

CSU GENERAL PROVISIONS
for
INFORMATION TECHNOLOGY ACQUISITIONS
Revision 10/15/14

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1. 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

2. Contract Alterations & Integration

No 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.

3. Severability

Contractor and CSU 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.

4. 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 CSU or the State of California. While Contractor may be required by this Contract to carry Worker's Compensation Insurance, in no event shall Contractor and its employees and agents be entitled to unemployment or workers' compensation benefits from the CSU.

5. 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.

6. Contractor's Power and Authority

Contractor warrants it has full power and authority to enter into this Contract and will hold CSU 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 CSU under this Contract.

7. Assignments

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

8. 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 CSU'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.

9. Waiver of Rights

Any action or inaction by CSU or the failure of CSU on any occasion to enforce any right or provision of this Contract shall not be a waiver by CSU of its rights hereunder and shall not prevent CSU from enforcing such provision or right on any future occasion. CSU'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.

10. Time

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

11. Entire Contract

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.

12. Appropriation of Funds

(a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved such continuation of the Contract is subject to the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any commodities furnished under the Contract and not yet paid for by CSU, terminate any future services and commodities to be supplied to the CSU under the Contract, and relieve the CSU of any further obligation therefore.

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- (b) CSU agrees that if provision (a) above is involved, commodities shall be returned to Contractor in substantially the same condition in which they were delivered, subject to normal wear and tear. CSU further agrees to pay for packing, crating, transportation to Contractor's nearest facility and for reimbursement to Contractor for expenses incurred for its assistance in such packing and crating.

13. Cancellation

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

14. Termination for Default

CSU 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 CSU may proceed with the work in any manner deemed proper by the CSU. The cost to the CSU shall be deducted from any sum due the Contractor under the Contract, and the balance, if any, shall be paid the Contractor upon demand.

15. Rights and Remedies of CSU 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, CSU 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 CSU, 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, CSU 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 CSU'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 CSU terminates this Contract, either in whole or in part, for Contractor's default or breach, Contractor shall compensate CSU, in addition to any other remedy CSU may have available to it, for any loss or damage sustained and cost incurred by the CSU in procuring any items that Contractor agreed to supply.
- (d) CSU'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.

16. 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. CSU'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 CSU believes harmful code may be present in any Commercial Software delivered, Contractor shall, upon CSU'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 CSU 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 CSU, its successors, assigns, customer agencies, and other governmental users of the Deliverables or services.

17. Safety and Accident Prevention

In performing work under this Contract on CSU 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 CSU 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.

18. 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 CSU.

(a) Policies and Coverage.

(1) The Contractor shall obtain and maintain the following policies and coverage:

(i) 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.

(ii) 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

(iii) Worker's Compensation including Employers Liability Insurance as required by law.

(2) The Contractor also may be required to obtain and maintain the following policies and coverage:

(i) Environmental Impairment Liability Insurance should the Work involve hazardous materials, such as asbestos, lead, fuel storage tanks, and PCBs.

(ii) Other Insurance by agreement between the Trustees and the Contractor.

(b) Verification of Coverage.

The Contractor shall submit original certificates of insurance and endorsements to the policies of insurance required by the Contract to the Trustees 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. The Trustees reserve the right to require the Contractor to furnish the Trustees 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 this Agreement. The insurance policies shall contain, or be endorsed to contain, the following provisions.

(1) For the general and automobile liability policies, 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.

(2) For any claims related to the Work, the Contractor's insurance coverage shall be primary insurance as respects 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 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.

(3) Each insurance policy required by this section 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 the Trustees.

(4) 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.

(1) For all projects, the insurance furnished by Contractor under this Contract shall provide coverage in amounts not less than the following, unless a different amount is stated in the Supplementary General Conditions:

(i) Comprehensive or Commercial Form General Liability Insurance--Limits of Liability

\$2,000,000 General Aggregate

\$1,000,000 Each Occurrence--combined single limit for bodily injury and property damage.

(ii) 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.

(iii) Workers' Compensation limits as required by law with Employers Liability limits of \$1,000,000.

(2) 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:

(i) Environmental Impairment (pollution) Liability Insurance-Limits of Liability

\$10,000,000 General Aggregate

\$ 5,000,000 Each Occurrence-- combined single limit for bodily injury and property damage, including cleanup costs.

(ii) In addition to the coverage for 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

\$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 Trustees' approval, the Contractor may delegate the responsibility to provide this additional coverage to its hazardous materials subcontractor. When the Contractor returns its signed project construction phase agreement to the Trustees, the Contractor shall also provide the Trustees with 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 CSU requirements. Further, this letter will provide that the subcontractor's certificate of insurance will be provided to the Trustees 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 University.

(f) Subcontractor's Insurance.

Contractor shall ensure that its subcontractors are covered by insurance of the types required by this Contract, 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, and approved by the CSU. Only the Contractor and its hazardous materials subcontractor(s) shall have the coverage for projects involving hazardous materials.

(g) Miscellaneous.

(1) Any deductible under any policy of insurance required in this Agreement shall be Contractor's liability.

(2) Acceptance of certificates of insurance by the Trustees shall not limit the Contractor's liability under the Contract.

(3) In the event the Contractor does not comply with these insurance requirements, the Trustees may, at its option, provide insurance coverage to protect the Trustees. 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.

(4) If the Trustees are damaged by the failure of Contractor to provide or maintain the required insurance, the Contractor shall pay the Trustees for all such damages.

(5) The Contractor's obligations to obtain and maintain all required insurance are non-delegable duties under this Contract.

(6) 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.

19. General Indemnity

Contractor shall indemnify, defend, and hold harmless the State of California, Board of Trustees of the California State University, CSU, and their respective officers, agents 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.

20. 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 CSU for payment of goods and services rendered. Unless otherwise specified, CSU shall pay properly submitted invoices not more than 45 days after (i) CSU'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.

21. 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:
 - (1) show the number of the container and the total number of containers in the shipment; and
 - (2) 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 CSU'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.

22. 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 CSU 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 CSU at law or in equity.

23. Substitutions

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

24. Inspection, Acceptance and Rejection

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

25. Taxes, Fees, Expenses, and Extras

- (a) Contractor certifies that it shall comply with all California Sale and Use Tax requirements. Articles sold to CSU are exempt from certain Federal Excise Taxes. CSU 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 CSU 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 CSU 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 CSU in establishing carrier liability.
- (d) Contractor certifies it will immediately advise CSU of any change in its retailers seller's permit or certification of registration or applicable affiliate's sellers permit or certificate of registration.

26. 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 CSU in tangible form, and shall defend and indemnify the CSU for any and all tax liability resulting from Contractors failure to deliver the software as required by this Agreement.

27. 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.

28. Use of Data

Contractor shall not utilize any non-public CSU 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. CSU specific information contained in the report, survey, or other product developed by Contractor pursuant to this Contract is the property of CSU, and shall not be used in any manner by Contractor unless authorized in writing by CSU.

29. 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 CSU 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 CSU) 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 CSU, 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 CSU's operation designated "confidential" by CSU, 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 CSU in writing prior to any such disclosure to give CSU an opportunity to oppose any such disclosure. Prior to any disclosure of confidential information as required by legal process, Contractor shall:
 - (1) Notify CSU 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 CSU in advance. Contractor's failure to comply with any provision of this Section shall constitute a material breach of the Contract.

30. Information Security Requirements

- (a) Contractor is required to comply with CSU 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 CSU 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 CSU records, confidential data, or premises of the CSU when such representative or subcontractor has been convicted of a felony.

31. Patent, Copyright, and Trade Secret Indemnity

- (a) Contractor shall indemnify, defend, and hold harmless the State of California, Board of Trustees of the California State University, CSU, and their respective officers, agents, and employees (collectively referred to as CSU), 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 CSU, 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 CSU with indemnity protection.
 - i) CSU 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 CSU operations or liability, or when involvement of the CSU is otherwise mandated by law. In such case no settlement shall be entered into on behalf of CSU without CSU's written approval.

- (b) Contractor may be required to furnish CSU 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, CSU shall permit Contractor at its option and expense either to procure for CSU 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 be practicable or if the use of such Deliverables or Software by CSU shall be prevented by injunction, Contractor agrees to take back such Deliverables or Software and use its best effort to assist CSU in procuring substitute Deliverables or Software at Contractor's cost and expense. If, in the sole opinion of CSU, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from Contractor under this Contract impracticable, CSU 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 CSU 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.

32. 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.

33. Examination and Audit

For contracts in excess of \$10,000, Contractor shall be subject to the examination and audit by (a) the Office of the University Auditor, and (b) the Bureau of State Audits, for a period of three (3) years after final payment under the Contract. The examination and audit shall be confined to those matters connected with the performance of the contract, including, but not limited to, the costs of administering the Contract.

Note: Authority Cited: Government Code Section 8546.7; Education Code Section 89045(c&d), respectively.

34. Dispute

Any dispute arising under or resulting from this Contract that is not resolved within 60 days of time by authorized representatives of Contractor and CSU shall be brought to the attention of Contractor's Chief Executive Officer (or designee) and CSU's Chief Business Officer (or designee) for resolution. Either Contractor or CSU may request that the CSU Vice Chancellor, Business and Finance (or designee) participate in the dispute resolution process to provide advice regarding CSU contracting policies and procedures. If this informal dispute resolution process is unsuccessful, the parties may pursue all remedies not inconsistent 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.

35. Conflict of Interest

CSU requires a Statement of Economic Interests (California Form 700) to be filed by any Consultant (or Contractor) who is involved in the making or participation in the making of decisions which may foreseeably have a material effect on any CSU financial interest.

36. Follow-On Contracts

No person, firm, or subsidiary thereof who has been awarded a contract for Consulting Services or providing Direction (as provided below) may submit a bid or be awarded a contract for the provision of services, the procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

- (a) If Contractor or its affiliates provides Consulting and Direction, Contractor and its affiliates:
 - i) shall not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for, or in connection with, any subject of such Consulting and Direction; and shall not act as consultant to any person or entity that does receive a Contract described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Consulting and Direction, whichever is later

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- (b) “Consulting and Direction” means services for which Contractor received compensation from CSU and includes:
 - i) development of, or assistance in the development, of work statements, specifications, solicitations, or feasibility studies;
 - ii) development or design of test requirements;
 - iii) evaluation of test data;
 - iv) direction of or evaluation of another Contractor;
 - v) provision of formal recommendations regarding the acquisition of products or services; or
 - vi) provisions of formal recommendations regarding any of the above. For purposes of this Section, “affiliates” are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- (c) Except as prohibited by law, the restrictions of this Section will not apply:
 - i) to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
 - ii) where CSU has entered into a Contract for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor’s own products.
- (d) The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law (“Conflict Laws”). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.

37. 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 CSU, its officers or employees.

38. Covenant Against Gratuities

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 CSU 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, CSU shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by CSU in procuring on the open market any items that Contractor agreed to supply shall be borne and paid for solely by Contractor. CSU’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.

39. 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.

40. Compliance with NLRB Orders

Contractor declares under penalty of perjury under the laws of the State of California that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court to comply with an order of the National Labor Relations Board.

Note: Cite Authority: PCC 10296

41. 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

42. Forced, Convict, Indentured and Child Labor

By accepting a contract with CSU, Contractor:

- (a) Certifies that no equipment, materials, or supplies furnished to CSU 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).

43. Recycled Content Certification

Contractor shall certify in writing the minimum, if not exact, percentage of postconsumer material, as defined in Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to CSU regardless whether the product meets the requirements of Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205).

44. Child Support Compliance Act

For any contract in excess of \$100,000, Contractor acknowledges in accordance with Public Contract Code Section 7110, that:

- (a) Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code;
- (b) Contractor, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

45. 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 CSU 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.

46. Expatriate Corporations

Contractor declares and certifies that it is not an expatriate corporation, and is not precluded from contracting with CSU by The California Taxpayer and Shareholder Protection Act of 2003, Public Contract Code Section 10286, et seq.

47. Citizenship and Public Benefits

If Contractor is a natural person, Contractor certifies he or she is a citizen or national of the United States or otherwise qualified to receive public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 110 STAT.2105, 2268-69).

48. Loss Leader

Contractor certifies and declares it is not engaged in business within this State of California to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code.

Note: Authority Cite: (PCC 12104.5(b).)

49. DVBE and Small Business Participation

(a) If Contractor has committed to achieve small business (SB) participation it shall, within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract), report to CSU: (1) the name and address of the SB(s) who participated in the performance of the Contract; (2) the total amount the prime Contractor received under the Contract; and (3) the amount each SB received from the prime Contractor. (Govt. Code § 14841.)

(b) If Contractor has committed to achieve disabled veteran business enterprise (DVBE) participation, it shall, within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract), report to CSU: (1) the name and address of the DVBE(s) who participated in the performance of the Contract; (2) the total amount the prime Contractor received under the Contract; and (3) the amount each DVBE received from the prime Contractor. The Contractor shall also certify that all payments under the Contract have been made to the DVBE. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code §14841)

50. 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.

51. Debarment and Suspension

By accepting a contract with the CSU, 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).

**Supplemental Provisions
to
CSU General Provisions for Information Technology Acquisitions**

DEFINITIONS

Affiliate - an entity now or hereafter controlled by, controlling or under common control with a Party. Control exists when an entity owns or controls more than 50% of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority of another entity.

Confidential Information - The term “Confidential Information” shall mean this Agreement and all proprietary information, data, trade secrets, business information, any Protected Information regarding students, employees or other individuals or entities, including but not limited to, Social Security numbers, other tax identification numbers, credit card, bank account and other financial information, and other information of any kind whatsoever which:

- a) a Party (“Discloser”) discloses, in writing, orally or visually, to the other Party (“Recipient”) or to which Recipient obtains access in connection with the negotiation and performance of this Agreement, and which
- b) relates to:
 - i. the Discloser, or
 - ii. in the case of Contractor as Recipient, the CSU, its students and employees, and its third-party contractors or licensors who have made confidential or proprietary information available to the CSU.

Party – The CSU or Contractor.

CSU Protected Data - data defined as “Protected Level 1” and “Protected Level 2” in the CSU Data Classification Standard
(http://www.calstate.edu/icsuam/sections/8000/8065_FINAL_DRAFT_Data_Classification_CW_V4.pdf)

Representative - an employee, officer, director, or agent of a Party.

Relationship Manager - the respective employees of each Party that each Party shall designate to act on its behalf with regard to matters arising under this Agreement; each Party shall notify the other in writing of the name of their Relationship Manager; however, the Relationship Manager shall have no authority to alter or amend any term, condition or provision of the Agreement; further, each Party may change its Relationship Manager by providing the other Party with prior written notice.

Subcontractor - a third party to whom Contractor has delegated or subcontracted any portion of its obligations set forth herein.

Work Product - All discoveries, inventions, work of authorship or trade secrets, or other intellectual property and all embodiments thereof originated by Contractor within the scope of Services provided under this Agreement, whether or not prepared on CSU's premises.

Contractor – Contractor is any party to an agreement with the CSU along with any Contractor Representative, Subcontractor, Affiliate, or other entity over whom the Contractor has control.

1.0 ACKNOWLEDGEMENT

Contractor acknowledges that its contract/purchase order with the California State University ("the CSU") may allow the Contractor access to CSU Protected Data including, but not limited to, personal information, student records, health care information, or financial information. This data may be transferred in various forms, notwithstanding the manner in which or from whom it is received by Contractor subject to state laws that restrict the use and disclosure of such information, including the California Information Practices Act (California Civil Code Section 1798 et seq.) and the California Constitution Article 1, Section 1. Contractor represents and warrants that it will keep CSU Protected Data confidential both during the Term and after the termination of the Agreement.

2.0 DISCLOSURE REQUIREMENTS

Contractor agrees that it will include all of the terms and conditions contained in this agreement in all subcontractor contracts providing services under this Agreement.

Contractor shall not use or disclose CSU Protected Data other than to carry out the purposes of this agreement. Contractor shall not disclose any CSU Protected Data other than on a "need to know" basis and then only:

- a. To its representatives, provided however, that each such employee or officer has entered into a confidentiality agreement;
- b. To affiliates of or Subcontractors to Contractor, only if previously approved by the CSU and provided that
 - i. Use by such Affiliates or Subcontractor shall be limited to the purpose of this agreement;
 - ii. Affiliate or Subcontractor is bound by contract and or confidentiality agreement to protect CSU data from unauthorized access.

If required by a court of competent jurisdiction or an administrative body to disclose Protected Data, Contractor shall notify the CSU in writing prior to any such disclosure in order to give the CSU an opportunity to oppose any such disclosure. Prior to any disclosure of Confidential Information as required by legal process, the Contractor shall:

- c. Notify the CSU of any, actual or threatened legal compulsion of disclosure, and any actual legal obligation of disclosure immediately upon becoming so obligated, and
- d. Delay disclosure until the CSU has provided contractor with notice that they will oppose or agree to such disclosure or the time specified for legal compliance is reached.

Any access, transmission, or storage of Protected Data outside the United States shall require prior written authorization by the CSU.

2.1 Exceptions to Obligations of Confidentiality

With the exception of the data classified as “Protected Level 1” or “Protected Level 2” under the CSU Data Classification Standard, identified in (http://www.calstate.edu/icsuam/sections/8000/8065_FINAL_DRAFT_Data_Classification_CW_V4.pdf), obligations of confidentiality shall not apply to any information that:

- a. Contractor rightfully has in its possession when disclosed to it, free of obligation to the CSU to maintain its confidentiality;
- b. Contractor independently develops without access to CSU Protected Data;
- c. Is or becomes known to the public other than by breach of this contract;
- d. The CSU or its agent releases without restriction; or
- e. Contractor rightfully receives from a third party without the obligation of confidentiality.

Any combination of Protected Data disclosed with information not so classified shall not be deemed to be within one of the foregoing exclusions merely because individual portions of such combination are free of any confidentiality obligation or are separately known in the public domain.

Failure by Contractor to comply with any provision of this Section shall constitute a default subject to Paragraph 14 of the CSU General Provisions for Information Technology Acquisitions.

3.0 INFORMATION SECURITY PLAN

- 3(a) Contractor acknowledges that the CSU is required to comply with information security standards for the protection of Protected Data Information required by law, regulation and regulatory guidance, as well as the CSU’s internal security policy for information and systems protection.

Within 30 days of the Effective Date of the Agreement and subject to the review and approval of the CSU, Contractor shall establish, maintain and comply with an information security plan (“Information Security Plan”), which shall contain such elements that the CSU may require after consultation with Contractor. On at least an annual basis, Contractor shall review, update and revise its Information Security Plan, subject to the CSU’s review and approval. At the CSU’s request, Contractor shall make modifications to its Information Security Plan or to the procedures and practices thereunder to conform to the CSU’s security requirements as they exist from time to time.

Contractor’s Information Security Plan shall be designed to:

- Ensure the security, integrity and confidentiality of the CSU Protected Data;
- Protect against any anticipated threats or hazards to the security or integrity of such information;

- Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to the person that is the subject of such information;
- Protect against unauthorized changes to or use of CSU Protected Data; and
- Comply with all applicable CSU policies legal and regulatory requirements for data protection.
- Include business continuity and disaster recovery plans.

Contractor's Information Security Plan shall include a written response program addressing the appropriate remedial measures it shall undertake in the event that there is an information security breach.

Contractor shall cause all Subcontractors and other persons and entities whose services are part of the Services which Contractor delivers to the CSU or who hold CSU Protected Data, to implement an information security program and plan substantially equivalent to Contractor's.

The parties expressly agree that Contractor's security procedures shall require that any Protected Level 1 Data transmitted or stored by Contractor only be transmitted or stored in an encrypted form approved by the CSU.

In addition, Contractor represents and warrants that in performing the Services, it will comply with all applicable privacy and data protection laws and regulations of the United States including, as applicable, the provisions in the Gramm-Leach-Bliley Act, 15 U.S.C. Section 6801 et seq., the Family Education Rights and Privacy Act ("FERPA"), 20 USC Section 1232(g) et seq., and of any other applicable non-U.S. jurisdiction, including the European Union Directives, and that it will use best efforts, consistent with Federal Trade Commission and other applicable guidance, to protect CSU's Protected Information from identity theft, fraud and unauthorized use.

Failure by Contractor to comply with any provision of this Section shall constitute a default subject to Paragraph 14 of the CSU General Provisions for Information Technology Acquisitions.

- 3(b) Contractor agrees that it will protect CSU Protected Data according to published information security policy and standards and no less rigorously than it protects its own confidential information but in no case less than reasonable care.

Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures, which may include but not be limited to encryption techniques, to preserve the confidentiality, integrity and availability of all such Protected Data.

In addition, Contractor represents and warrants that in performing the Services, it will comply with all applicable privacy and data protection laws and regulations of the United States including, as applicable, the provisions in the Gramm-Leach-Bliley Act, 15 U.S.C. Section 6801 et seq., the Family Education Rights and Privacy Act ("FERPA"), 20 USC Section 1232(g) et seq., and of any other applicable non-U.S. jurisdiction, including the European Union Directives, and that it will use best efforts, consistent with Federal Trade Commission and other applicable guidance, to protect CSU's Protected Information from identity theft, fraud and unauthorized use.

Failure by Contractor to comply with any provision of this Section shall constitute a default subject to Paragraph 14 of the CSU General Provisions for Information Technology Acquisitions.

4.0 INCIDENT RESPONSE MANAGEMENT

4.1 Notification of a Security Incident.

Contractor shall report, in writing, to the CSU any use or disclosure of CSU Protected Data not authorized by this Agreement or authorized in writing by the CSU, including any reasonable belief that an unauthorized individual has accessed CSU Protected Data. This report shall be made to the CSU's primary contact and its designated information security officer. It shall include details relating to any known or suspected security breach of Contractor's system or facilities which contain CSU Protected Data or any other breach of Protected Data relating to this Agreement. This report shall be made not later than within twenty-four (24) hours after discovery, if the information was, or is reasonably believed to have been, acquired by an unauthorized person.

4.2 Notification Contents

Contractor's report shall identify:

- The nature of the unauthorized use or disclosure,
- The time and date of incident,
- A description of CSU Protected Data used or disclosed,
- Who made the unauthorized use or received the unauthorized disclosure,
- What Contractor has done or shall do to mitigate any harmful effect of the unauthorized use or disclosure, and
- The corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.

Contractor shall provide such other information, including a written report, as reasonably requested by the CSU.

4.3 Notification to Parties

Contractor agrees to fully cooperate with the CSU with the preparation and transmittal of any notice, which the CSU may deem appropriate or required by law, to be sent to affected parties regarding the known or suspected security breach, and to be financially responsible for any such notice resulting from Contractor's, its Representatives, Affiliates, or Subcontractors acts or omissions with regard to the data security requirements of this Agreement. Contractor shall take appropriate remedial action with respect to the integrity of its security systems and processes.

5.0 COMPLIANCE

5.1 PCI-DSS Requirements

Contractor represents and warrants that it shall implement and maintain certification of Payment Card Industry ("PCI") compliance standards regarding data security and that it shall undergo independent third party quarterly system scans that audit for all known methods hackers use to access private information, in addition to vulnerabilities that would allow malicious software (i.e., viruses and worms) to gain access to or disrupt the network devices. If during the term of the

Agreement, Contractor undergoes, or has reason to believe that it will undergo, an adverse change in its certification or compliance status with the PCI DSS standards and/or other material payment card industry standards, it will promptly notify the CSU of such circumstances.

Contractor agrees to promptly provide current evidence of PCI-DSS standards at the CSU request. The form and substance of such evidence must be reasonably satisfactory to and must be certified by an authority recognized by the payment card industry for that purpose.

Contractor shall maintain and protect in accordance with all applicable laws and PCI regulations the security of all cardholder data when performing the contracted Services on behalf of the CSU.

Contractor will provide reasonable care and efforts to detect fraudulent credit card activity in connection with credit card transactions processed for the CSU.

Contractor shall indemnify and hold CSU harmless from loss or damages resulting from Contractor's failure to maintain PCI compliance standard in accordance with this section.

Contractor shall not be held responsible for any such loss of data if it is shown that the loss occurred as a result of the sole negligence of the CSU.

5.2 PA DSS REQUIREMENTS

Contractor represents and warrants that software applications it provides for the purpose of processing payments, particularly credit card payments, are developed in accordance with and are in compliance with the standards known as Payment Application Data Security Standards (PA-DSS). As verification of this, the Contractor agrees to provide evidence that any such application it provides is certified as complying with these standards and agrees to continue to maintain that certification. The evidence may be provided in the form of the PA DSS form if the contractor self-certified, or a copy of the PA QSA if the Contractor was certified by an external party. If the contractor is unable to provide a copy of the PA DSS form or the PA QSA letter, the contractor must provide the CSU with proof of bonded insurance listing the CSU as the beneficiary in the case of a security breach.

If during the term of the Agreement, Contractor undergoes, or has reason to believe that it will undergo, an adverse change in its certification or compliance status with the PA DSS standards and/or other material payment card industry standards, it will promptly notify the CSU of such circumstances.

Contractor agrees promptly to provide, annual or at the request of the CSU, current evidence, in form and substance reasonably satisfactory to the CSU, of compliance with PA-DSS security standards which has been properly certified by an authority recognized by the payment card industry for that purpose.

Contractor shall indemnify and hold CSU harmless from loss or damages resulting from Contractor's failure to maintain PA-DDS security standards in accordance with this section.

5.3 NACHA Requirements

Contractor agrees to assist the CSU in documenting compliance with NACHA-The Electronic Payment Association provisions.

5.4 Health Insurance Portability and Accountability Act (HIPAA) Requirements

Contractor shall agree to use and disclose Protected Health Information in compliance with the security standards for the protection of electronic protected health information as per (45 C.F.R. Parts 160 and 164).

6.0 PERSONNEL SECURITY REQUIREMENTS

Any work to be performed in connection with this Agreement by Contractor, its Affiliates or Subcontractors must be performed in the United States, unless the prior written consent of the CSU is received to perform work outside the United States. Further, CSU Protected Data may not be transmitted or stored outside the United States without the prior written consent of the CSU.

Contractor shall require all Representatives, Affiliates and Subcontractors with access to CSU Protected Data, as a condition of their engagement, to participate in annual security awareness training.

Contractor shall comply and shall cause its Representatives, Affiliates and Subcontractors to comply with all personnel, facility, safety and security rules and regulations and other instructions of the CSU, when performing work at a CSU facility, and shall conduct its work at the CSU facilities in such a manner as to avoid endangering the safety, or interfering with the convenience of, CSU Representatives or customers.

Contractor shall not knowingly permit a Representative, Affiliate, or Subcontractor to have access to the records, data or premises of the CSU when such Representative, Affiliate or Subcontractor:

- (a) has been convicted of a crime;
- (b) has engaged in a dishonest act or a breach of trust; or
- (b) uses illegal drugs.

Contractor agrees that under no circumstances shall any of Contractor's Representatives, Affiliates or Subcontractors, whether full-time or part-time, connect to any CSU system or access any CSU data, for purposes of downloading, extracting, storing or transmitting information through personally owned, rented or borrowed equipment including, but not limited to mobile devices (e.g., laptops, PDAs, cell phones, etc.,)

Contractor represents that it maintains comprehensive hiring policies and procedures which include, among other things, a background check for criminal convictions, and pre-employment drug testing, all to the extent permitted by law. Contractor shall conduct thorough background checks and obtain references for all its Representatives, Affiliates, and Subcontractors who have access to CSU's protected information.

Any exceptions are at variance with the CSU policy and must be approved in advance according to CSU policy guidelines.

7.0 RECORD RETENTION REQUIREMENTS

Contractor shall maintain all records pertaining to the Services provided to the CSU under this Agreement for a period of [## years/months], and if longer after termination of the Agreement, subject to applicable law or regulation. Contractor further agrees to provide to the CSU, at its request, a full copy of all such records for the CSU to maintain at a U.S. location which the CSU shall designate.

Any residual data that exists on backups must be destroyed or purged within [## years/months]. Backup data may not be archived. Contractor to provide evidence or certification that this section has been complied with.

8.0 THE CSU RIGHT TO CONDUCT AND/OR REVIEW RISK ASSESSMENTS

8(a) A Contractor, with access to the CSU protected data, shall conduct risk assessments and/or audits of its use of CSU protected data at least annually. The Contractor shall provide the CSU with copies of its latest information security risk assessments and/or audits upon request.

If any assessment and/or audit discloses material variances from the performance requirements set forth in this Agreement or a breach by Contractor of the provisions of this Agreement, Contractor shall be deemed in breach of this Agreement.

8(b) During regular business hours, the CSU may, at its sole expense and on a mutually agreed upon date (which shall be no more than fourteen (14) days after written notice), time, location and duration perform or arrange for a site visit and/or confidential audit of Contractor's operations, facilities, financial records, and security and business continuity systems which pertain specifically to the Services.

If Contractor is not in substantial compliance with the requirements of the performance requirements set forth in this Agreement, the CSU shall be entitled, at Contractor's expense, to perform additional such assessments and/or audits. The CSU will provide to Contractor a copy of each report prepared in connection with any such audit within thirty (30) calendar days after it prepares or receives such report. Contractor agrees to promptly take action at its expense to correct those matters or items that require correction as mutually agreed.

If any assessment and/or audit discloses material variances from the performance requirements set forth in this Agreement or a breach by Contractor of the provisions of this Agreement, Contractor shall be deemed to be in default subject to Paragraph 14 of the CSU General Provisions for Information Technology Acquisitions.

9.0 TERMINATING OR EXPIRING THE AGREEMENT – RETURN/DESTROY PROTECTED DATA

Upon the termination or expiration of this Agreement, or at any time upon the request of the CSU, Contractor and its subcontractors shall return all CSU Protected Data (and all copies and derivative works thereof made by or for Contractor). Further, Contractor and all subcontractors shall delete or erase such Protected Data, copies and derivative works thereof, from their computer systems.

The CSU shall have the right to require Contractor to verify, to CSU's satisfaction, that all CSU Protected Data has been returned, deleted or erased. Contractor agrees to fully cooperate with the CSU's requests for verification.