

Additional Terms and Conditions – Data Security

ARTICLE 1 – ACKNOWLEDGMENT OF ACCESS TO INFORMATION CHARACTERIZED AS COVERED DATA

Contractor acknowledges that its contract/purchase order with The Regents of the University of California (“Agreement”) may allow the Contractor access to confidential University information including, but not limited to, personal information, student records, health care information, or financial information notwithstanding the manner in which or from whom it is received by Contractor (“Covered Data”) which is 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 further acknowledges the applicability to this Agreement of 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 records and information from student records. Contractor shall maintain the privacy of, and shall not release, Covered Data without full compliance with all applicable state and federal laws, University policies, and the provisions of this Agreement. Contractor agrees that it will include all of the terms and conditions contained in this appendix in all subcontractor or agency contracts providing services under this Agreement.

ARTICLE 2 – APPLICABLE LAWS AND UNIVERSITY POLICIES

Contractor agrees to abide by the University’s Electronic Communications Policy and Business and Finance Bulletin IS-3, Electronic Information Security, which can be viewed at (<http://www.ucop.edu/ucophome/policies/ec/>), and (<http://www.ucop.edu/ucophome/policies/bfb/bfbis.html>). Where a federal, state or local law, ordinance, rule or regulation is required to be made applicable to this Agreement, it shall be deemed to be incorporated herein without amendment to this Agreement.

ARTICLE 3 – PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF COVERED DATA AND INFORMATION

Contractor agrees to hold Covered Data received from or created on behalf of University in strictest confidence. Contractor shall not use or disclose Covered Data except as permitted or required by the Agreement or as otherwise authorized in writing by University. If required by a court of competent jurisdiction or an administrative body to disclose Covered Data, Contractor will notify University in writing prior to any such disclosure in order to give University an opportunity to oppose any such disclosure. Any work using, or transmission or storage of, Covered Data outside the United States is subject to prior written authorization by the University.

ARTICLE 4 – SAFEGUARD STANDARD

Contractor agrees that it will protect the Covered Data according to commercially acceptable 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 Covered Data.

ARTICLE 5 – RETURN OR DESTRUCTION OF COVERED DATA AND INFORMATION

Upon termination, cancellation, expiration or other conclusion of the Agreement, Contractor shall return the Covered Data to University unless University requests that such data be destroyed. This provision shall also apply to all Covered Data that is in the possession of subcontractors or agents of Contractor. Contractor shall complete such return or destruction not less than thirty (30) days after the conclusion of

this Agreement. Within such thirty (30) day period, Contractor shall certify in writing to University that such return or destruction has been completed.

ARTICLE 6 – REPORTING OF UNAUTHORIZED DISCLOSURES OR MISUSE OF COVERED DATA AND INFORMATION

Contractor shall report, either orally or in writing, to University any use or disclosure of Covered Data not authorized by this Agreement or in writing by University, including any reasonable belief that an unauthorized individual has accessed Covered Data. Contractor shall make the report to University immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the University Covered Data used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by University.

ARTICLE 7 – EXAMINATION OF RECORDS

University and, if the applicable contract or grant so provides, the other contracting party or grantor (and if that be the United States, or an agency or instrumentality thereof, then the Controller General of the United States) shall have access to and the right to examine any pertinent books, documents, papers, and records of Contractor involving transactions and work related to this Agreement until the expiration of five years after final payment hereunder. Contractor shall retain project records for a period of five years from the date of final payment.

ARTICLE 8 – ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS

Contractor shall make itself and any employees, subcontractors, or agents assisting Contractor in the performance of its obligations under the Agreement available to University at no cost to University to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings against University, its directors, officers, agents or employees based upon a claimed violation of laws relating to security and privacy and arising out of this Agreement.

ARTICLE 9 – NO THIRD-PARTY RIGHTS

Nothing in this Agreement is intended to make any person or entity who is not signatory to the Agreement a third-party beneficiary of any right created by this Agreement or by operation of law.

ARTICLE 10 – ATTORNEY'S FEES

In any action brought by a party to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, including the reasonable value of any services provided by in-house counsel. The reasonable value of services provided by in-house counsel shall be calculated by applying an hourly rate commensurate with prevailing market rates charged by attorneys in private practice for such services.

ARTICLE 11 – INDEMNITY

Contractor shall indemnify, defend and hold University harmless from all lawsuits, claims, liabilities, damages, settlements, or judgments, including University's costs and attorney fees, which arise as a result of Contractor's negligent acts or omissions or willful misconduct.

ARTICLE 12 – SURVIVAL

The terms and conditions set forth in this Appendix shall survive termination of the Agreement between the parties.