obligation, to purchase in the open market and receive reimbursement from Contractor, as set forth in (a), above shall apply.
- c) In the event the Research Foundation terminates this Contract, either in whole or in part, for Contractor's default or breach, Contractor shall compensate Research Foundation, in addition to any other remedy Research Foundation may have available to it, for any loss or damage sustained and cost incurred by the Research Foundation in procuring any items that Contractor agreed to supply.
- d) Research Foundation's rights and remedies provided above shall not be exclusive and shall be in addition to any other rights and remedies provided by law, equity or this Contract.

15) Warranty

- a) Contractor warrants that (i) Deliverables and services furnished hereunder will conform to the requirements of this Contract (including, without limitation, all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be free from defects in materials and workmanship. Where the parties have agreed to design specifications in the Statement of Work directly or by reference, Contractor warrants the Deliverables shall provide all functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, Contractor warrants such Software shall perform in accordance with its license and accompanying Documentation. Research Foundation's approval of designs or specifications furnished by Contractor shall not relieve Contractor of its obligations under this warranty.
- b) Contractor warrants that at the time of delivery, deliverables (i) shall be free of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or software); and (ii) shall not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if Research Foundation believes harmful code may be present in any Commercial Software delivered, Contractor shall, upon Research Foundation's request, provide a master copy of the Software for comparison and correction.
- c) Unless otherwise specified in the Statement of Work: (i). Where Contractor resells Hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor shall pass through any such warranties to Research Foundation and shall cooperate in enforcing them. Such warranty pass-through shall be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth above.
- d) All warranties, including special warranties specified elsewhere herein, shall inure to Research Foundation, its successors, assigns, customer agencies, and other governmental users of the Deliverables or services.

16) Safety and Accident Prevention

In performing work under this Contract on Research Foundation premises, Contractor shall conform to all specific safety requirements contained in this Contract or as required by law or regulation. Contractor shall take all additional precautions as the Research Foundation may reasonably require for safety and accident prevention purposes. Contractor's violation of such rules and requirements, unless promptly corrected, shall constitute a material breach of this Contract.

17) Insurance Requirements

The Contractor shall not commence Work until it has obtained all the insurance required in this Contract, and such insurance has been approved by the Research Foundation.

a) Policies and Coverage.

- i) The Contractor shall obtain and maintain the following policies and coverage:
 - (1) Comprehensive or Commercial Form General Liability Insurance, on an occurrence basis, covering Work done or to be done by or on behalf of the Contractor and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the Work.
 - (2) Business Automobile Liability Insurance on an occurrence basis, covering owned, hired, and non-owned automobiles used by or on behalf of the Contractor and providing insurance for bodily injury, property damage, and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists.
 - (3) Workers' Compensation including Employers Liability Insurance as required by law.
- ii) The Contractor also may be required to obtain and maintain the following policies and coverage:
 - (1) Environmental Impairment Liability Insurance should the Work involve hazardous materials, such as asbestos, lead, fuel storage tanks, and PCBs.
 - (2) Other Insurance by agreement between the Trustees and the Contractor.

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- b) Verification of Coverage. The Contractor shall submit original certificates of insurance and endorsements to the policies of insurance required by the Contract to Research Foundation as evidence of the insurance coverage. Renewal certifications and endorsements shall be timely filed by the Contractor for all coverage until the Work is accepted as complete pursuant to Article 8.01, Acceptance. Research Foundation reserve the right to require the Contractor to furnish complete, certified copies of all required insurance policies.
- c) Insurance Provisions. Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in Article 4.07. The insurance policies shall contain, or be endorsed to contain, the following provisions.
- i) For the general and automobile liability policies, Research Foundation, the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents are to be covered as additional insureds.
 - ii) For any claims related to the Work, the Contractor's insurance coverage shall be primary insurance as respects Research Foundation, the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents. Any insurance or self-insurance maintained by Research Foundation, the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall be in excess of the Contractor's insurance and shall not contribute with it.
 - iii) Each insurance policy required by this Article shall state that coverage shall not be canceled by either the Contractor or the insurance carrier, except after thirty (30) Days prior written notice by certified mail, return receipt requested, has been given to Research Foundation.
 - iv) Research Foundation, the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.
- d) Amount of Insurance.
- i) For all projects, the insurance furnished by Contractor under this Article shall provide coverage in amounts not less than the following, unless a different amount is stated in the Supplementary General Conditions:
 - (1) Comprehensive or Commercial Form General Liability Insurance Limits of Liability: \$2,000,000 General Aggregate and \$1,000,000 Each Occurrence--combined single limit for bodily injury and property damage.
 - (2) Business Automobile Liability Insurance--Limits of Liability: \$1,000,000 Each Accident-- combined single limit for bodily injury and property damage to include uninsured and underinsured motorist coverage.
 - (3) Workers' Compensation limits as required by law with Employers Liability limits of \$1,000,000.
 - ii) For projects involving hazardous materials, the Contractor shall provide additional coverage in amounts not less than the following, unless a different amount is stated in the Supplementary General Conditions:
 - (1) Environmental Impairment (pollution) Liability Insurance--Limits of Liability: \$10,000,000 General Aggregate and \$ 5,000,000 Each Occurrence-- combined single limit for bodily injury and property damage, including cleanup costs.
 - (2) In addition to the coverage described in 4.06-d (1) (b), Business Automobile Liability Insurance, the Contractor shall obtain for hazardous material transporter services:
 - (a) MCS-90 endorsement
 - (b) Sudden & Accidental Pollution endorsement--Limits of Liability*: \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate.
- *A higher limit on the MCS-90 endorsement required by law must be matched by the Sudden & Accidental Pollution Insurance. With the Research Foundation' approval, the Contractor may delegate the responsibility to provide this additional coverage, as described in this Article 4.06-d (2) (b) above, to its hazardous materials subcontractor. When the Contractor returns its signed project construction phase agreement to the Research Foundation, the Contractor shall also provide a letter stating that it is requiring its hazardous materials subcontractor to provide this additional coverage, if applicable. The Contractor shall affirm in this letter that the hazardous materials subcontractor's certificate of insurance shall also adhere to all of the requirements in Article 4.06-b: Verification of Coverage and 4.06-c: Insurance Provisions. Further, this letter will provide that the subcontractor's certificate of insurance will be provided to Research Foundation as soon as the Contractor fully executes its subcontract with the hazardous materials subcontractor, or within 30 Days of the Notice to Proceed, whichever is less.
- e) Acceptability of Insurers.
Insurers shall be licensed by the State of California to transact insurance and shall hold a current A.M. Best's rating of A:VII, or shall be a carrier otherwise acceptable to the Research Foundation.
- f) Subcontractor's Insurance.
Contractor shall ensure that its subcontractors are covered by insurance of the types required by this Article, and that the amount of insurance for each subcontractor is appropriate for that subcontractor's Work. Contractor shall not allow any subcontractor to commence Work on its subcontract until the insurance has been obtained. Only the Contractor and its hazardous materials subcontractor(s) shall have the coverage for projects involving hazardous materials as required in Article 4.06-d, Amounts of Insurance, subdivision (2).
- g) Miscellaneous.
- i) Any deductible under any policy of insurance required in this Article shall be Contractor's liability.
 - ii) Acceptance of certificates of insurance by the Research Foundation shall not limit the Contractor's liability under the Contract.
 - iii) In the event the Contractor does not comply with these insurance requirements, the Research Foundation may, at its option, provide insurance coverage to protect the Research Foundation. The cost of the insurance shall be paid by the Contractor and, if prompt payment is not received, may be deducted from Contract sums otherwise due the Contractor.
 - iv) If the Research Foundation are damaged by the failure of Contractor to provide or maintain the required insurance, the Contractor shall pay the Research Foundation for all such damages.
 - v) The Contractor's obligations to obtain and maintain all required insurance are nondelegable duties under this Contract.
 - vi) The Contractor's liability for damages proximately caused by acts of God (as defined in Public Contract Code section 7105) and not involving Contractor negligence shall be limited to five percent of the Contract.

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18) General Indemnity

Contractor shall indemnify, defend, and hold harmless Research Foundation, the State of California, the Trustees of the California State University, University, and their respective board members, officers, agents, volunteers and employees from any and all claims and losses accruing or resulting to any other person, firm or corporation furnishing or supplying work, service, materials or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation related to, arising out of or resulting from Contractor's performance of this Contract.

19) Invoices

Invoices shall be submitted, in arrears, to the address provided in the Contract. Each invoice must contain the Contract number and Contractor's Identification number. Final invoice shall be marked as such. Contractor shall submit invoices to Research Foundation for payment of goods and services rendered. Unless otherwise specified, Research Foundation shall pay properly submitted invoices not more than 45 days after (i) Research Foundation's acceptance of goods; (ii) the performance completion date of services; or (iii) receipt of an undisputed invoice, whichever is later. Late payment penalties shall not apply to this Contract. The consideration to be paid Contractor, as described within the Contract, shall be in full compensation for all of Contractor's expenses incurred in the performance of this Contract, including travel and per diem, unless otherwise expressly so provided.

20) Packing and Shipment

- a) All goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - i) Show the number of the container and the total number of containers in the shipment; and
 - ii) The number of the container in which the packing sheet has been enclosed.
- b) All shipments by Contractor or its subcontractors must include packing sheets identifying: the Research Foundation's contract number; item number; quantity and unit of measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required. Goods for different contracts shall be listed on separate packing sheets.

21) Delivery

Contractor shall strictly adhere to the delivery and completion schedules specified in this contract. Time, if stated as a number of days shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, the Research Foundation shall not be required to make any payment for the excess deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the Research Foundation at law or in equity.

22) Substitutions

Substitution of Deliverables may not be tendered without advance written consent of the Research Foundation. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Research Foundation.

23) Inspection, Acceptance and Rejection

Unless otherwise specified in the Statement of Work all deliverables may be subject to inspection and test by the Research Foundation.

24) Taxes, Fees, Expenses, and Extras

- a) Contractor certifies that it shall comply with all California Sale and Use Tax requirements. Articles sold to Research Foundation are exempt from certain Federal Excise Taxes. Research Foundation will furnish an exemption certificate on request.
- b) Unless specified otherwise, prices quoted shall include all required and applicable taxes.
- c) No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by Research Foundation unless expressly included and itemized in the Contract. Unless otherwise indicated on the Purchase Order or Contract, on "FOB Shipping Point" transactions vendor shall arrange for lowest cost transportation, prepay, add freight to invoice, and furnish supporting freight bills over \$50. On "FOB Shipping Point" transactions, should any shipments under this Contract be received by Research Foundation in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers by wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper, such as inadequate packing or loading or some inherent defect in the equipment and/or material, vendor shall, at its own expense, assist Research Foundation in establishing carrier liability.
- d) Contractor certifies it will immediately advise Research Foundation of any change in its retailers seller's permit or certification of registration or applicable affiliate's sellers permit or certificate of registration.

25) Electronic Software Tax Liability

Contractor further agrees to deliver purchased software solely in an intangible form and via electronic means. Contractor shall be responsible for ensuring that the software is not delivered to the Research Foundation in tangible form, and shall defend and indemnify the Research Foundation for any and all tax liability resulting from Contractor's failure to deliver the software as required by this Agreement.

26) Document Referencing

All correspondence, invoices, bills of lading, shipping memos, packages, etc., must show the Contract number. If factory shipment, the factory must be advised to comply. Invoices not properly identified with the Contract number and Contractor identification number may be returned to Contractor and may cause delay in payment.

27) Use of Data

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Contractor shall not utilize any non-public Research Foundation information it may receive by reason of this Contract, for pecuniary gain not contemplated by this Contract, regardless whether Contractor is or is not under contract at the time such gain is realized. Research Foundation specific information contained in the report, survey, or other product developed by Contractor pursuant to this Contract is the property of Research Foundation, and shall not be used in any manner by Contractor unless authorized in writing by Research Foundation.

28) Confidentiality of Data

- a) Contractor acknowledges the privacy rights of individuals to their personal information that are expressed in the Information Practices Act (California Civil Code Section 1798 et seq.) and in California Constitution Article 1, Section 1. Contractor shall maintain the privacy of personal information and confidential data as confidential information. Contractor shall not use, disclose, or release confidential information contained in Research Foundation records without full compliance with applicable state and federal privacy laws, and this Contract. Contractor further acknowledges and agrees to comply with Federal privacy laws, such as the Gramm-Leach-Bliley Act (Title 15, United States Code, Sections 6801(b) and 6805(b)(2)) applicable to financial transactions, and the Family Educational Rights and Privacy Act (Title 20, United States Code, Section 1232g) applicable to student education records and information from student education records. Contractor shall maintain the privacy of confidential information and shall be financially responsible for any notifications to affected persons (after prompt consultation with Research Foundation) whose personal information is disclosed by any security breach relating to confidential information resulting from Contractor's or its personnel's acts or omissions. Further, If so requested by Research Foundation, Contractor shall be administratively responsible for providing such notification in the most expedient time possible consistent with the methods prescribed in California Civil Code 1798.29g and 1798.82g.
- b) Contractor further agrees that all financial, statistical, personal, technical and other data and information relating to Research Foundation's operation designated "confidential" by Research Foundation, and not otherwise subject to disclosure under the California Public Records Act, and made available to Contractor to perform this Contract or which become available to Contractor while performing this Contract, shall be protected by Contractor using the same level of care it takes to protect its own information of a similar nature, but in no event less than reasonable care. If required by a court of competent jurisdiction or an appropriate administrative body with legal authority to order the disclosure of confidential information or confidential data, Contractor will notify Research Foundation in writing prior to any such disclosure to give Research Foundation an opportunity to oppose any such disclosure. Prior to any disclosure of confidential information as required by legal process, Contractor shall:
 - i) Notify Research Foundation of any actual or threatened legal compulsion of disclosure, and any actual legal obligation of disclosure, immediately upon becoming so obligated;
- c) Contractor shall cooperate with any litigation or investigation proceedings concerning confidential data loss or other breach of Contractor's obligations under this Contract. Any access, transmission, or storage of confidential data outside the United States must be approved in writing by Research Foundation in advance. Contractor's failure to comply with any provision of this Section shall constitute a material breach of the Contract.

29) Information Security Requirements

- a) Contractor is required to comply with Research Foundation Information Security Requirements as per the attached Information Security Requirements Supplemental Provisions.
- b) Information Security Plan. Contractor is required to maintain an Information Security Program sufficient to protect the sensitive and/or confidential Research Foundation data to which they have access. Requirements for the Information Security Plan are described in the Information Security Requirements Supplemental Provisions, attached hereto, and by reference made a part of this agreement.
- c) Personal Security Requirements. Contractor shall require all its affiliates and subcontractors, as a condition to their engagement, to agree to be bound by provisions substantially the same as those included in this Agreement related to information security matters only. Contractor shall not knowingly permit a representative or subcontractor to have access to Research Foundation records, confidential data, or premises of the Research Foundation when such representative or subcontractor has been convicted of a felony.

30) Patent, Copyright, and Trade Secret Indemnity

- a) Contractor shall indemnify, defend, and hold harmless Research Foundation, the State of California, the Trustees of the California State University, University, and their respective officers, agents, and employees (collectively referred to as Research Foundation), from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any Intellectual Property Right, domestic or foreign, by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to Research Foundation, in addition to the foregoing provision, such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide Research Foundation with indemnity protection.
 - i) Research Foundation will notify Contractor of such claim in writing and tender its defense within a reasonable time; and
 - ii) Contractor will control the defense of any action on such claim and all negotiations for its settlement or compromise, except when substantial principles of government or public law are involved, when litigation might create precedent affecting future Research Foundation operations or liability, or when involvement of the Research Foundation is otherwise mandated by law. In such case no settlement shall be entered into on behalf of Research Foundation without Research Foundation's written approval.
- b) Contractor may be required to furnish Research Foundation a bond against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c) Should the Deliverables or Software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a Intellectual Property Right, whether domestic or foreign, Research Foundation shall permit Contractor at its option and expense either to procure for Research Foundation the right to continue using the Deliverables or Software or to replace or modify the same so they become non-infringing, provided they comply with Contract and performance requirements and/or expectations. If neither option can reasonably practicably or if the use of such Deliverables or Software by Research Foundation shall be prevented by injunction, Contractor

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agrees to take back such Deliverables or Software and use its best effort to assist Research Foundation in procuring substitute Deliverables or Software at Contractors cost and expense. If, in the sole opinion of Research Foundation, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from Contractor under this Contract impracticable, Research Foundation shall then have the option of terminating this Contract, or applicable portions thereof, without penalty or termination charge. Contractor agrees to take back such Deliverables or Software and refund any sums Research Foundation paid Contractor less any reasonable amount for use or damage.

- d) Contractor certifies it has appropriate systems and controls in place to ensure State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

31) Rights in Work Product

All inventions, discoveries, intellectual property, technical communications and records originated or prepared by Contractor pursuant to this Contract, including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this section may be revised in a Statement of Work.

32) Dispute

Any dispute arising under or resulting from this Contract that is not resolved within a reasonable time by authorized representatives of Contractor and Research Foundation shall be brought to the attention of Contractor's Chief Executive Officer (or designee) and Research Foundation's Chief Operating Officer (or designee) for resolution. The Parties must participate in this high level informal dispute resolution process in good faith prior to initiating any legal action. If this informal dispute resolution process is unsuccessful, the parties may pursue all remedies consistent with this Contract. Despite an unresolved dispute, Contractor shall continue without delay in performing its responsibilities under this Contract. Contractor shall accurately and adequately document all service it has performed under this Contract.

33) Endorsement

Nothing contained in this Contract shall be construed as conferring on any party, any right to use the other party's name as an endorsement of product/service or to advertise, promote or otherwise market any product or service without the prior written consent of the other party. Furthermore nothing in this Contract shall be construed as endorsement of any commercial product or service by the Research Foundation, its officers or employees.

34) Covenant against Gratuities

- 35) Contractor shall warrant that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of Research Foundation with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, Research Foundation shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by Research Foundation in procuring on the open market any items that Contractor agreed to supply shall be borne and paid for solely by Contractor. Research Foundation's rights and remedies provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under the Contract.

36) Nondiscrimination

- a) During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition, age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- b) Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- c) Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

37) Drug-Free Workplace Certification

Contractor certifies that Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 and shall provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations
- b) Establish a Drug-Free Awareness Program to inform employees about all of the following:
- i) The dangers of drug abuse in the workplace;
 - ii) The person's or organization's policy of maintaining a drug-free workplace;
 - iii) Any available counseling, rehabilitation and employee assistance programs; and,
 - iv) Penalties that may be imposed upon employees for drug abuse violations.
- c) Provide that every employee who works on the proposed or resulting Contract:
- i) Will receive a copy of the company's drug-free policy statement; and,
 - ii) Will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

Note: Authority Cited: Government Code Section 8350-8357

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38) Forced, Convict, Indentured and Child Labor

By accepting a contract with Research Foundation, Contractor:

- a) Certifies that no equipment, materials, or supplies furnished to Research Foundation pursuant to this Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further certifies it will adhere to the Sweat free Code of Conduct as set forth on the California Department of Industrial Relations website located at <http://www.dir.ca.gov/>, and Public Contract Code Section 6108.
- b) Agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).

39) Americans With Disabilities Act (ADA)

Contractor warrants that it complies with California and federal disabilities laws and regulations. (Americans with Disabilities Act of 1990, 42 U.S.C. 12101et seq). Contractor hereby warrants the products or services it will provide under this Contract comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services. Contractor further agrees to indemnify and hold harmless Research Foundation from any claims arising out of Contractor's failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a material breach of this Contract.

40) Contractor's Staff

Contractor warrants that its staff, which is assigned to performing work under this Contract, is legally able to perform such duties in the country where the work is being performed.

41) Debarment and Suspension

By accepting a contract with the Research Foundation, Contractor certifies neither it nor its principals or its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency (2 Code Federal Regulations[CFR] 180.220, in accordance with the Office of Management and Budget guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235)).