

## UNIVERSITY PROCUREMENT TERMS AND CONDITIONS

### STANDARD TERMS INCORPORATED INTO ALL PURCHASE ORDERS

#### 1. DEFINITIONS

**1.1. "Agreement"** means a single integrated accord between the Parties evidenced by one of the following sets of documents: (i) a Master Service Agreement, any amendment thereto, any related Statement of Work and Purchase Order and the Terms & Conditions; (ii) a Service Agreement, any amendment thereto, any related Purchase Order and the Terms & Conditions; or (iii) a Purchase Order and the Terms & Conditions.

**1.2. "Merchandise"** means goods, products, materials or supplies.

**1.3. "Party"** means either Rutgers or Supplier, while **"Parties"** means both Rutgers and Supplier.

**1.4. "Purchase Order" or "PO"** means the document issued by Rutgers which defines the services, merchandise and associated fees.

**1.5. "Rutgers"** means Rutgers, The State University of New Jersey and any school, institute, unit or controlled affiliate thereof.

**1.6. "Rutgers Confidential/Proprietary Information"** means data, records, accounts, and other information regarding Rutgers, and its affiliates, that become known to Supplier, or is generated by Supplier through its activities hereunder, including Services and deliverables, information regarding Rutgers and its affiliates' operations, policies, procedures, faculty, employees, students, information technology systems, and financial information and plans.

**1.7. "Services"** means design, engineering, installation, testing, evaluation, training, maintenance, repair, management, consulting, data analysis or any other services necessary to fulfill Supplier's obligations under this Agreement, including any deliverables resulting from said services.

**1.8. "Statement of Work" or "SOW"** shall mean the specifications, qualities, nature, type, properties, amounts and other descriptions of and requirements for Merchandise or Services provided by Supplier.

**1.9. "Supplier"** means any seller furnishing Merchandise or Services to Rutgers.

**1.10. "Terms & Conditions"** means these Rutgers University Procurement Terms and Conditions.

**1.11. "Work Product"** means all inventions, improvements, discoveries, formulas, processes, computer programs, algorithms, designs, trade secrets, works of authorship whether or not fixed in a tangible medium of expression and other information and know-how made, discovered or developed by Supplier either alone or in conjunction with any other person or entity during the term of this Agreement.

#### 2. RULES OF PRECEDENCE

Any conflict or inconsistency between the documents that comprise this Agreement shall be resolved in the following order: (1) any Amendment to this Agreement; (2) this Agreement; (3) the SOW; (4) properly executed agreement provided by Supplier; (5) the Purchase Order(s); (6) the Terms & Conditions; and (7) any other document(s) thereafter. The terms and conditions of this Agreement shall prevail over any conflicting terms set forth by Supplier, unless Rutgers agrees in writing to the alternate terms and conditions. All terms and conditions of this Agreement shall prevail over the Uniform Commercial Code (UCC) Article 2.

#### 3. OFFER AND ACCEPTANCE

Any term or condition in any offer, invoice, or other document issued by Supplier that modifies, adds to, or changes these terms and conditions is rejected and will not be part of the Agreement unless agreed by Rutgers in writing, and signed by the duly authorized signatory as per the Rutgers signatory matrix. If an offer issued by Supplier is referenced in a PO, it is hereby included and made part of the PO only to the extent of specifying the nature of the Merchandise or Services ordered, the price thereof and delivery date, and then only to the extent that such terms are consistent with these Terms & Conditions. Supplier should not fulfill its obligations under an Agreement with Rutgers without a Purchase Order Number. By fulfilling a Rutgers Purchase Order,

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Supplier agrees to furnish the Merchandise or Services covered by the PO and to be bound by and to comply with these Terms & Conditions. This Agreement shall be deemed accepted if Supplier: (1) commences Services; (2) ships all or part of the Merchandise ordered in a PO; or (3) gives any other expression of acceptance of the Terms and Conditions hereof. Rutgers reserves the right to revoke the PO at any time before acceptance by Supplier.

### 4. PAYMENT

**4.1. Payment.** Rutgers shall pay undisputed invoices within forty-five (45) days of receipt of Supplier's invoice. If any portion of the Merchandise or Services does not conform to the requirements of this Agreement, a corresponding portion of the price may be withheld by Rutgers until the nonconformity is corrected. No additional charges of any kind, including, but not limited to, charges for boxing, packing, transportation, insurance, or container charges, will be allowed unless specifically agreed to in writing by Rutgers. Invoices must be sent directly to Rutgers Accounts Payable at [accountspayable@finance.rutgers.edu](mailto:accountspayable@finance.rutgers.edu) with the Purchase Order number clearly identified on the invoice. Invoices submitted without a valid Rutgers PO number will not be processed.

**4.2. Taxes.** Rutgers is generally not subject to any sales or excise taxes. Taxes are not to be included in any quotations or invoices to Rutgers unless applicable. Suppliers can find additional Rutgers tax information at <http://uco.rutgers.edu/tax-services>. Upon request, Rutgers will issue an exemption certificate to Supplier.

**4.3. Royalties and Other Fees.** Unless agreed upon by the Parties in writing, any fees, such as royalties (e.g., BMI, ASCAP, SESAC) or union dues, which may be required in connection with or as a result of this Agreement are the sole responsibility of Supplier.

### 5. TERMINATION

**5.1. Termination for Convenience.** Rutgers may terminate this Agreement in whole or in part at any time without cause upon at least thirty (30) days written notice to Supplier. If this Agreement is a subcontract (with Rutgers being the contractor to another party, and Supplier being Rutgers' subcontractor), then Rutgers may immediately terminate this Agreement upon written notice to Supplier if the prime contract is terminated for any reason. If Rutgers terminates this Agreement without cause, Rutgers will promptly pay Supplier for its Services performed through the effective date of termination, in accordance with the terms of this Agreement.

**5.2. Termination for Cause.** Either Party may terminate this Agreement upon at least 30 days' written notice to the other Party, for breach of this Agreement by the other Party, unless during such notice period, the Party fully cures the breach to the other Party's reasonable satisfaction.

**5.3. Immediate Termination.** Rutgers shall have the right to terminate immediately: (i) upon the institution by or against Supplier of insolvency, receivership or bankruptcy proceedings or any other proceeding for the settlement of debts; (ii) upon Supplier making an assignment for the benefit of creditors; (iii) upon Supplier's dissolution or ceasing to do business or (v) as set forth in Section 7.2 of these Terms & Conditions.

**5.4. Continuing Obligations.** In the event of expiration or termination of this Agreement for any reason, or at any time upon Rutgers' request, Supplier will: (i) immediately return to Rutgers any Rutgers proprietary materials and information in Supplier's possession or control, including, without limitation all Rutgers Confidential/Proprietary Information and any deliverables then under development; and (ii) at Rutgers' request, cooperate with Rutgers in the transition of the work performed under this Agreement to Rutgers or its designee.

**5.5. Limitation of Damages.** Rutgers' liability and Supplier's recovery for any damages arising out of the termination of any part of this Agreement shall be limited to the lesser of: (i) the reasonable costs incurred by Supplier prior to such termination; or (ii) the balance remaining for this Agreement.

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### 6. CONFIDENTIAL OR PROPRIETARY INFORMATION

**6.1. Supplier's Obligations.** Supplier shall treat as confidential all Rutgers Confidential/Proprietary Information. Supplier's confidentiality obligations include establishing and maintaining appropriate safeguards, procedures, and systems to avoid the unauthorized destruction, loss, alteration, access to, or disclosure of any Rutgers Confidential/Proprietary Information, in accordance with the standards of the applicable industry and as otherwise required by applicable law. Supplier will obtain from all subcontractors and agents authorized to perform the Services under this Agreement a signed written statement agreeing to the confidentiality provisions herein. Supplier shall not disclose to Rutgers, nor induce Rutgers to use any proprietary, secret or confidential information or material belonging to others, including any current or former employers or persons with whom Supplier has had a consulting arrangement.

**6.2. Rutgers' Obligations.** Rutgers shall treat as confidential all of Supplier's proprietary methodologies, software and materials that Supplier provides to Rutgers hereunder and which are marked "Confidential" or "Proprietary." In no event will Supplier's Confidential/Proprietary Information be deemed to include any Rutgers Confidential/Proprietary Information.

**6.3. Mutual Obligations.** During and after the term of this Agreement, neither Party will use nor disclose the other Party's Confidential/Proprietary Information, except for the purpose of providing, receiving or using the Merchandise or Services in accordance with this Agreement, or as may be required by law, regulation or court order.

**6.4. Exceptions.** The obligations of confidentiality under this Section do not apply to any information to the extent it: (i) was known to the receiving Party prior to such Party's receipt of or access to that information under this Agreement, (ii) was or becomes a matter of public information or publicly available through no act or failure to act on the part of the receiving Party, (iii) is acquired from a third-party entitled to disclose the information without obligation of confidentiality, or (iv) is developed independently and without use of the disclosing Party's Confidential/Proprietary Information. Except as otherwise required by applicable laws or regulations, including but not limited to, the New Jersey Open Public Records Act, the Parties agree to, and to cause their respective affiliates to, keep confidential all non-public information relating to this Agreement.

### 7. REPRESENTATIONS AND WARRANTIES

**7.1. Authority to Execute.** Rutgers and Supplier hereby represent, warrant and guarantees that each Party has the legal capacity to execute and perform this Agreement.

**7.2. Debarment.** Supplier represents, warrants and guarantees: (i) that it is not debarred, suspended, proposed for debarment, or declared ineligible by any State or Federal agency; (ii) that the execution and performance of this Agreement by Supplier does not, and will not, violate or conflict with any law, rule, regulation, judgment or order of any court or other adjudicative entity or regulatory agency binding on Supplier; (iii) that Supplier knows of no reason why Supplier is in any way (physically, legally or otherwise) precluded from performing the obligations under this Agreement in accordance with its terms; and (iv) that it does not have any non-disclosure, confidentiality, non-competition or other similar obligations to any current or former employer or any other person or entity, concerning proprietary, secret or confidential information used in this Agreement. In the event Supplier becomes debarred, or learns that a person performing on its behalf under this Agreement has been debarred or has become subject of debarment proceedings, Supplier shall promptly notify Rutgers and Rutgers shall have the right to immediately terminate this Agreement without penalty.

**7.3. Conflict of Interest.** Supplier represents, warrants and guarantees that there exists no actual, potential or appearance of conflict between Supplier and Rutgers. Furthermore, Supplier represents that it has not offered (and will not offer during the term of this Agreement) any compensation, reward, gift, favor, service, outside employment, reimbursement of expenses, loan, ownership interest, or anything else of value, to any officer, employee, or faculty member of Rutgers as an inducement to enter into or renew this Agreement. Supplier will notify Rutgers in writing of any change in conditions that might give the appearance of a conflict of interest.

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**7.4. Services.** Supplier represents, warrants and guarantees that any Services provided under this Agreement shall be: (i) conducted in a timely manner, and in accordance with the Agreement, applicable law and university policy; (ii) correct and appropriate for the purposes contemplated in this Agreement and befitting an institution of higher learning; and (iii) provided in a skillful, workmanlike and highly-professional manner and consistent with generally accepted industry practices and procedures. Supplier will obtain all required governmental and third-party licenses, approvals, and permits appropriate for the provision of Services. Supplier warrants that the Services will not infringe or misappropriate the rights of any third-party, and that Supplier has all power and authority to convey ownership of the Services to Rutgers in accordance with this Agreement.

**7.5. Malware.** Supplier represents, warrants and guarantees that any deliverables resulting from the Services do not include, and that any method of transmitting said deliverables to Rutgers will not introduce, any program, routine, subroutine, or data (including malicious software or “malware,” viruses, worms and Trojan Horses) that are designed to disrupt the proper operation of the deliverables or any other software or system used by Rutgers, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause the deliverables resulting from the Services or any system or software used in connection therewith to be destroyed, damaged or rendered inoperable.

**7.6. Merchandise.** Supplier represents, warrants and guarantees that any Merchandise provided under this Agreement shall be: (i) provided in accordance with the SOW and/or PO and correct and appropriate for the purposes contemplated in this Agreement; (ii) is fit for the purpose for which similar materials and articles are ordinarily employed; (iii) is free from defects in materials and/or workmanship, and merchantable; (iv) was not manufactured and is not being priced or sold in violation of any federal, state or local law, including without limitation those relating to health and safety; (v) will perform or be performed according to industry standards; and (vi) will not infringe or misappropriate the rights of any third-party. These warranties shall survive acceptance of and payment for the Merchandise and shall be in addition to any other warranties or service guarantee, express or implied, given by Supplier to Rutgers. Replaced and repaired goods shall be warranted for the remainder of the warranty period or six (6) months, whichever is longer.

**7.7. Equipment.** Supplier represents, warrants and guarantees that any equipment provided under this Agreement shall be: (i) the manufacturer’s latest model in production; (ii) that parts are all in production and not likely to be discontinued; (iii) that trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request may emanate within a 48-hour period; and (iv) that during the warranty period for such equipment the Supplier shall replace immediately any equipment which is rejected for failure to meet the requirements of this Agreement.

## 8. INDEMNIFICATION

Supplier will indemnify, hold harmless and defend Rutgers, its governors, trustees, officers, faculty, students, agents, and employees against any and all damages, suits, actions, claims, liabilities, losses, judgments, costs and expenses arising out of or relating to (i) any personal or bodily injury (including death) or property damage caused by Supplier’s negligent, willful, or unlawful acts or omissions or breach of this Agreement, (ii) breach of Supplier’s confidentiality obligations, or (iii) an infringement or misappropriation of any third-party intellectual property or proprietary rights (including, without limitation, trademark, trade secret, copyright or patent) by the Services or Work Product. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOST PROFITS, LOST BUSINESS OR COST OF PROCUREMENT OF SUBSTITUTE SERVICES.

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### 9. INSURANCE

Supplier shall, and cause its subcontractors of any tier, to maintain, at its own cost and expense, the insurance policies described herein and submit to Rutgers prior to PO issuance as evidence thereof in the form of current certificates of insurance certifying all coverage. All policies and certificates of insurance, except workers' compensation, shall be endorsed to name Rutgers as an additional insured and provide for the insurer's waiver of subrogation in favor of Rutgers. **Such coverage shall be deemed primary coverage irrespective of any insurance maintained by Rutgers.** All policies and certificates shall contain the provision that the insurance shall not be cancelled for any reason, except after thirty (30) days written notice to Rutgers. Failure to maintain insurance coverage consistent with the provisions of this Section shall be considered a material breach of contract. The following insurance coverage is the minimum required and shall not relieve the Supplier of any liability where liability for injury, death, and property damage is greater than the insurance coverage:

**9.1. Commercial General Liability Insurance.** Shall cover bodily injury, death or property damage with minimum combined single limits of \$2,000,000.00 per occurrence and in the aggregate. This policy shall include broad form contractual liability, products liability and completed operations coverage.

**9.2. Workers' Compensation and Employer's Liability Insurance.** Shall provide statutory coverage in accordance with the Workers' Compensation Laws of the State of New Jersey and Employers' Liability coverage with limits of not less than: \$1,000,000 each employee for Bodily Injury by Accident; \$1,000,000 each employee for Bodily Injury by Disease; and \$1,000,000 Bodily Injury by Disease policy limit.

**9.3. Business Automobile Liability Insurance.** Shall cover all owned, non-owned and hired vehicles with a combined single limit of \$1,000,000 each accident and in the aggregate.

**9.4. Professional Liability or Errors and Omissions Insurance.** Shall cover the work under this Agreement in the following amounts, \$1,000,000 per claim, \$3,000,000 in the aggregate.

**9.5. Cyber/Privacy Liability Insurance.** Shall cover the work under this Agreement with limits/sublimits not less than \$1,000,000, which provides, at a minimum, coverage for: (i) Security and Privacy Liability, including defense and indemnity for liability and damages (including investigations, fines, and penalties) resulting from any failure to protect, misuse, misappropriation, unauthorized disclosure, or other breach of private information and personally identifiable information and Rutgers' data; and (ii) event management, including but not limited to data breach notification, public relations, forensics, credit monitoring, and related costs; arising from the Supplier's performance of services. In cases where protected health information (PHI), electronic protected health information (ePHI), electronic health records (EHR) or FERPA records are involved, insurance with limits/sublimits not less than \$5,000,000 for liability and damages resulting from any misuse, misappropriation, unauthorized disclosure or other breach of private information and personally identifiable information, arising from the Supplier's performance of services is required. Such damages shall include notification costs and/or forensics costs, fines, penalties, and related damages. The Cyber/Privacy Liability insurance requirement can be satisfied by a stand-alone policy or by an endorsement to the Commercial General Liability or the Professional Liability/ Errors & Omissions policy.

### 10. OWNERSHIP RIGHTS

**10.1. Work Made for Hire.** Supplier shall disclose promptly all Work Product to Rutgers. Supplier agrees that all Work Product made, discovered, developed, authored, prepared or conceived by Supplier in connection with the furtherance of this Agreement whether alone or in combination with another, whether or not on Rutgers' premises, shall belong solely and exclusively to Rutgers. Supplier acknowledges that no rights whatsoever in the Work Product are retained by Supplier including the right to prepare derivative works and that any work of authorship shall be deemed a work made for hire.

**10.2. Work Product Rights.** Supplier agrees to and hereby does assign all right, title and interest in and to any Work Product to Rutgers. Rutgers shall have the right to apply for, prosecute, obtain, retain and transfer any and all copyrights, trademarks, registrations, patents or any such similar right or property interest arising

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from or in connection with the Work Product. Supplier agrees to cooperate with and provide all reasonable assistance to Rutgers, its designees, assignees or licensees in connection with the foregoing.

**10.3. Supplier's Rights.** Notwithstanding the foregoing, Supplier will retain ownership of its pre-existing and proprietary materials and other intellectual property that may be incorporated into the Work Product, provided that Supplier will inform Rutgers in writing before incorporating any pre-existing material or pre-existing intellectual property into the Work Product. Supplier hereby grants Rutgers a perpetual, irrevocable, royalty-free, worldwide right and license (with the right to sublicense) to freely use, make, have made, reproduce, disseminate, display, perform, and create derivative works based on such pre-existing materials and intellectual property as may be incorporated into the Work Product or otherwise provided to Rutgers in the course of performing the Services.

**10.4. Recording Rights.** Supplier grants to Rutgers a nonexclusive, nontransferable license and right to make an audio and/or video recording or photographic images of the services rendered, and to retain a copy of the audio, video and/or photographs for the purpose of archival records and certain personal use, such as educational, informational, advertising or other commercial use, provided such use does not result in direct monetary payment to Rutgers. Supplier hereby acknowledges and agrees that Rutgers shall be, and is, the sole owner of all rights, title and interest in and to the audio, video and/or photographs, including the copyright.

### 11. DELIVERY AND TITLE

**11.1. Timely Delivery.** Time is of the essence in Supplier's performance of this Agreement. Rutgers is relying upon the promised delivery date, installation and/or service performance set forth in this Agreement and basic to Rutgers' acceptance. If Supplier fails to deliver or perform as and when promised, Rutgers, in its sole discretion, may terminate this Agreement, PO, or any part thereof, without prejudice to its other rights, return all or part of any shipment made, and charge Supplier with any loss or expense sustained as a result of such failure to deliver or perform as promised.

**11.2. Delivery.** Delivery of Merchandise required by this Agreement must be made in the quantities specified by Rutgers. Unless otherwise agreed upon in writing, all Merchandise under this Agreement shall be delivered to Rutgers DDP (delivery duty paid) during Rutgers' normal business hours. Unless otherwise agreed, items received must be new and, if type of materials normally packaged for protection and convenience in storage, shall be in proper container.

**11.3. Ownership and Transfer.** Supplier certifies that it has all power and authority to convey ownership of the Merchandise to Rutgers in accordance with this Agreement, that the Merchandise is free and clear of all liens and encumbrances, and that Supplier has a good and marketable title to same. Supplier agrees to defend and indemnify Rutgers for any liability and damages resulting from third party claims challenging Supplier's or Rutgers' title to the Merchandise.

**11.4. Title and Risk of Loss; Inspection.** Title to and risk of loss shall remain with Supplier until receipt by Rutgers, subject to Rutgers' right of inspection and rejection in the event of nonconformance. For a reasonable time after delivery and before acceptance, Rutgers shall have the right to inspect and test the Merchandise. Rutgers shall notify Supplier if the Merchandise does not conform to this Agreement. At its sole option, Rutgers may return to Supplier any rejected Merchandise. Such rejected goods shall remain at Supplier's risk until returned to Supplier at Supplier's expense. Rutgers may, at its sole option, demand that Supplier promptly correct, repair or replace all nonconforming Merchandise at its sole expense. Payment for Merchandise by Rutgers prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that Rutgers may against the Supplier.

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### 12. COMPLIANCE WITH LAWS; CODES; RULES; REGULATIONS

**12.1. Anti-Kickback Statute.** Each Party certifies that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C. §1320a-7b(b) ("Anti-Kickback Statute"), or the federal prohibition on physician self-referrals, set forth at 42 U.S.C. § 1395nn ("Stark Law"), with respect to the performance of its obligations under this Agreement.

**12.2. Non-Discrimination in Employment.** Rutgers is an Equal Opportunity Employer. Supplier hereby represents that it is an Equal Opportunity Supplier and it and its subcontractors (if any) agree to comply with the laws and regulation pursuant to the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., the Civil Rights Act of 1964, Title VII, 42 U.S.C.A. S200e et seq., the Age Discrimination in Employment Act, 29 U.S.C.A. S621 et seq., the Americans with Disabilities Act, 42 U.S.C.A S12101 et seq., Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Section 503 of the Vocational Rehabilitation Act of 1973, Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A) as applicable, relating to the notice of employee rights under federal labor laws, and all other laws guaranteeing equal employment.

**12.3. Additional Affirmative Action Requirements.** If this Agreement is for \$50,000 or greater, and is for a goods or services contract as defined by N.J.A.C. 17:27 [Exhibit A](#) is incorporated herein by reference. Supplier is required to provide Rutgers with a copy of either a federally approved Affirmative Action program or a certificate of Employment Information Report. If neither federal form is available the Supplier must provide a copy of a completed [AA-302 form](#). Certificates must be mailed to University Procurement Services, Rutgers, The State University of New Jersey, Attn: Affirmative Action Administrator: 33 Knightsbridge Road, First Floor, Piscataway, NJ 08854.

**12.4. Federal Funding.** If this Agreement is funded by the federal government, Supplier is required to comply with all applicable federal laws, which are hereby incorporated by reference as if they were set forth herein, including, but not limited to all laws, regulations and rules. Procurements made with federal funds are subject to compliance with the standards and requirements as set for in 2CFR, Part 215, OMB Circular A-133, Paragraph 5. All procurement requirements contained in the above Circular are incorporated herein by reference.

**12.5. ARRA Funding.** If this Agreement is funded from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, Supplier is required to comply with all applicable laws, hereby incorporated by references as if they were set forth herein including, but not limited to the Davis-Bacon Act and Buy American Act.

**12.6. Recovered Materials.** If this Agreement is funded by the federal government, any goods (or services where applicable) delivered by Supplier must comply with the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 and must contain the highest percentage of recovered materials practicable.

**12.7. Patient Information.** In the event that this Agreement involves access to patient care areas and/or access to or use of protected health information, Supplier agrees to execute a Rutgers' Business Associate Agreement or Addendum, as required by the HIPAA Privacy Rule codified at 45 C.F.R. Part 160 and 164, which shall be obtained from the University Director of Privacy.

**12.8 "Public Works" Projects.** Any supplier awarded a Purchase Order by Rutgers for all "public works" projects, as defined by the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 et seq. ("PWA"), shall adhere to all requirements of the PWA. The PWA, N.J.S.A. 34:11-56.26(5), defines "public works" as "construction, reconstruction, demolition, alteration, custom fabrication, repair work, maintenance work, including painting and decorating." Supplier guarantees that neither it nor any Subcontractor it might employ to perform Work covered by this Purchase Order has been suspended or debarred by the Commissioner of Labor and Workforce Development for violation of the provisions of the PWA. Supplier agrees that it shall comply with the provisions of the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48, where required. Certified payroll records shall be submitted to Rutgers c/o the project manager for the project for

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each payroll period within ten (10) days of payment of wages in accordance with N.J.A.C. 12:60-62. The Vendor is also responsible for obtaining and submitting all Subcontractors' certified payroll records.

**Building Services:** With respect to any Purchase Order for "Building Services," the employees of the **Supplier** or its Subcontractor shall be paid prevailing wage for "Building Service" rates, as provided in N.J.S.A. 34:11.56.60. N.J.S.A. 34:11.56.59 defines "Building Services" as "any cleaning or building maintenance work, including but not limited to sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, engineering, securing, patrolling or other work in connection with the care, securing or maintenance of an existing building." The prevailing wage shall be adjusted annually during the term of this Purchase Order.

**12.9 PCI Compliance.** Credit Card Data (PCI-DSS Compliance) - Supplier certifies that their Information Technology practices conform to and meet Payment Card Industry Data Security Standard (PCI DSS) requirements as defined by The Payment Card Industry Security Standards Council (PCI SSC) at: <https://www.pcisecuritystandards.org>. Supplier will monitor these PCI DSS requirements and its own Information Technology practices and will notify Rutgers within five (5) business days if its IT practices do not conform to such requirements. If Supplier is unable to conform its Information Technology practices to the PCI DSS requirements within 30 days of its notification of nonconformity to Rutgers, Rutgers shall have the right to terminate this Agreement. Supplier will provide either a letter of certification to attest to meeting this requirement or, if subject to PCI DSS or Payment Application Data Security Standard (PA-DSS), appropriate validation documentation as defined by the PCI SSC.

Supplier agrees that it may (1) create, (2) receive from or on behalf of Rutgers, or (3) have access to, payment card records or record systems containing cardholder data including credit card numbers, cardholder names, service codes or expiration dates (collectively, the "Cardholder Data") and shall accept responsibility for such Cardholder Data that Supplier has in its possession in accordance with PCI-DSS Requirement. Supplier shall comply with the Payment Card Industry Data Security Standard (PCI DSS) requirements for Cardholder Data that are prescribed by PCI SSC member card brands, as they may be amended from time to time (collectively, the "PCI DSS Requirements"). Supplier acknowledges and agrees that Cardholder Data may only be used for assisting in completing a card transaction, for fraud control services, for loyalty programs, or as specifically agreed to by PCI SSC member card brands, for purposes of the Agreement or as required by applicable law.

### 13. GENERAL TERMS

**13.1. Governing Law; Jurisdiction.** This Agreement shall be construed in accordance with the laws of the State of New Jersey. The Parties agree that any and all disputes arising out of this Agreement shall be filed and heard in the New Jersey Superior Court, Middlesex County or the United States District Court for the District of New Jersey, and the Parties hereto consent to the jurisdiction of said courts.

**13.2. Collection, Attorney or Litigation.** Fees that arise relating to this agreement; each party will be responsible for their own attorney, litigation, or collection fees. Each party will be responsible for their own arbitration and or court cost no matter who is the prevailing party.

**13.3. Independent Contractor.** Supplier is an independent contractor, and nothing in this Agreement constitutes the Parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking, or allow either Party to create or assume any obligation on behalf of the other Party for any purpose whatsoever. Furthermore, Supplier and its employees or agents, are not, and shall not be considered, employees of Rutgers. Supplier acknowledges full responsibility for compliance with all Federal, State, and City tax regulations regarding taxes that may accrue for the Services, including expenses, if any, paid to Supplier as a result of services rendered to Rutgers. Further, Rutgers will not provide any medical, health, insurance or similar plans or workers' compensation or any other benefit whatsoever to Supplier, its agents or employees. Supplier has no actual authority, nor shall the Supplier give the impression of having apparent authority, to bind or represent Rutgers with regard to any third-parties.



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**13.4. Subcontracting or Assignment.** Supplier shall not assign, delegate or subcontract any of the work or Services covered by this Agreement, nor shall any interest in this Agreement be assigned or transferred, without prior written approval of Rutgers. All subcontractors to Rutgers must meet Rutgers' diversity and social responsibility practices.

**13.5. Third Parties.** This Agreement shall not confer any rights or remedies upon any third-party other than the Parties to this Agreement and their respective successors and permitted assigns.

**13.6. Premises.** Supplier shall confine its facilities, materials, tools and equipment in areas specified by Rutgers for that purpose, if applicable. Supplier shall on a daily basis and on completion of Services, clean up and remove all waste materials, rubbish, tools and machinery and leave adjoining premises, driveways and streets free and clear from all obstructions. At the completion of the Services, Supplier shall return Rutgers' site to its original condition or as otherwise required in this Agreement. Damages to the premises caused by Supplier or their staff, either intentionally or through negligence, shall be paid for by the Supplier, deducted from the payment, or result in the payment being withheld by Rutgers.

**13.7. Alcohol and Drugs.** Intoxicating beverages or substances are not permitted to be in the possession of any person performing under this Agreement. Supplier's employees, agents and guests are prohibited from having alcoholic beverages or controlled dangerous substances on Rutgers property. Supplier shall inform all of its employees, agents and guests of this prohibition, and shall assist Rutgers in enforcing this policy. In the event Supplier, its employees, agents or guests arrive at the service location under the influence of intoxicating beverages or substances, Rutgers may terminate this Agreement without liability, and deem such conduct a breach of the Agreement.

**13.8. Amendment.** No changes to this Agreement shall be made except in writing by Rutgers and signed by Rutgers and Supplier.

**13.9. Click-Throughs Superseded:** In the event Supplier enters into terms of use, end user agreement, or other agreements or understandings, whether electronic, click-through, or shrink-wrap, and whether verbal or written, with Rutgers' employees or other end users, such agreements apply to end users in their individual capacity. Supplier agrees that such agreements do not apply to Rutgers.

**13.10. Notices.** Any notices regarding this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) when sent by confirmed electronic mail if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day; or (iii) as indicated by a tracking report or signed delivery receipt if sent via an overnight courier service, in each case properly addressed to the Party to receive the same. All written notices to Rutgers shall be sent to [procure@finance.rutgers.edu](mailto:procure@finance.rutgers.edu) or Rutgers, The State University of New Jersey at 33 Knightsbridge Road, East Wing – First Floor, Piscataway, NJ 08854, to the attention University Procurement Services, and the Supplier at its address as set forth in this Agreement, or at such other address as either party may designate in writing to the other party. Either Party may change its addressee or other information by providing written notice thereof to the other Party.

**13.11. Non-Waiver.** The failure of either Party to exercise any of its rights under this agreement for a breach thereof shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver of any subsequent breach, either of the same provision or otherwise.

**13.12. Severability.** If any provision of this Agreement shall be determined to be void, invalid, unenforceable or illegal for any reason, it shall be ineffective only to the extent of such prohibition and the validity and enforceability of all the remaining provisions shall not be affected thereby.

**13.13. Survival.** The following sections shall survive termination or expiration of this Agreement: Section 2, 5, 6, 7, 8, 9, and 13.

**13.14. Remedies.** Supplier acknowledges that Rutgers will be irreparably harmed if Supplier's obligations hereunder are not specifically enforced and that Rutgers would not have an adequate remedy at law in the event of an actual or threatened violation by Supplier of its obligations hereunder. Therefore, Supplier agrees and consents that Rutgers shall be entitled to seek an injunction, including preliminary, or any appropriate

## UNIVERSITY PROCUREMENT TERMS AND CONDITIONS

decree of specific performance for any actual or threatened violation or breach by Supplier or any agent of Supplier, without the posting of any bond, and such other relief as may be just and proper, including the right to recover all losses or damages suffered by Rutgers resulting from any such breach or threatened breach. In the event Rutgers applies to seal any papers produced or filed in any judicial proceedings to preserve confidentiality, Supplier specifically agrees not to oppose such application and to use its best efforts to join such application.

**13.15. Use of Name.** Supplier will not use the name, insignia, or symbols of Rutgers, its faculties or departments, or any variations or combination thereof, or the name of any governors, trustees, faculty member, other employee, or student of Rutgers for any purpose whatsoever without Rutgers' prior written consent.

**13.16. Trademark and Licensing.** Supplier agrees to comply with all licensing and trademark policies and procedures for Merchandise sold by Supplier with the Rutgers logo. Requirements may be found at <http://ur.rutgers.edu/trademark/index.shtml> All costs associated with this process will be borne by the Supplier.

**13.17. Force Majeure.** Neither Party shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting there from, due to causes beyond its reasonable control, including but not limited to, acts of God, public enemy or government, riots, fires, natural catastrophe or epidemics. In the event of such failure or delay, the date of delivery or performance shall be extended for a period not to exceed the time lost by reason of the failure or delay; provided that Rutgers may terminate this Agreement if the period of failure or delay exceeds fifteen (15) days. Rutgers shall have no obligation to make any payments to Supplier during the period of failure or delay for any Services affected by the Force Majeure. Each Party shall notify the other promptly of any failure or delay in, and the effect on, its performance.

**13.18. Access to Records.** Rutgers shall have full access to Supplier records, including, but not limited to financial records, in connection with this Agreement. All financial records shall be subject to audit by Rutgers upon advanced notice. Supplier shall maintain all documentation related to Merchandise, Services and transactions under the Agreement for a period of five years from date of final payment. Such records shall be made available to the New Jersey Office of State Comptroller upon request.

**13.19. Non-Solicitation.** Supplier agrees that, during its engagement by Rutgers and for a period of twelve (12) months thereafter, it will not and will not attempt to, directly or indirectly, influence, solicit or canvass, any employee of Rutgers, to work for Supplier or any individual, partnership, firm, corporation, or other entity associated with Supplier.

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### ADDITIONAL TERMS INCORPORATED INTO ENGAGEMENTS WITH ARTISTS OR PERFORMERS

#### 14. ARTIST / PERFORMER TERMS

**14.1. Logistics.** Supplier must provide Rutgers with the following information, in writing, at least 30 days prior to the Services: (i) full technical requirements to be provided for the event; (ii) scheduled time of Supplier's arrival to the Services location; (iii) scheduled time of any sound checks; and (iv) diagram indicating placement of equipment on stage or at venue. Supplier shall furnish all materials to perform the Services, except where agreed to in advance by both Parties. If Rutgers deems any of the logistics unreasonable, then Rutgers has the right to terminate without any liability to Supplier for all fees and expenses. Supplier shall reimburse Rutgers for any additional costs at the time of the event incurred by Rutgers as a result of changes required by Supplier from the technical requirements.

**14.2. Advertising.** Services are for the Rutgers community and invited guests; therefore, Supplier shall not conduct any outside advertising or radio promotions unless agreed upon in writing by Rutgers.

**14.3. Merchandise.** Supplier shall not sell any products while performing the Services, including but not limited to the sale of CD's, records, tapes or other mementos, unless agreed upon in writing by Rutgers.

**14.4. Control of Services.** If Supplier is not punctual in arrival according to the schedule provided by Supplier to Rutgers, Supplier shall reimburse Rutgers for any additional costs incurred by Rutgers as a result of such tardiness (e.g., facilities maintenance services, electrician's fees, etc.). If Supplier fails to appear for the Services, Supplier shall reimburse Rutgers for all bona fide costs related to the event and this Agreement will be voidable by Rutgers. Notwithstanding the foregoing provisions of this Agreement, if the Supplier fails to perform to the specifications of this Agreement, payment may be reduced or withheld by Rutgers. Supplier will control the details and manner of the Services but it is agreed to and understood that Rutgers shall have the right to direct Supplier to discontinue any activity constituting violation of a university policy, state statute, applicable ordinances, direction of lawful authority, or, if Rutgers determines, in its sole discretion, that the Services is disruptive to the normal functions of the university. Such discontinuation shall not be considered a breach of this Agreement. Municipal law imposes an 11 p.m. sound amplification curfew Sunday through Thursday and 12 a.m. sound amplification on Friday and Saturday curfew on all outdoor, on-campus live performances at Rutgers University, New Brunswick/Piscataway campuses. There are also a 10 p.m. sound amplification curfew on the Newark campus and a 10 p.m. sound amplification curfew on the Camden campus. The Supplier shall end the Services before or by the curfew time.

**14.5. Security.** Supplier shall comply with all security measures and procedures adopted by Rutgers, including but not limited to metal detector scanning. Supplier agrees not to engage in, or encourage audience participation in behaviors that in any way threaten or endanger personal safety or security, including but not limited to stage diving, crowd surfing, floating, or moshing. Supplier agrees not to enter the audience at any point during the event, nor invite or encourage audience members to come on stage, unless previously approved in writing by Rutgers as part of the event. Supplier acknowledges that such behaviors significantly increase the risk of injury to patrons. Supplier shall be responsible for any and all damage or injury arising from any such incident.

**UNIVERSITY PROCUREMENT TERMS AND CONDITIONS**

**ADDITIONAL TERMS INCORPORATED INTO HOSPITALITY AGREEMENTS**

**15. HOSPITALITY TERMS**

**15.1. Attrition Fees.** Rutgers shall pay Supplier if Rutgers does not utilize 80% of the total room nights committed in the room block. Rutgers will be invoiced following the official end date, as liquidated damages and not as penalty, for the difference between 80% of the total room nights and Rutgers’ actual usage of rooms, multiplied by the single group room rate.

**15.2. Mitigation/Resell of Guest Rooms or Meeting Space.** Supplier shall undertake all reasonable efforts to resell any unused or cancelled rooms and any unused or cancelled function space, and it will credit those revenues against any penalties, attrition fees, performance clause fees, or liquidated damages. For any day that the Supplier achieves 100% occupancy during the official event dates, Rutgers will receive credit for full achievement of the contracted guest room block for that day. Supplier must submit to Rutgers a copy of the daily occupancy report documenting that the rooms were not resold and were available for sale. Any revenue received by the Supplier from the resell of guest rooms or function space over the cancelled event dates shall be credited back to Rutgers within thirty (30) days after the final date of the meeting.

**15.3. Food and Beverage Minimum Charge.** Supplier shall establish an 80% Minimum Food and Beverage Charge which it shall require Rutgers to fulfill for any functions at which food and/or beverage services are required at the event (“Food and Beverage Functions”). Should the expected guest count drop below the agreed-upon estimated number of guests prior to the event, Supplier shall advise Rutgers of alternatives for food and beverage which shall bring the function back up to the Minimum Food and Beverage Charge for the function.

**15.4. Cancellation.** Rutgers may cancel any event upon written notice to Supplier at any time prior to the event date. Such termination and cancellation shall be followed by a cancellation payment to the non-canceling party based on the following scale:

120 days up to 91 days prior to start date of event	25% of Guestroom Revenue only
90 days up to 61 days prior to start date of event	50% of Guestroom Revenue only
60 days up to 31 days prior to start date of event	75% of Guestroom Revenue, 40% of Food & Beverage, and Rental Minimums
30 days prior to start date of event	85% of Guestroom Revenue, 80% of Food & Beverage, and Rental Minimums

**15.4.1. Change in Management.** The Supplier shall promptly notify Rutgers if there is a change in its management prior to the event and Rutgers shall have the right to cancel this Agreement without liability upon written notice to Supplier.

**15.4.2. Construction/Renovation.** In the event that Supplier will be undergoing any construction or renovation during the event dates, Supplier shall promptly notify Rutgers and Rutgers shall have the right to cancel this Agreement without liability upon written notice to Supplier, if in the reasonable judgment of Rutgers such construction or renovation may unreasonably affect the use of the facilities or the quality of service to be provided under this Agreement.